



# **The EU as Promoter of Global Gender Justice**

**Combating Trafficking in the  
Face of the 'Migrant Crisis'**

*Vera Sofie Borgen Skjetne*

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# The EU as promoter of global gender justice

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**Reconsidering European Contributions to Global Justice (GLOBUS) is a research project that critically examines the EU's contribution to global justice.**



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## About GLOBUS

Reconsidering European Contributions to Global Justice (GLOBUS) is a Research and Innovation Action (2016 – 2020) funded by the EU's Horizon 2020 programme, Societal Challenge 6: Europe in a changing world – Inclusive, innovative and reflective societies. GLOBUS is co-ordinated by ARENA Centre for European Studies at the University of Oslo, Norway and has partner universities in Brazil, China, Germany, India, Ireland, Italy and South Africa.

GLOBUS is a research project that critically examines the European Union's contribution to global justice. Challenges to global justice are multifaceted and what is just is contested. Combining normative and empirical research GLOBUS explores underlying political and structural obstacles to justice. Analyses of the EU's positions and policies are combined with in-depth studies of non-European perspectives on the practices of the EU. Particular attention is paid to the fields of migration, trade and development, cooperation and conflict, as well as climate change.

## Abstract

This report contributes to the debate of the European Union (EU) as a promoter of gender equality and global justice by investigating the EU's approach to trafficking before and in the face of the so-called 'migrant crisis'. Trafficking as policy field is highly 'gendered' both on-ground and on the EU political agenda, and it affects both the internal and the external relations of the Union. Using an idea analytical perspective, I ask how and to what extent ideas of gender justice are evident in the EU's policy documents on trafficking, and how these ideas changed as the focus shifted from trafficking within the Union to trafficking coming from outside Europe following the so-called 'migrant-crisis'. The theoretical framework elaborated in the report builds on theories of global political justice and different feminist theoretical contributions. It highlights what consideration the EU pays to gender justice within the state-frame, universal approaches to gender justice, and considerations of group differences and/or intersecting inequalities. The framework allows us to address the different ways gender justice is promoted at the global level.

My analysis shows that the EU's approach to trafficking when faced with the so-called 'migrant crisis' changed from a victim-centred view of justice highlighting universal solutions to gender justice, to a state-centred view of justice. Two tendencies are particularly striking in this regard: 1) the shift to see trafficking and smuggling as something alike, and 2) the focus on trafficking as security problem. Furthermore, the analysis shows that despite this overarching change in balance towards ideas of global gender justice rooted in state concerns, the EU still devoted considerable attention to ideas of universal gender justice, and recognition of group differences. The findings of the report challenge the traditional focus on gender in EU external relations on whether or why gender is more or less incorporated – or mainstreamed – in foreign policy. Instead, I argue that to allow for an analysis of how the EU promotes gender justice globally, it is necessary to broaden the perspective and recognise that promotion of gender justice take different forms, involving different normative dilemmas.

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## List of abbreviations

Art.	Article (law)
CoE	Council of Europe
CSDP	Common Foreign and Security Policy
DG	Directorate General
EAM	European Agenda on Migration
EEAS	European External Action Service
EIGE	European Institute of Gender Equality
ENP	European Neighbourhood Policy
EU	European Union
EWL	European Women's Lobby
FEMM	European Parliament's Committee on Women's Rights and Gender Equality
IR	International Relations
Rec.	Recital, found in the preamble of a Directive
TFEU	Treaty on the Functioning of the European Union
THB	Trafficking in human beings
UN	United Nations

# Introduction

The aim to ensure gender equality and justice are listed as fundamental values of the European Union (EU)<sup>1</sup>, as stated in the 2009 Treaty of Lisbon:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

(Treaty on European Union 2009: art. 2)

Article 3(5) of the Treaty also makes clear that the EU aim to export these ideals: 'in its relations with the wider world, the Union shall uphold and promote its values'. The scholarly literature on gender in EU's external relations have aimed considerable attention to whether or why gender is more or less incorporated – or mainstreamed – in

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<sup>1</sup> I follow Hill and Smiths (2005: 8) definition of the EU as 'a set of international institutions and arrangement within which the interests and preference of member states and other actors can be coordinated for international purposes'.



foreign policy. Yet, as it appears in the Treaty, justice related to gender equality is interwoven with other values such as minority rights, in a community consisting of different member states. This indicates that despite the EU's strong formal commitment to promote gender equality and justice on the global level, the Union's actual approach might take different forms, following several roads to a perceived Rome. I suggest that rather than only asking whether the EU promotes gender justice globally, there is a need to redirect the discussion to also consider how gender justice is promoted on the global scene, and thus allow for different approaches to ensure gender justice.

I take trafficking in human beings as case for investigating the EU's approach to global gender justice.<sup>2</sup> Following a 'before' and 'after' logic, in what Yin (2014: 53) would describe as a longitudinal case study, I focus on the change in ideas of gender justice in the EU approach to trafficking when faced with the so-called 'migrant crisis'.

Human trafficking is an illustrative example of gender injustice in a globalised world. In the scholarly justice literature, the archetypical example of domination is the relationship between the master and slave. Trafficking is often referred to as modern day slavery (Council of Europe, 2005) and the question of how the problem of trafficking should be solved thus point to the core topic of this report: how to avoid domination. However, the complexity of the problem reveals that the master/slave relation alone is not sufficient to describe the injustice in human trafficking (Allen, 2015). Trafficking take many different forms, and although it does not necessary involve border-crossing, the exploitation of the victims might be due to a wide range of actors in different parts of the world with help from factors such as internet and new means of communication. The gendered nature of the problem of trafficking is also widely acknowledged; gender both shapes who and in what form individuals are trafficked. Globally, most of the identified victims are women, and whereas male victims often are trafficked for forced labour, the majority of the girls and women are trafficked for sexual exploitation (UNODC, 2018: 28), the latter described as one of the most 'blatant contemporary manifestations of gender inequality' (Askola, 2007b: 204).

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<sup>2</sup> I use the terms 'trafficking in human beings', 'human trafficking' and 'trafficking' interchangeably. They all refer to the former when else not specified.

The past two decades, the EU has developed a comprehensive legal and policy framework towards trafficking in human beings, targeting both internal and external dimensions of the problem. When faced with the so-called 'migrant crisis', attention to trafficking coming from outside the EU increased, and politicians discussed the need to save refugees 'from the 21st century slave trade' of human trafficking (Rettman, 2015). Scholars have cited the 'crisis' as reason both for concern for the trafficking situation, as well as an opportunity to monitor actions taken by states in order to follow up their anti-trafficking obligations (Piotrowicz, Rijken, & Uhl, 2017). Yet, studies on the implications of the so-called 'migrant crisis' on the EU's approach to trafficking are still scarce.

Many scholars have pointed to the global dynamics of gender injustice (see e.g. Jagger 2005, 2009; Fraser, 2009; Nussbaum, 1999, 2001), but few have specified what a global approach to gender justice might look like when it comes to foreign policy. To allow for the complexity in which justice and gender equality is promoted in EU external relations, I use a theoretical framework of three different conceptions of global justice - justice as non-domination, as impartiality and as mutual recognition - as elaborated in the GLOBUS project<sup>3</sup> (Eriksen, 2016; Sjursen, 2017). They need not to be mutually exclusive, but generally focus on different challenges and highlight different solutions to justice at the global level, focusing respectively on states, individuals and groups.

This division have also proven useful when investigating questions related to gender equality policies (Holst, 2018, 2019). I suggest that adding a feminist lens to the GLOBUS framework helps to better concretise and understand how gender justice is understood and promoted by the EU on the global level. In order to do so I build on insights from feminist theories focusing on the state in relation to justice as non-domination; when it comes to justice as impartiality I use insights from feminist theories focusing on universal women's rights; and in the case of justice as mutual recognition I draw on third-wave feminist arguments about the need to account for the difference in which gender oppression occurs.

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<sup>3</sup> GLOBUS is a research project that critically examines the European Union's contribution to global justice. For more info see [www.globus.uio.no](http://www.globus.uio.no).

Theoretically and analytically, this report contributes to the scholarly literature on gender and global justice, by providing a theoretical elaboration of what the GLOBUS framework might entail from a gender perspective. The insight that promotion of gender in external relations might take various forms, underpinned by different normative concerns, are however also relevant for other studies on gender in foreign policy. When it comes to its empirical contribution, the report contributes to fill a knowledge gap on the effect of the migrant crisis on the EU's approach to trafficking.

In order to assess the balance the EU makes between these three orientations towards gender justice in the case of human trafficking, I deploy an idea analytical perspective. The research question I investigate is twofold, and sounds:

- 1) To what extent and how are ideas of gender justice evident in the EU's approach to trafficking in human beings?
- 2) How have these ideas changed with the migrant crisis?

The aim of this report is thus to investigate what the prevailing ideas of gender justice in the EU's approach to trafficking are, and whether and how the balance between them is changing. After addressing the theoretical foundation of the three idea-orientations, I answer the research questions through an analysis of key EU documents addressing trafficking in human beings between 2009 and 2018. I distinguish between documents addressing trafficking in general and key documents targeting the external approach to trafficking. By differentiating between underlying ideas of justice in the problem understanding and in policy solutions in the EU's approach to trafficking, the analysis opens up for addressing how the EU perceive the injustices in trafficking and by what means they should be addressed. Although trafficking is a shared competence between the EU and its member states, the focus of the analysis will be at the EU level, namely on its institutions and policies.<sup>4</sup>

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<sup>4</sup> Shared competence implies that both member states and the EU can provide regulations and adopt legally binding acts (Olsen, Rosén & Trondal, 2017).

## Structure of the report

The report is structured in the following way: First, I will present the current attempts by the EU to promote gender equality, with focus on how considerations towards universal women's rights, other vulnerabilities and the position of the states are balanced. I further present the case of trafficking. In the third chapter, I will situate, set out and discuss the methodology and data used to conduct the research. In the fourth chapter, I examine what the GLOBUS model of conceptions of global justice entails for analysis of gender policy. Next, I operationalise these concepts and apply the conducted ideal types to the case of EUs trafficking policy between 2009 and 2018. The analysis has been divided into two phases. The first phase extends from 2009 to 2012, and is characterised by the developing of the current EU legal and policy framework towards trafficking in human beings. The second phase under investigation, from 2015 to 2018, marks a turn on the EU level, to an increased focus on trafficking coming from outside Europe. After investigating the ideas of justice in the EU's approach to trafficking in these periods, I discuss these changes more directly to the theories on global gender justice. In the last chapter, I discuss some implications of these changes for the EU as promoter of global gender justice in the case of trafficking. Finally, I reflect on more general theoretical and empirical insights raised by my report, and present some suggestions for further research.

# Chapter 2

## Background and state of the art

This report contributes to the literature and research on both the EU as a promoter of gender equality and as a promoter of global justice. More specifically, I focus on *how* the EU seeks to promote gender justice in its external relations. As Jacquot (2017: 41) notes, there are multitude of different understandings of the principle of equality at the European level. In this chapter, I introduce key strategies and debates for understanding gender equality policies in the EU, and present and discuss the case of trafficking and the situation around the so-called 'migrant crisis'. I argue that in order to assess the EU as a promoter of gender justice, it is crucial to understand the balance between the autonomy of the states to form their own gender equality policies, more universal women's rights and awareness of other inequalities. In the case of global gender justice, this implies turning attention from whether or why gender is included in external relations, to also consider *how* gender is promoted. The three diverging considerations in promoting gender justice here presented form important axes in the theoretical framework of the report, as elaborated in chapter 4.

## Gender in the EU

The EU has a long history as a promoter of women's rights and gender equality. Starting with the inclusion of the principle of equal pay between genders in the 1957 Treaty of Rome (art. 119), gender politics has expanded to a wide array of policy areas. The history of EU gender policy is usually described as a development from focus on *equal possibilities*, to the inclusion of *positive actions* during the 1980s, turning attention 'from equality of access to creating conditions more likely to result in equality of outcome' (Rees 1998: 34). In 1995, EU gender policies saw a further shift to *gender mainstreaming* (Abels & Mushaben, 2012: 7).

Until the 1990ties, EU gender policies were mainly targeting inequality in the economic sphere, on the (paid) workplace (Abels & Mushaben, 2012: 7). The adoption of the principle of gender mainstreaming in the Treaty of Amsterdam created an obligation on the EU to integrate a gender perspective in *all* policies and activities, including its external actions. Gender perspectives are supposed to have been incorporated on all stages of the policy-processes: design, implementation, monitoring and evaluation (Abels & Mushaben, 2012: 7; Woodward, 2012). The turn to gender mainstreaming implied a shift from a more traditional women-focused approach in gender equality-policies, to also targeting men, and interactions between women and men. With this approach, the focus was supposed to shift from adding women to a particular issue, to a stronger focus on how gender norms and structures form the context itself (Bretherton, 2002: 6).

During the 1990s, debate occurred around the absence of policies targeting other sources of inequality than that of gender (Bell, 2008: 36). Whereas 'equality' from the Treaty of Rome (1957) onwards was extensively linked to gender, the Article 13 of the Treaty of Amsterdam (1996) thus expanded 'equality' to include factors such as ethnicity, disability, age, religion and sexual orientation (Lombardo & Verloo, 2009: 479). In the 2000s, this was followed by the adoption of a new comprehensive package of anti-discrimination laws and policies (Bell, 2008). The shifting focus on inequality among both women and men led some scholars to describe it as a mainstreaming *equality for all*-approach (Booth & Bennett, 2002).

Several EU gender scholars have focused on the content and strategies of EU gender equality policies since the implementation of the gender



mainstreaming approach (Beveridge & Velluti, 2008; Kantola, 2010; Klein, 2006; Lombardo & Verloo, 2009; Pollack & Hafner-Burton, 2000; Van der Vleuten, 2016; Verloo, 2006; Woodward, 2012). One of the central debates has been over whether the strategy of mainstreaming provides a more inclusive equality approach, by improving the situation for previously neglected and/or intersecting inequalities; or if it creates obstacles between different discriminated groups (Squires, 2005; Verloo, 2006). The turn from a positive action approach focusing on women, to a 'mainstreaming all' approach has led some feminist critics to raise concerns about dilution or dismantling of EU gender equality politics (Kantola, 2010; Jacquot, 2010, 2017). Jacquot (2010) argues that by replacing gendered discrimination with a model where gender is treated as one among many other social strata, the EU gender politics has become more fragmented and diffuse. The 'diversity management' is criticised for side-lining gender in favour of other equality gaps (Kantola, 2010), and moreover generate barriers between groups advocating against particular and separate inequalities (Lombardo & Verloo, 2009: 481).

Nevertheless, most feminist critiques of the EU mainstreaming approach acknowledge the need to account for intersecting inequalities and other discrimination than that of gender (Kantola, 2010: 53; Lombardo & Verloo, 2009). Most EU gender scholars thus agree that this legal framework on equality developed after the Treaty of Amsterdam has a 'radical potential' (Allwood, 2013: 43). Yet, to act and account for these complex inequalities when it comes to policies is challenging, and the concerns raised by EU gender scholars is therefore more related to the shortcomings of the emerging focus on multiple inequalities, rather than the focus itself (Kantola, 2010; Lombardo & Verloo, 2009).

### **How does the EU act in the field of gender equality?**

European law, member states, institutions and actors from within and outside the EU all influence how gender issues occur and gender equality is promoted on the European agenda (Abels & Mushaben, 2012: 3; Locher, 2012; Woodward, 2003). Formally, the Unions commitment to gender equality is, as already mentioned, stated in the Treaty of Lisbon and can thus be considered as 'hard law' (Woodward & van der Vleuten, 2014: 72). Yet, the EU does not provide any direct opportunities for sanctioning violations of this commitment. On the basis of the treaties, the EU can however adopt directives, which are

the strongest tools available to steer member states actions as they might include sanctions by the Court of Justice (Woodward & van der Vleuten, 2014: 72). The legal remedies produced under the Court of Justice has influenced gender equality-law and jurisprudence in several member states, although there is still much room for the states to manoeuvre (van der Vleuten, 2012: 54-57).

Historically, the European Commission has been the main site for development of EU gender policies (Guerrina & Wright, 2016: 302). Institutionally, gender equality and anti-discrimination are positioned under Directorate-General (DG) of Justice. However, the uniqueness of EU gender policy has been in 'building itself around multiple pillars, combining law, funding for positive action programmes and integrating equality into all of the Union's policies' (Jaquot 2017: 29). Gender mainstreaming and non-discrimination are both horizontal principles, which means they are binding for all EU institutions and activities. This is reflected in the specialised units within several DGs of the European Commission, the Advisory Committees, and the expert groups dedicated to gender equality found in various Commission services (Woodward & van der Vleuten, 2014: 74). After the establishment of European External Action Service (EEAS), the responsibility for mainstreaming gender in EU external affairs was transferred from the Commission to EEAS (Allwood, 2015: 13). In the European Parliament, the Committee on Women's Rights and Gender Equality (FEMM) has become an important guardian of gender issues, particularly in external affairs. The European Institute for Gender Equality (EIGE) and the Agency of Fundamental Rights (FRA) are two important institutions, generating knowledge and providing expertise on respectively gender issues and other types of discrimination. Civil society actors and stakeholders such as the European Women's Lobby (EWL) also play important informal roles in the promotion of gender equality in the EU, through independent evaluations of European gender policies and as channels for policy demands (Woodward & van der Vleuten, 2014: 75).

Despite a comprehensive EU gender machinery, it remains a clear balance between the aim to ensure gender equality and the position of the single states. This is reflected by the limited number of directives adopted in the domain of gender equality, where only a handful address gender issues outside the (official) working sphere (Woodward & van der Vleuten, 2014: 72-73). Member states also enjoy



considerable freedom when it comes to defining gender issues for example, in family related policies (Kantola, 2010: 104-124). Additionally, the increased use of soft law instruments such as recommendations and the Open Method of Coordination since 2006 gave the member states a lot of leeway when it comes to gender equality policies (Kantola, 2010: 83; Woodward & van der Vleuten, 2014: 73-74).

It should also be noted that EU gender policies are not only a top-down process, where the states 'download' gender equality policies from EU level policy-making and developments in EU law. Several scholars working on EU gender topics have emphasised the importance of member states advocating gender equality friendly policies within and up to the EU level (Guerrina & Wright, 2016: 312; Kantola, 2010: 156-157). Yet at the same time, the Council of the EU has been considered the most difficult body in the EU from a gender perspective, as minority-coalitions of states have been able to block gender progressive policies due to conflicting 'national interests' (Kantola, 2010: 22; van der Veluten, 2012: 50-52).

As elaborated above, the equality policies of the EU are formed by complex vertical and horizontal linkages. While acknowledging the several complex processes influencing EU gender policies, I argue that common for the EU's approach to gender justice is the balance between inequalities related to gender and that of other social factors, as well as the freedom of the states to form their own gender policies. I argue that these considerations form important axes for understanding how gender justice is understood and promoted by the EU, also globally.

## **Gender in EU external relations**

Despite gender being included in EU external activities since the second half of the 1990ies, foreign policy aspects have generally been of less interest to EU gender scholars. The past few years, a growing number of analyses have devoted attention to gender in EU's external relations in areas such as migration (Allwood, 2015; Mushaben, 2012), development aid (Debusscher, 2014), security policy (Guerrina & Wright, 2016; Guerrina, Chappell, & Wright, 2018; David & Guerrina, 2013; Muehlenhoff, 2017) and trade (Hoffman, 2014; van der Vleuten & Hulse, 2014). Some of these scholars have focused on the quality or extent to which gender equality is incorporated – or mainstreamed – in external policies, while others have focused more on the process

leading to these policies. Although focusing on different fields and addressing them from different angles, studies on gender in EU external relations have often highlighted that despite formal commitment by the EU to promote gender equality externally, the actual implementation of gender mainstreaming in policy strategies are varying. Gender is often mentioned in general terms, without relation to concrete plans or proposed implementation of EU policies in external relations (Debusscher, 2014; Woodward & van der Vleuten, 2014).

EU gender scholars have provided a lot of insight into the question of *why* gender concerns are more or less integrated in some foreign policy fields than others. Scholarly work in this field has pointed to several reasons for the lack of commitment to gender mainstreaming when it comes to action plans or proposed policy implementation in EU external affairs. One answer is that external affairs are not typically seen as 'gendered'. The lack of focus on gendered consequences in these fields result in gender matters being forgotten, or simply ignored, when confronted with other concerns (Allwood, 2013). This is linked to the second proposed reason for absence of commitment to gender mainstreaming in these fields: the lack of interest in foreign affairs among traditional gender advocates within the EU, such as the EWL (Guerrina & Wright, 2016: 300). Following Woodward's (2003) concept of 'velvet triangles', many EU gender scholars have pointed to networks among feminist actors coming from different positions in the EU to explain why gender is included in policy areas traditionally portrayed as gender-neutral, or contrariwise: the lack thereof to explain gender-blindness (Guerrina & Wright, 2016; Locher, 2007). The third argument points to the previously mentioned lack of hard policy when it comes to gender issues outside the economic sphere, which also affects EU external relations (Woodard & van der Vleuten, 2014: 86).

For these reasons, gender scholars have called for more studies on how the principle of gender equality shape the Europe's external activities (David & Guerrina, 2013: 53). However, as shown above, the work on gender in EU's external relations have focused largely on whether and why gender has been more or less mainstreamed in fields of EU's external relations. I suggest that in order to understand and capture the promotion of gender in EU's external relations, we must acknowledge that equality and the solutions to achieve it are contested. That different ideas and representations of what gender equality is and requires might be actualised when the focus of a

gender issues is moved to the external agenda has recently been suggest by Jacquot (2017: 41). This report contributes by an alternative approach to the study of gender in EU's external relations that allows us to account for a complexity of three different approaches to ensure gender justice, and further enable us to redirect the question of the promotion of gender in EU external relations to not only ask whether or why, but also *how* gender is promoted.

## Trafficking as case

Before presenting trafficking as a case of EU's promotion of gender justice, it is useful to present the EU's definition of the issue of trafficking in human beings. The EU's anti-trafficking Directive (Council of the EU & European Parliament, 2011: art. 2) provides the following definition:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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.

As this definition makes clear, human trafficking involves two critical elements: coercion or deception, and exploitation. It is further stated that a 'position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.' Additionally, article two states that no consent of a victim should be considered relevant where any of the means set forth in paragraph 1 are used.

## Trafficking – an exception in EU gender policies

I argue that there are three reasons why trafficking as a policy problem is distinct from other gender issues in EU external relations: the gendered nature of the problem, the political framing of the problem and the use of hard policy.

First, the importance of gender is more recognised in the case of trafficking than in other fields of EU external relations. The gender specific nature of human trafficking is clear in that the majority of the

identified victims of trafficking globally - and in the EU are women (EIGE, 2018: 13; European Commission, 2018: 3).<sup>5</sup> Hughes (2000) and EIGE (2018) have highlighted that gendered discrimination, poverty and violence might cause trafficking. Gender also steers the different 'sectors' in which trafficking occurs. Whereas women and girls often are trafficked into the sex industry or household work, men and boys tend to end up in the construction industry (European Commission, 2018: 3-4). Females (women and girls) were over 95% of the registered victims of sexual exploitation in the EU (EIGE, 2018: 13). Several scholars have emphasised the importance of considering gender as a social category in the process of trafficking, not only because gender steers who and in what 'sectors' people are trafficked, but also to fully understand the dynamics of violence, coercion and exploitation involved in trafficking (Askola, 2007a; Locher, 2007; Roth, 2011).

Second, in contrast to most fields of EU external relations, the political framing of trafficking on the EU agenda has very much been linked to gender. Trafficking is, although not extensively, brought on the political agenda as a case of gender violence (Aradau, 2008; Askola, 2007b; Kantola, 2010; Woodward & van der Vleuten, 2014), meaning a 'form of violence that is directed against a woman because she is a woman and/or that affects women disproportionately' (EIGE, 2018: 13). This is partly due to the well-established link between trafficking and the sex-industry (see. e.g. Locher, 2007; Aradau, 2008). The relationship between trafficking and gender justice is also due to the process in which the anti-trafficking norm was established. In 1997, The Treaty of Amsterdam article 29 stated that preventing and combating 'trafficking in persons' was one of the objectives to an 'Area of Freedom, Security and Justice'. This was partly influenced by the emerging women's human rights norm following the 1993 Vienna World Conference on Human Rights, as well as the strong anti-violence norm that emerged from the 1995 UN Beijing Conference on Women (Kantola, 2010: 151; for a more detailed account see Locher 2007).

Gender advocates within the EU have been particularly active when it comes to the issue of trafficking. Locher's (2007) study on the development of an anti-trafficking norm within the EU examines how a so-

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<sup>5</sup> Note that the number of identified victims are not necessary the same as the total amount of victims (for a more detailed account of this see Tyldum and Brunovskis (2005)).

called ‘velvet triangle’ of feminist from academia, from EU bureaucracy and NGOs played an important role from the adaptation of an anti-trafficking norm to the actual implementation of the norm through political measures in the EU. Actors such as the EWL succeeded in framing trafficking as a form of modern slavery, as well as coupling them to existing gender equality norms through FEMM in the European Parliament (Locher, 2007). Since then, also EIGE has contributed substantially to highlight the gender dimensions of trafficking in human beings through research, data gathering and reports (see e.g. EIGE, 2017, 2018). It is thus clear that trafficking largely is considered as a ‘gendered’ political problem on the EU agenda.

Finally, trafficking can be considered an exception when it comes to the use of hard policy in EU gender policies. With the formulation on trafficking in the Treaty of Amsterdam, combating trafficking was incorporated into part of the EU primary law and formally acknowledged as a political issue under EU competencies (Locher, 2007: 267). Today, trafficking in human beings is prohibited under article 83(1) in the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union. In addition to this, the EU has produced several binding legal instruments on trafficking. At the beginning of the 2000s EU adopted the Framework Decision on combating trafficking in human beings (2002) and the directive on the short-term residence permit for victims of trafficking (2002). Between 2011 and 2012, the EU established the current legal and policy framework for combating and preventing trafficking in human beings. This framework consists of hard policy in the form of the Anti-trafficking Directive (European Parliament & Council of the EU, 2011), along with the Strategy (European Commission, 2012) and the establishment of an Anti-Trafficking Coordinator under DG Migration and home affairs in 2011. In 2017, this was followed up by the Communication stepping up EU action against trafficking in human beings (European Commission, 2017). The political commitment of the EU to address trafficking and the complexity of the phenomenon is reflected in the large number of initiatives addressed within contexts such as employment, gender equality, anti-discrimination, fundamental rights, crime, migration and security.

It should also be noted that the European approach to trafficking in human beings is not limited to the activities under the EU. The UN



Palermo Protocols and the trafficking framework established under the Council of Europe (CoE) also forms an important part of the European trafficking-management (Piotrowicz et al., 2017). Yet, the ways in which these legal instruments and monitoring instruments compliment, overlap and possibly conflict with the EU's approach to trafficking is beyond the scope and focus of this report.

As outlined above, the role of gender is acknowledged in both causes and consequences of trafficking. The additional political framing of the trafficking as a gender issue on the EU agenda and the rather unusual use of hard policy by the EU in this field, demonstrate the uniqueness of trafficking as a gender issue on the EU agenda. I therefore expect ideas of gender justice to form an important part of the EU's approach to trafficking in human beings, also when it comes to the external dimension of the issue.

### The migrant crisis and the shift from internal to global gender justice

As discussed above, it is fair to expect gender justice to be an important concern when it comes to EU's approach to trafficking. Yet, why should we distinguish the period before and after the so-called 'migrant crisis' when investigating the EU as promoter of global gender justice? In what Yin (2014: 53) would characterise as a longitudinal case study, I analyse how ideas of gender justice are evident in the EU's trafficking policies between 2009 and 2018. Following a 'before' and 'after' logic, I focus on the change in these ideas when faced with the so-called 'migrant crisis' (Yin, 2014: 53).

The link between trafficking and migration has been emphasised by several scholars (Aradau, 2008; Askola, 2007b; Goodey, 2003). The relationship between trafficking and migration is also evident at the EU level, where the main responsibility for trafficking and the Anti-trafficking coordinator is placed under DG Migration and home affairs. Yet, trafficking affects both external and internal migration and relations of the EU. In fact, trafficking *within* and *between* member-states consists around half of the identified cases of trafficking in the EU (European Commission, 2018: 2). This simultaneously internal- and external nature of the policy field allows for investigating whether and how the principle of gender equality is promoted by the EU on the global level compared to more domestic EU affairs in the case of trafficking. I consider the so-called 'migrant

crisis' a turning point in this regard. The situation raised concern for the trafficking situation and the focus on migration from outside the EU raised among European policy makers (Piotrowicz et al., 2017). Thus, I expect the 'migrant crisis' to have actualised the external nature of the trafficking problem in the EU, and shifted the focus from the domestic to the external aspects of trafficking in human beings.

When further analysing the EU's approach to trafficking before and after the 'migrant crisis', I therefore pay attention to whether and how there is a change in the promotion of gender justice when the problem focus shifts from domestic EU affairs to more emphasis on foreign affairs. Besides filling a substantial knowledge gap, the value of studying the EU's approach to trafficking before and after the so-called 'migrant crisis' lies in the opportunity to shed empirical light and gain insight on the use of different theoretical conceptions of global gender justice (Yin, 2014: 40-41). This has theoretical and analytical relevance for both the broader debate on gender and global justice, and in particular for those studying gender in EU's external relations. This will be further discussed in the next two chapters.

## Summary

It is fair to expect that the EU, with strong commitments to gender equality and global justice should promote gender justice in its trafficking policies. This chapter has revealed that whereas other fields of EU external relations suffer from a lack of focus on gendered consequences, little interest by gender advocates, and absence of hard policy, this is not the case when it comes to trafficking. I therefore expect concerns of gender justice to play a central role in the EU's approach to trafficking, also in its external relations. Yet, EU's aim of promoting gender justice is not straightforward, as it seems to intertwine with state considerations, as well as the aim of integrating other and intersecting inequalities. While other studies on gender in EU's external relations have focused on whether or why gender is more or less mainstreamed in politics, this study takes a different approach, investigating *how* the EU promotes gender justice in light of three justice conceptions. As the so-called 'migrant crisis' actualised the external nature of the trafficking problem, I pay attention to whether and how there is a change in the promotion of gender justice when the focus shifts from domestic EU affairs to foreign affairs.

# Chapter 3

## Research design

The aim of this report is to investigate to what extent and how ideas of gender justice are evident in the EU's approach to trafficking in human beings, and how this changed after the migration crisis. In order to do this, I deploy an *idea analytical perspective*. The aim of this chapter is to clarify the concept of ideas and situate it in the broader theoretical landscape of political science. I then go on to discuss the idea analysis as instrument for textual research and present the analytical tools and chosen data material for the analysis. Finally, I discuss some methodological challenges related to the chosen research strategy and data material. In chapter 4, I will present the operationalisation of ideas of gender justice in light of three approaches to global justice, which will further structure my analysis of EU policy documents on trafficking.

### Ideas and the field of IR

In the study of political science and international relations (IR), politics and policy-making is often understood as pursuit of 'national-interests' (Morgenthau, 1951). Since the end of the cold war the importance of ideas and norms<sup>6</sup> have however come to occupy a more central

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<sup>6</sup> Political scientist often refer to 'ideas' and 'norms' interchangeably. It is, however, necessary to present a distinction between the two. Finnemore (1996: 22) writes that unlike norms, ideas may be held privately. Whereas ideas 'may or may not have behavioral implications: norms by definition concern behavior' (Finnemore, 1996: 22).



position of the debate in political science. Today most scholars in the field of politics agree that 'ideas matter' (Mehta, 2011). Focusing on the EU as an actor (see definition on page 1), this report aims to investigate to what extent and how three idea-orientations of gender justice are evident in the approach to trafficking before and in the face of the so-called 'migrant crisis'. The idea analytical perspective conducted in this analysis draws attention to politics and policy making in light of ideas, based on an interpretative view of science (Weber, 1978). This follows from an assumption that actors are motivated by a variety of ideas, and that these ideas and motives are *interpretable* in texts (Bratberg, 2017; Beland and Cox, 2011: 1).

Although this study do not aim to test any relationship between ideas and action, the scholarly literature on ideas provide several reasons for why ideas might do so. Scholars within the rationalist-approaches to IR see ideas merely as reflections of 'state interests' (Carr, 2001; Morgenthau, 1951; Moravcsik, 1998; Waltz, 1979). In this view, it is the interests disguised as ideas that form politics. On the other side, a broad range of analytical approaches associated with social constructivist perspectives, have argued that ideas might have causal/constitutive effects and shape political action (Wendt, 1992, 1999; Finnemore & Sikkink, 1998; Katzenstein, 1996). While some go as far as to say that interests *are* ideas (Weldes, 1996; Hay 2011: 70), others emphasise how ideas are part of the social environment in which actors operate, and thus serve as sources to motivation and justification of political action (Finnemore & Sikkink, 1998; Risse, 2000). Some scholars emphasise the institutional element of ideas and norms, arguing that actors adhere to institutional roles following a 'logic of appropriateness' (March & Olsen, 1989, Checkel, 1999; Müller, 2004; Blyth: 2002). More recently, scholars have suggested that norms and ideas may not be as stable as has been argued earlier (Carstensen, 2011; Wiener, 2014). These scholars have argued that there may be significant *contestation* over the meaning of an idea or a norm, and that they therefore might change over time.

## Ideas

I follow Bergström and Boréus (2012: 140) definition of ideas as thoughts which, in contrast to impressions and attitudes, are marked by some continuity. Bergström and Boréus (2012: 149) further distinguish between normative and factual ideas, where the former refer to ideas about how the world should be, and the latter to ideas about

how it is. In this report, I am interested in studying how ideas of gender justice are evident in the EU's approach to trafficking, and whether and how there is a change when the focus is moved from the internal to the external relations. Justice and equality are both classic political ideals. These questions are therefore expected to activate underlying *normative ideas*, such as the relationship between the state and justice, and between individual- or group-centred justice approaches. At the same time, this study is not only engaging with theories on the meaning of justice, but also the influence ideas about justice have more concretely on politics and policy-making (Finnemore & Sikkink, 1998: 889), in this case: political texts on trafficking. Although the report concentrates on underlying normative ideas, these ideas are also expected to shape more descriptive ideas about the nature of the trafficking problem. The focus of ideas in this analysis can thus be considered a combination of normative and descriptive ideas.

## Conducting idea analysis

The idea analysis I use for textual research is qualitative and interpretative, with focus on the presence and changing balance of different ideas in political message (Bratberg, 2017: 67; Weber, 1978). The assumption behind the analytical perspective I deploy is that actors are carriers of different ideas, and that these ideas can be analysed qualitatively in texts. The actor-focus and qualitative foundation distinguish an idea analysis respectively from the somewhat related discourse analysis and quantitative content analysis (Bratberg, 2017: 69).

Beckman (2005: 14) categorises textual idea analysis in three types: the explanatory, the critical and the interpretative idea analysis, where this report is situated mainly in the latter approach.<sup>7</sup> It is however important to emphasise how crucial interpretations are in order to explain a phenomenon (Beckman, 2005: 46). In order to understand and explain actor's behaviour, one has to understand how they interpret their surroundings and how they seek to achieve their self-defined goals (Schmidt, 2011). By investigating to *what extent* and *how* ideas of justice are evident in the EU's approach to trafficking before and how this changed in 2015, this report therefore also adds to the understanding of what occurred to the EU's approach to trafficking when faced with the so-called 'migrant crisis'.

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<sup>7</sup> Beckman use the term descriptive instead of interpretative.

Based on an assumption that ideas might influence politics, the starting point of an interpretative idea analysis is that political communication – here political texts – can be interpreted in light of prevailing ideas. The focus of idea analysis is thus not *on* the text, but rather the meaning *behind* it (Bratberg, 2017: 67-68). Although ideas are considered measurable, the quantification of ideas is of less interest, as the aim of the idea analysis is to capture and filter the underlying ideas that form the message of the text (Bratberg, 2017: 69). An interpretative idea analysis therefore implies going behind the text, past the obvious, making assessments and drawing inferences based on the material under investigation (Bratberg, 2017: 69; Beckman 2005: 51).

An interpretative idea analysis is also appropriate for the overarching focus of this study, namely the EU as promoter of global gender justice. First, an idea analytical perspective is useful for interpretative studies seeking to say something about specific actors (Bratberg, 2017: 69). In addition, as discussed further in chapter 4, both justice and gender equality are contested concepts. There are a multitude of different approaches to how justice and gender equality could and should be achieved – and especially at the global level. As regards to gender justice in the EU's approach to trafficking, the underlying ideas are particularly relevant to study since, as Whitworth (1994: 126) express it: 'gender does not exist simply at the material level but at the level of ideas and institutions as well'. To be aware of how gender justice is applied and what and which subjects it refer to is therefore crucial in order to understand the political text (Beckman 2005: 31), and further the EU as a promoter of gender justice.

It should be clarified that the idea analysis is first and foremost is a retrospective analysis (Solhøy, 2016: 41). The strength of this approach is that it is well suited for a theory-based deductive analysis of existing data material, in my case: political texts on the EU's trafficking policy. The advantage of using idea analysis is thus primarily to understand policies and policy making in the wake of- and in a concrete context (Solhøy, 2016). This is valuable regarding the empirical contribution of this report: filling a knowledge gap on the EU's approach to trafficking when faced with the so-called 'migrant crisis'.

Bergström and Boréus (2012: 149) identifies two central analytical tools for conducting idea analysis: ideal types and dimensions. The aim with ideal types is to identify a set of central characteristics for a

phenomenon. Dimensions is a related concept, however, when compared to ideal types, dimensions are less detailed. As framework for the empirical analysis, I build on three normative ideal types for how gender justice is understood and promoted on the global scene in the case of trafficking, focusing respectively on gender justice related to states, universal rights and groups. The ideal types are further distinguished between two dimensions: ideas as problem understandings and ideas as policy solutions. In the next section I present the chosen idea analytical tools.

## Ideal types

Ideal types were chosen as an analytical tool primarily as they are useful for deductive analyses with a clear theoretical foundation. One of the aims of this report is to contribute to the GLOBUS project with a theoretical elaboration and concretisation of what this framework of three conceptions of justice might entail from a gender-perspective. As this framework was elaborated prior to the document-analysis, creating ideal types based on the different established theoretical arguments related to gender justice in the case of trafficking thus contributed to the theoretical aim of the report, through concretisation and structuring of the framework.

Stemming from Webers famous work from 1949, the use of ideal types as an analytical tool has long history in the study of political science. The aim of ideal types is to define a set characteristics that reflects an idea in its pure – or extreme – form, and thereafter compare it to the material under investigation. By creating ideal types, the researcher is extracting the most important elements from different idea- or theoretical orientations, and the essential differences between them are clarified (Beckman, 2005: 29). I found this to be a useful tool given the aim of the report: to investigate how ideas of gender justice are evident in the EU's approach and whether and how this has changed when faced with the so-called 'migrant crisis'. As elaborated further in chapter 4, the theoretical framework elaborated in this report consists of three somewhat interrelated conceptions – or idea orientations – of justice, and a challenge is thus to establish where they differ from each other. When contrasting these on specific variables, it allowed me to construct an analysis scheme which clarifies the answers the different idea orientations gives to the same questions (Bratberg, 2017: 83).

Weber (1949) writes that the use of the ideal type is heuristic, it is the practical advantage that constitutes the most important reason for using this analytical tool. This implies that ideal types are not 'ideals' in the normative sense, nor do they provide explanation or understanding of what is going on in reality. Rather, ideal types provide categories from which the text can be read (Bergström and Boréus, 2012: 150). The practical value of ideal types was another important reason for choosing this tool for textual analysis. As discussed below, the past ten years, human trafficking has been addressed in many of the EUs official documents, across different policy areas. By providing a structured basis for analyses of overwhelming data material, ideal types are helpful for systematic comparisons of a political issue within a relative short period of time (Bergström and Boréus, 2012: 166). In chapter 4, I operationalise the ideas of gender justice and conduct ideal types based on three theoretical approaches to global justice: justice as non-domination, justice as impartiality and justice as mutual recognition. Arguments from different feminist theorists are used in order elaborate what the different approaches might entail from a gender perspective.

### **Dimensions and variables**

Drawing on Kingdon and Thurber (1984), Mehta (2010) distinguish between ideas as 'problem understandings', as 'policy solutions' and as 'public philosophies' (Zeitgeists). When further structuring my analysis, I focus on the first two groups as dimensions. This choice was based on more inductive reasoning. After the first review of the documents, it was clear to me that there were some interesting tendencies related to how trafficking was perceived, and the different policy solutions presented. Previous literature on human trafficking policies also suggested that attention to problem-understandings and solutions to trafficking in human beings was a fruitful starting point (Goodey, 2003; Aradau, 2004, 2008; Wylie, 2016). There are nevertheless reasons to believe that the two levels are connected. Aradau (2008: 15) suggest that the way policy makers perceive trafficking in women affect their preferred response to the issue. On the other hand, the practical advantage of differentiating between underlying ideas of justice in the problem understanding and in policy solutions lies precisely in that it opens up for distinguishing between more general ideas of how the EU perceives challenges to gender justice in the case of trafficking, and more concrete ideas of the means by which they should be addressed.



I structured each dimension on three variables. First, both dimensions contain the variable 'focus'. This is supposed to capture more general ideas about who the problem affects – and thereby who the rightful claimants of justice should be – and ideas about what the main concerns in the solutions to trafficking should be. Whereas the 'focus'-variables are more general, the next variables, problem 'understanding' and 'tools' for solution are meant to capture more concrete formulations of justice. Finally, I include variables clarifying how these considerations appear when applied more specifically to gender-concerns. Together, they form an analysis scheme that opens for capturing more abstract ideas as well as the specific differences between the theoretical approaches as regards to actual policies. The variables chosen were inspired by previous concretisations of the GLOBUS framework (Sjursen, 2017: 6), the feminist theoretical contributions elaborated in chapter 4, as well as scholarly literature on trafficking (Goodey, 2003; Aradau, 2004, 2008; Wylie, 2016, Askola, 2007a, 2007b; Locher, 2007; Roth, 2011).

## Data and analytical strategy

The aim of this report is to investigate to what extent and how ideas of gender justice are evident in the EU's approach to trafficking in human beings, and how this changed when faced with the so-called 'migrant crisis'. As the focus of the report is on the EU as a global actor, and the policy instruments are formally written and available, a textual idea analysis of official documents seemed like a valuable starting point.

My empirical analysis is based on official EU policy documents on trafficking applying an idea analytical perspective. The analysis is divided in two epochs. The first is 2009-2012, which covers the years leading up to- and following the central EU framework for combating trafficking. The second epoch is 2015-2018, under the assumption that focus on the so-called 'migrant crisis' have moved the attention to trafficking from the EU's internal to its external relations. As mentioned in chapter 2, trafficking is addressed in several fields of EU actions. That trafficking is a field where the EU have been particularly active is also evident in the amount and range of documents targeting trafficking in human beings produced by several EU actors. A search

for 'trafficking in human beings' in the EUR-lex database<sup>8</sup> returned 5135 documents (1975-2019). Whereas a large amount of them are resolutions or agreements with third countries, the areas in which trafficking is referred to extend from climate change to human rights, gender violence, migration and security (the search was conducted on 30 March 2019).

Given the enormous amount of EU policy documents targeting trafficking in human beings, I decided to focus my analysis on a selection of key policy documents targeting trafficking in EU's external relations between 2009 and 2018. The selection process was based on an overall assessment of whether the documents could answer my research question. The focus was to identify policy documents targeting trafficking in general, as well as key policy documents with relevance for trafficking in the Union's external relations.

Central EU legal and policy documents on trafficking in human beings are identified on the web page of the EU Anti-Trafficking Coordinator. From the first period, the central legal document is The Directive (Council of the EU & European Parliament, 2011), and the central policy document is the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 (European Commission, 2012), hereafter 'the Strategy'. For the second period the 2017 Communication stepping up EU action against trafficking (European Commission, 2017), hereafter 'the 2017 Communication' is the central policy document. From this period, I also include the two Progress Reports following up the Directive (European Commission, 2016, 2018), hereafter 'First-' and 'Second Progress Report'.

I base the selection of documents targeting the external dimension of trafficking in human beings on key foreign policy instruments as identified in Strategy (European Commission, 2012: 3-4) for the first period, and as identified in the First Progress Report (European Commission, 2016: 3) for the second period. The basic framework on the external dimension of trafficking in the first period is set in the 2009 Action Oriented Paper on strengthening the EU external dimension against trafficking in human beings (Council of the EU, 2009), hereafter the 'Action Paper'. In addition to this, the following

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<sup>8</sup> EUR-Lex provides access to: the Official Journal of the European Union, EU law, EU case-law, international agreements, EFTA documents, summaries of EU legislation, and other public documents.

documents are defined as key policy documents on the external approach to trafficking in the first period: the Global Approach to Migration and Mobility (European Commission, 2011), hereafter 'the GAMM'; Taking stock of the European Neighbourhood Policy (European Commission, 2010b), hereafter the 'ENP Report I'; the EU Plan of Action on Gender Equality and Women's Empowerment in Development 2010-2015 (European Commission, 2010a), hereafter the 'Gender Action Plan I'; and the EU Internal Security Strategy in Action: Five steps towards a more secure Europe (European Commission, 2010c) hereafter the 'Internal Security Strategy',

In the second period, the following documents are defined as key to the EU's external approach to trafficking: the European Agenda on Migration (European Commission, 2015b); The EU Action Plan against migrant smuggling (European Commission, 2015c); Review of the European Neighbourhood Policy (European Commission & HR, 2015b), hereafter the 'new ENP'; Gender Equality and Women's Empowerment: Transforming the Lives of Girls and Women through EU External Relations 2016-2020 (European Commission & HR, 2015a), hereafter the 'Gender Action Plan II'; the European Agenda on Security (European Commission, 2015a); and Global Strategy for the European Union's Foreign and Security Strategy (EEAS, 2016), hereafter the 'Global Strategy'.

Although I was not able to include all EU policy initiatives affecting the field of trafficking in human beings, this selection seemed appropriate given the focus of analysis. As the report aims to investigate whether and how there has been a change in ideas of gender justice in the EU's approach to trafficking when faced with the so-called 'migrant crisis' it was important that the selection of documents could be compared between the two periods. In the documents targeting trafficking in general this was not possible, as there was no legal document on trafficking from the second period. I was therefore aware that there is less room for elaborations in a Directive than in the policy documents. For the documents targeting the external dimension of the trafficking problem, only the first period has a document that focuses exclusively on the external trafficking dimension, namely the Action Plan (Council of the EU, 2009). The remaining documents can be grouped in four categories: documents on migration (European Commission, 2011, 2015b, 2015c), foreign and security policy (European Commission, 2010c, 2015a; EEAS, 2016), European



Neighbourhood Policy (European Commission 2010b; European Commission & HR, 2015b) and gender in EU's external relations (European Commission, 2010a; European Commission & HR, 2015a).

## Methodological reflections

The idea analysis I conduct is qualitative, with emphasis on interpretation of ideas expressed in texts. Interpretative research is often met with questions of *reliability* – the extent to which repeated analysis yields the same result, and to what degree the analysis actually measures what is to be investigated – the *validity* of the analysis. Finally, this research strategy raises questions on the role of the researcher. The way in which I try to manage this is by being open about the methodological choices I have made and the limitations I have done. I will further discuss some of these challenges related to the chosen data material and the idea analytical perspective.

## Reflections on data

As outlined above, official EU textual documents served as my main source for data in this report. According to Hansen (2006: 53), texts that stipulate official policy have traditionally been considered the most legitimate sources of data within studies of politics. As the focus of this report is on ideas of gender justice in the EU's approach to trafficking, and I focus on the EU as an actor, the use of official documents is considered a strength to the validity of the report. As official policy documents are results of several rounds of contestation, negotiations and review, the ideas reflected in these documents can be assumed to be well-grounded formulations on the EU's approach to trafficking. It should be clarified that although I focus on the EU as an actor, it does not mean that I expect all the documents to be formed by the same idea orientation, nor to reflect only one set of ideas, as I expect actors to be formed by several ideas. However, official data is considered a useful source for investigating how ideas of gender justice are integrated into official EU documents. The use of official documents is also considered to strengthen the reliability of the report, as the accessibility of the documents provide other researchers with the possibility to criticise my findings and interpretations by repeating, going into details or testing my analysis.

The focus on comparable documents in the two period was also important in order to ensure that I actually investigated a change in the EU's approach to trafficking, and not a change in the types of

documents investigated. I expect it to be differences in how ideas of justice are integrated in relation to trafficking across the different policy fields. This due to the assumption that the *genre* varies between political texts in different fields (Hansen, 2006). There are also reasons to believe that considerations to state sovereignty are more evident in documents targeting the external dimension of the trafficking problem, as the states are the central actors in global affairs. Therefore, I also expect considerations for sovereignty to play a greater role in the EU's approach to trafficking in the second period, when there is greater focus on trafficking coming from outside Europe. By comparing ideas of justice related to trafficking in documents from the same fields in the different periods, I keep these factors constant.

### Reflections on the use of idea analysis

As official policy documents often have been through several rounds of negotiations, the texts often have an ambiguous character. This creates an additional need to present the ground for interpretations and inferences (Beckman 2005: 52). In order to strengthen the reliability of the analysis I try to be open about the methodological choices I make, and through thorough referencing and citation of the texts that underpins my interpretations. It should here be repeated that the aim of the idea analytical approach I follow is not to 'count' the presence of ideas in the material. Nor do I argue that ideas always are visible in single sentences. My findings are based on my interpretations of the text, with assessments of the meaning behind the texts, the bearing ideas and overarching tendencies of the material as a whole. It should also be noted that if the texts were not ambiguous there would be no reason to conduct an idea analysis - as the task of the researcher is not to point out the obvious (Beckman, 2005: 52).

As regards generalisation, this report has an aim of theoretical – or analytical – generalisation (Yin, 2014: 40-41; Lewis & Richie, 2003: 263-67). By building bridges between scholarly work in international relations, political theory on justice and feminist theory, the theoretical framework elaborated in chapter 4 provides new insights into the question of how gender justice might be promoted globally. The framework allows for a complexity of three different approaches of global gender justice, and reflects on the normative dilemmas involved. Building on a framework that allows for three different approaches to gender justice, this framework contribute to a more nuanced picture of the EU as promoter of global gender justice. Subsequently, I show

how this framework can be concretised and further improve our understanding of the EU's promotion of gender equality in specific contexts. In doing so, I examine ideas of justice in the EU's approach to trafficking before- and after the so-called 'migrant crisis'. In this way, I aim to redirect the discussion on gender in EU's external relations from whether or why gender is more or less incorporated, to also consider *how* gender justice is promoted on the global scene.

The theoretical propositions here elaborated are of relevancy to both the broader scholarly debate on gender and global justice, to scholars concerned with promotion of gender equality, as well as the recent debate on 'feminist foreign policy' (Aggestam, Rosamond & Kronsell, 2018). Moreover, the framework provides an answer to earlier calls for studies on how the principle of gender equality shapes the EU's external relations (David & Guerrina, 2013: 53), as well as previous suggestions of a difference in ideas about what gender equality is and requires on the foreign policy agenda (Jacquot, 2017: 41).

I will further discuss some of the methodological challenges and advantages connected to ideal types as an analytical tool. In principle, the use of ideal types requires a deductive strategy where the ideal types are created *before* the analysis. As Bergström and Boréus (2012: 166) put it: If the ideal types are created as a result of the analysis, they cannot be analytical tools at the same time. On the other hand, an idea analysis will often entail some degree of inductivity, as the researcher has to possess knowledge about the topic under investigation and the theoretical foundation of the ideal types in order to create accurate analytical tools (Bergström & Boréus, 2012: 166-167). The research strategy of this report can be characterised as primary deductive, as the analysis on whole has been theory-driven and the general assumptions derived from the theoretical framework remained unchanged throughout the process of operationalisation and analysis. However, the division between ideas related to the problem and solution was based on more inductive reasoning and previous literature on trafficking.

Ideal types are considered useful both because it allows for a systematic comparison, and because it make the preconditions of the analysis explicit (Bergström & Boréus, 2012: 166). This has not only practical advantages, it also contributes to a structured, transparent and thus more verifiable research design. The use of ideal types

however also implies a risk of 'forcing' the theoretical material on the model (Bergström & Boréus, 2012: 167). This might result in both over-interpretation and the missing out of important ideas. The first challenge, over-interpretation, is a threat to the validity of the analysis – as there is a risk of pushing meaning from the theories on the text. The second challenge, missing out on ideas, is more related to weakening of the reliability of the report – as other researchers might relate differently to ideas that do not 'fit into' the analysis scheme. I have tried to meet these challenges in several ways. Prior to the analysis, I have tried to manage the balance between a too open and too detailed analysis scheme by contrasting the theories on both general variables related to 'focus', as well as more concrete variables related to the problem understanding and tools for solutions.

During the analysis, I have tried to be aware that some of the ideas found in the documents do not fit directly into the analysis scheme, or that some ideas might point to more than one idea tradition. This is in line with assumption that there are various understanding of justice, and that actors are motivated by a variety of ideas (Beland and Cox, 2011: 1). In order to make the report variable and solve some of the challenges related to the reliability, I will therefore discuss such interpretations, and support them with concrete examples from the text.

## Summary

In this chapter, I laid out the research strategy for the report, specifically an idea analytical perspective as instrument for textual research. This perspective builds on the assumption that actors are carriers of different ideas which can be interpreted qualitatively in text. Further, I have discussed the challenges and advantages of the selected data materiel, the possibility of generalising beyond my study, and the analytical tools deployed in the analysis, namely ideal types and dimensions. Although the use of ideal types raise some challenges, the practical and analytical advantage ideal types entail - by linking theory, methods and analysis - is considered a general strength to the validity and reliability of the report. In the next chapter, I construct the ideal types and analysis scheme based on the three approaches to gender justice.

# Chapter 4

## Theoretical framework

In this section, I show how gender injustice in general and trafficking in particular can be studied using three different approaches to justice, focusing respectively on states, individuals and groups. Taking a political approach to the question of justice, based on the GLOBUS framework, I use insights from different feminist theorists in order to investigate what the three ideas of justice entail from a gender perspective. I further develop analytical concepts and construct ideal types based on these three ideas of justice to further guide my investigation of the EU as a promoter of global gender justice. The EU's trafficking approach before – and in face of the so-called 'migrant crisis' will then be used as a case for investigation of the EU's approach to gender justice.

### The global context of gender justice

Since Plato first wrote about 'justice' as the virtue ordering all other virtues (Plato, as cited in Fraser, 2012: 107) theorists have engaged in questions on whether social agreements can be more enabling and just. Nevertheless, justice is still a highly contested concept and the challenges to its conceptual nature are multifaceted. Following the increased process of globalisation, there have been considerable changes in how we argue about justice (Fraser, 2009: 15). We see new forms of transnational injustice, and the old frame in which justice was said to be reached – the territorial state – is not alone sufficient to



address these changes. Also the question of whether the relevant subjects to justice should be states, individuals or groups is disputed.

When adding gender to the global justice context, there are even more diverging conceptions of what global justice is, and how it could and should be reached. Should gender justice be measured in terms of opportunity or outcome? Is gender justice best secured by the individual states? Does gender justice imply that some universal principles must be secured, regardless of geographical location or cultural history in which the individual is situated? Or, does gender justice require different solutions for different groups of people?

This study takes a *political* approach to justice, focusing on the 'underlying political question of how decisions are made and who actually makes them' (Sjursen, 2017: 5). More concretely, this study tries to investigate the presence of such ideas of justice in policies and policy-making. This stands in contrast to questions of whether or not actors receive a fair share of resources, a topic for studies of *distributive* justice. The essence of political injustice is considered to be domination: subjection and rule without justification (Eriksen, 2016: 4).

The scholarly example of the dominated person is the slave. Even though the slave may receive a just *distribution* of goods and resources from the master, the slave is subject to the master's whim – an unjust relation in terms of structure and power (Buckinx, Trejo-Mathys & Waligore, 2015: 1). Human trafficking is often referred to as a case of modern day slavery, and the example of the master and slave illustrate well the value of a political approach to justice when investigating political approaches to trafficking. However, when looking at the transnational scope of the problem of trafficking in general, and the gender relations in particular, it is clear that the master/slave relation alone is not sufficient to describe the injustice in trafficking (Allen, 2015). Scholars have pointed to gender inequality as both cause and effect of human trafficking (Askola, 2007a; Locher, 2007; Roth, 2011). The majority of the victims are women, and the majority of them are exploited in the sex-industry (UNODC, 2018: 10). It should be noted that sexual exploitation also occur when women are exploited outside the sex industry, such as in domestic work or through forced marriages. Trafficking is further a clear example of injustice following a globalised world. Due to new means of communication, financial transactions and travel options, trafficking

might entail elements of injustice provided by a wide range of different actors in different parts of the world. For example, internet is not only a platform for recruitment of potential victims, it also enables new forms of globalised exploitation such as broadcasting of sexual abuse to people all over the world. Traffickers, states, and/or overlapping effects of (possibly) unintentional actions might therefore all be sources to the injustice in trafficking.

Bringing justice theory beyond the 'distributive paradigm' has been central to many feminist theorists (see e.g. Young and Nussbaum). As Young (2011) notes, exploitation and violence are aspects that cannot be reduced to questions of redistributive justice alone. Feminist thinkers are concerned with women's subordination in today's and previous societies, criticising structures of power and domination, and the goal can thus be seen as to liberate women from these oppressing relations (Joas & Knöbl, 2009: 432). However, regarding the process of liberating women from oppressing relations and achieve gender justice worldwide, the approaches from feminist contributions differ. A central disagreement between feminist thinkers has been what role the state should play, if equality require sameness and use of single standards, or if equal recognition and the valuation of different contributions is what matters more (Fraser, 2009, 2013). Yet, to my knowledge, these axes have not been captured together in previous theoretical framework on gender and global justice. In order to do so, this report takes the GLOBUS justice-framework as its starting point to elaborate a theoretical framework consisting of three approaches to gender-justice.

### **Three ideas of global gender justice**

When further elaborating different ideas of justice that the EU might demonstrate when targeting gender justice in the case of trafficking, I will focus on feminist theoretical contributions in relation to three global justice conceptions. The first approach sees gender-justice best secured within a state-frame (justice as non-domination). The second build on insight from first and second wave feminism, related to universal ideas of gender-justice (justice as impartiality). The final concept is concerned with the securing of different views on- and different contexts of gender-justice, and build on third wave feminist contribution (justice as mutual recognition). The three conceptions I use are not mutually exclusive as they are to be understood as different priorities, rather than three distinct approaches. Thus, I expect them

all to be evident to some extent in the EU's approach to trafficking. I do not engage in the question of what balance might best meet these considerations of gender justice. However, I acknowledge that the three approaches may occur in more or less comprehensive forms, and that a too limited version might increase the risk of domination.

When using insights from feminist contribution to elaborate what the three justice-orientations might entail from a gender perspective, some aspects should be clarified. First of all, the aim of this report is not to conduct a framework for *one* overarching global gender justice approach, like the ones covered in different global feminism approaches by scholars such as Nussbaum (1999), Fraser (2009), or Jaggar (2005, 2009a, 2009b). Rather, my ambition is to use contributions from feminist theory to elaborate and concretise what the three justice conceptions might entail from a gender perspective. Second, none of the theorists I refer to use a framework similar to the one I conduct, and I do not claim that any of them necessarily would place themselves or their theoretical contributions within one of the three approaches. Although the main concern in this paper is justice on the global level, the theorists presented in this chapter are not exclusively concerned with arrangements at the global level. Fraser (2009) for example argues for a task division between the global level and other levels – such as the regional and local. It should also be noted that not all of the theorists engage exclusively with questions of *political* justice. Taking the GLOBUS framework as starting point and foundation, I use these different feminist theoretical contributions to elaborate and concretise what this framework would entail from a gender perspective.

In order to be able to operationalise the different ideas and conduct ideal types for further investigation of EU policy documents on trafficking, this will require some simplification of theories that in reality are more diverse and build on each other. It should here be repeated that ideal types as analytical tool has its strength in the practical advantage. By contrasting the theories on the same variables, the ideal types provide schematised and structured answers of general theories to more concrete questions. As the three conceptions of justice are used to operationalise three separate ideas-orientations in order to investigate the further analysis, the final section of this chapter will be used to highlight the differences between the three approaches and clarify them in a schematised form.



## Justice as non-domination

One possible approach to justice that the EU might pursue in the approach to trafficking is justice as non-domination. In this view of justice, states are the main focus. As Pettit puts it, this idea of justice see ‘the free individual [...] protected against the domination of others by the undominating and undominated state’ (Pettit, 2010: 77). The relationship between citizenship and freedom is closely connected in this view, and public state institutions are expected to provide rights to the citizens in order to prevent interference by others (Eriksen, 2016: 9).

In the introduction chapter to *Welfare State and Women Power*, Helga Hernes writes about previous feminist theorising about the state: ‘Most feminist theorists doubt that a specifically feminist theory of the state is possible at all, and cite the potential for oppression of all concentrations of power’ (Hernes, 1987: 12). Since then, several feminist theoretical contributions have suggesting the state frame as a site for achieving gender-justice. I sum these up in three (interlinked) groups of arguments related to respectively the state, globalisation and the state-structure. The first argument is related to the role the states might have in securing women’s rights and opportunities. Hernes (1987: 15) definition of a women-friendly state as one that ‘would not force harder choices on women than on men, or permit unjust treatment on the basis of sex’ was ground-breaking in this context. Her work made a break with the previous assumption among feminist scholars that had stressed the state as a solely patriarchal institution. Her work led to a new wave of feminist theorising, focusing mainly on (ways to achieve) women-friendly public institutions. The role of the welfare state as provider of beneficiaries and paid work for women has been central to these arguments. Similar to this, Dahlerup (1994) has suggested that women in industrialised countries are more dependent on the state than men, because women rely more on the state’s redistributive functions.

The second feminist defence of the state-frame has occurred as a reaction to globalised capitalism (Tickner, 2001: 120). Gendered dimensions of economic globalisation have been pointed out in areas such as agriculture and environment (Shiva, 2009), care-work (Kittay 2009; Lutz & Amelina, 2017), international taxation (Brock, 2009) and climate (Dankelmann, 2010). Some theorists have focused on the state as a potential buffer to the harmful effects of globalisation (Tickner,

2001: 120). Others have argued that a more just state-system is key to manage gender injustice in face of globalisation. Jaggar (2005) argues that when globalised capitalism increases inequalities between rich and poor states, poor women within poor states are affected negatively due to amplified inequalities (Jaggar, 2005: 64). In her view, western attempts to address global gender injustice too seldom address the way in which unjust state-relations impact women disproportionality (Jaggar, 2005: 69). Although Jaggar's work mainly addresses economic concerns, and thus is more related to distributive justice, we can draw from her argumentation that in order to ensure global gender justice, there is a need for a global political order that address unjust relations among states. Similar arguments can be found in works by feminist scholars such as Nussbaum (2006: 19, 406).

Jaggar's argument is linked to the third group of arguments stemming from feminist scholars, linked to the state system. Starting with Enloe's (1989: 186) famous quote 'the personal is international', feminist theory has had increasing interests in international relations (IR). Feminist IR scholars have addressed how gendered norms shape and are shaped in a varied array of areas within the international system. One central example is the feminist critique of how masculine norms are embedded in militarism of states and securitisation of international issues (Enloe, 2000; Peterson, 2004). Despite many feminist IR scholars being critical to the consequences of a state-centred international order, they are also doubtful to visions of alternative models of global governance that advocate devolution of power up to some form of a world-state (Tickner, 2001: 97). In her work, *Frontiers of Justice*, Nussbaum (2006: 313) argues that unlike domestic basic structures, a world state would be unlikely to hold a proper level of accountability to the people. She further argues that the current state system allows for some discipline of unjust states in the form of pressure from other states. If a world state would become unjust, Nussbaum (2006: 313) argues, there would be no other alternative than rebellion from within. This makes a world state dangerous.

The above-discussed arguments are relevant to trafficking in several ways. First, it is clear that the absence of institutions and regulations can be a source of dominance, also in the case of trafficking (Eriksen, 2016: 5). Hence, by prioritising legalisation and prosecution of traffickers, the state can contribute to prevent domination among individuals. International cooperation can also be important in order to

overcome common border-transcending challenges such as trafficking, and to detect the potential international criminal networks behind. Further, a non-dominating global order and state-to-state assistance as a duty of beneficence (charity) might contribute to reduce some of the underlying causes that enables people to be victims of trafficking in the first place.

In this idea of justice, one would thus expect the EU to focus on the state as provider of gender justice, but also the state's freedom of interference, as ensured within the institutional framework enabled from the state system (Sjursen, 2017: 7). International law and agreements would be the key to regulate global affairs, and international solutions to problems of global gender justice would occur when all states have a say on an equal basis (Sjursen, 2017: 14). Human trafficking networks would in this idea be seen as a serious threat to gender justice as provided by the states and within the state frame. If ideas of justice as non-domination are present in the EU's solutions to trafficking, I expect the EU to address trafficking in cooperation with other states, and further support multilateral arrangements targeting the problem of trafficking. Human's rights and women's rights would be important in this perspective, even though obstacles will occur when promotion of these rights collide with the principle of non-interference (Sjursen, 2017: 12). A state-centred approach to the issue of trafficking is thus expected in this idea of justice.

### **Justice as impartiality**

The next idea-orientation I expect to see in the EU's approach to trafficking in women is justice as impartiality. This is more an individual-centred understanding of justice, where the state plays a secondary role. In this view, ideally all persons should be treated alike, according to some universal principles (Eriksen, 2016: 14). A central question here is how we can extend justice and dignified life conditions to all citizens of the world, regardless of genders.

In the feminist view of this idea, focus on gender is considered necessary to ensure individuals their universal rights. Linking gender injustice to human rights has been an important strategy for the feminist movement. Under the slogan 'women's rights are human rights', feminists the world over have linked local patriarchal struggles to campaigns to reform international law (Fraser 2008: 14). Nussbaum (1999: 9) argues that question of gender justice is 'not

really a question about women, but about human beings and about women seen as a fully human'. This idea of feminism might thus be seen as a specification of humanism. By adding sex to the 'list of morally irrelevant characteristics', Nussbaum (1999: 10) contributes to the liberal tradition of thinkers such as Kant, Mill and Aristotle, advocating the right of an individual to be treated as an end, rather than a mean, and a person rather than an object.

Nussbaum (1999: 6) argues that despite historical and geographical circumstances, women all over the world find themselves treated unequally because of their gender. According to her, there is a great deal of overlap in problems within the lives of women globally due to gender-related struggles such as rape, sexual harassment, unequal access to work etc. (Nussbaum, 1999: 6). From the argument that there is something universal to all human beings, Nussbaum argues that global gender justice requires that some universal rights are entitled women all over the world, regardless of their citizenship or ethnicity. Nussbaums (2001) 'capabilities approach' clarifies elements that are required for each individual to be able to live equal. In her view, the capabilities approach has a critical function in relation to gender as: 'Women have all too often been treated as the supporters of the ends of others, rather than as ends in their own rights' (Nussbaum 2001: 5-6).

Some of the elements included on Nussbaums list of capabilities have strong links to the injustice trafficking impose, such as the right to bodily health and integrity, equal worth and control over ones environment.<sup>9</sup> These can all be related to the injustice a trafficked person experience when being forced to work or serve for the trafficker. Central to Nussbaums thought is that the women do not have to exercise any of the elements on the list; however, they should be *capable* of doing it if they want to. It should not be necessary to specify how limited the abilities of victims of trafficking are. Bringing this insight together with the many capabilities that trafficking violates, this give a clear picture of a situation, in which universal rights, or capabilities are clearly disrupted.

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<sup>9</sup> Full list of capabilities: Life; Bodily Health; Bodily Integrity; Senses, Imagination and Thought; Emotions; Practical reason; Affiliation; Other Species; Play; Control over one's Environment (Politically and Materially) (Nussbaum, 2001: 78-80).

But what would be the solution to the injustice in trafficking? An important aspect when investigating approaches to trafficking in women is the question of dignity for the victim. Nussbaum is strongly critical to the rhetoric of victimology. In her view, this framing of injustice simply distracts us from asking the real question, which is what people are entitled to claim from society (Nussbaum, 1999: 20). Following her argumentation, we can conclude that victims of trafficking should be entitled rights, regardless of their willingness to contribute to 'catch' the traffickers or otherwise fulfil requirements from the states. Nussbaum (2001) argue that all human beings are entitled to realise capabilities because of their status as human beings, regardless of culture, tradition, nation or gender. In order to ensure global gender justice (and a good human life), all nations, states and societies must therefore respect these conditions. In this way, Nussbaum weigh women's rights over state rights on some 'universal' issues. This is linked to her next argument, that when women are at issue, one should, according to Nussbaum (1999: 8) be especially sceptical of turning to local tradition. She argues that in most parts of the world, the most powerful voices tend to be male voices failing to acknowledge the needs and interests of women (Nussbaum, 1999: 8).

If ideas of justice as impartiality were present in the EU's approach to trafficking, one would expect human rights and thus women's rights to have pre-eminence over sovereignty rights. However, this conception of justice does not imply a shift away from the state structure. Important here is 'to ensure international procedures and structure that give individuals the key status as rightful claimants of justice' (Sjursen, 2017: 8). From this, I expect that the EU show a positive attitude towards supranational authorities and legal agreements that assure individuals influence over decisions being made. An impartiality approach to global gender justice would thus require that the EU states clearly that rights to victims of trafficking are entitled to them because of their status as a human being, not because of citizenship, nor as means to solve state interests.

### **Justice as mutual recognition**

The point of departure in the idea of justice as mutual recognition is that in order to ensure justice for all, there is a need for procedures that treat people differently. While not contesting the importance of the individual's right to justice, this approach acknowledge that there is no single path to achieve global justice. Questions of just decision-



making in the case of mutual recognition include not only the question of who the relevant subjects of justice are, but also the rules and procedures to which decisions are made (Young, 2011: 22-23). In this concept, the *process* in which decisions are made is even more central than in the other justice-concepts.

When assessing gender justice, this perspective takes into account how gender-injustice is interlinked with other forms of oppression, and how these intersecting factors must be addressed in relation to each other. Feminist theorists have criticised the universal solutions to injustice found in the impartiality-paradigm for underestimating and simplifying the particularities of social contexts, and the different needs people have (Young, 2011: 96). Young (2011: 47) argues that oppression such as violence and exploitation form social groups.<sup>10</sup> People develop different group identities based on their culture, history or experience, and in order to create social justice, these differences needs to be counted for (Young, 2011: 45).

An argument for the importance of these considerations in the gender-justice context is provided by intersectional feminist scholarship. Inspired by critical race theory and postcolonial perspectives, feminist scholars within these traditions have addressed overlapping, combinations or intersections between gendered discrimination and discrimination related to factors such as colour, class, citizenship, age and sexuality (Butler, 1990; Collins, 2002; Crenshaw, 2018; Lorde, 2012). These insights have uncovered how prior feminist contributions often were situated in a white middle or upper class paradigm, not necessarily reflecting the diversity in women's needs and pursues within and across societies (Jaggar, 2009b). According to Jaggar, critical theory of race and ethnicity have also inspired feminist philosophy to take into account that groups (of women), and not only individuals, can be subjects of justice (Jaggar, 2009a: 5-6). Further, she argues that many western feminists have ignored how gender justice often is intertwined with injustice against states or groups (Jaggar, 2005, 2009a, 2009b). The idea that cultural recognition, and not only political rights or economic and social goods, can be the objects of justice is therefore a central insight from such theories (Holst, 2019: 3).

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<sup>10</sup> Note that Young (2011) distinguish between separate 'faces of oppression' which I will not discuss here.



Another important argument for considering differences has been that the ideal of universal rights found in the impartiality paradigm can serve imperialistic functions in the name of justice. When the views of the dominant groups are framed as universal, it might amplify already existing hierarchical decision-making structures (Young, 2011: 96). Taking into account how different groups might be marginalised in universal justice approaches, justice as mutual recognition therefore stresses the need for procedures that treat people differently, and highlight the importance of bringing subjects of justice into the process in which decisions they are affected from are being made (Eriksen, 2016: 20).

An idea of mutual recognition can give a lot of insight in the factors contributing and the possible solutions to trafficking. In the case of trafficking it is thus relevant to consider that the drivers to gender injustice are often complex and multifaceted. Some women might be trafficked into Europe against their will, forced to sell sexual services. Some might agree to leave their country to work, but are trafficked into the sex industry. Other women might decide themselves to move a place to sell sexual services, and still end up being exploited and trafficked (Jaggar, 2009b: 44; Sassen: 266). Finally, women are also exploited elsewhere than in the sex industry (European Commission, 2018). It is also well established that trafficking is related to other forms of oppression than gender-oppression, such as that of class, nationality, ethnicity and race (Tyldum & Brunovskis, 2005; Williamson, 2017). These factors may intersect in various ways, for example through racialised understandings of gender (and sexuality) in the sending and receiving countries, or as crossing or amplified forms of oppression and violence (True, 2009: 255-6).

These insights contribute to an understanding of the injustice in trafficking that enable us to go further than simply acknowledging that women form the majority of the victims, and recognise the multiple and interlocking forms of injustice that contribute to the global gender injustice in trafficking. The above-discussed factors also highlight the importance of context-specific solutions and a system that facilitates participation of the affected.

If ideas of justice as mutual recognition are present in the EU's approach, I expect the EU to acknowledge that the same solutions to trafficking may not be suitable for all individuals under all circum-

stances. This implies, to seek solutions to trafficking that is suited to individuals and their particular experiences, rather than universal solutions. As regards gender, this involves taking into account how group-differences and intersecting inequalities form matters of gender injustice. The mutual recognition approach to justice differs from the two above-mentioned ideas of justice, by the emphasis on the inclusion of vulnerable groups in the relevant political processes. The data material does not allow me to investigate how the victims of trafficking are treated in particular contexts, however, I will pay attention to how the principle of due hearing is integrated in the considerations found in the political documents.

The final possible answer to the question of to what extent and how ideas of gender justice are evident in the EU's approach to trafficking in human beings, and how this changed when faced with the so-called 'migrant crisis' is that ideas of justice are simply not present in the documents. In the context of political justice, injustice refers to 'relations of dominance between actors – that is, their unequal status and standing' (Eriksen 2016: 4). Dominance is seen as violation of the principle of equal freedom for all, as exemplified in its extreme form by the slave/master-relation (Eriksen 2016: 4).

## Operationalisation

The above-discussed theoretical approaches to global gender justice can further be operationalised as three separate idea-orientations, each emphasising different understandings of- and strategies to solve human trafficking. I will further use these viewpoints as analytical tools in order to categorise ideas in the EUs approach to trafficking.

*A non-domination idea of justice* considers the territorial state the primary institution to ensure justice. In these ideas, justice is seen as best addressed within the state-frame and the securing thereof. The solutions to trafficking can thus be expected to focus on how the state – alone or through cooperation with other states – can hinder traffickers from exploiting victims. I chose to call this an international criminal approach to trafficking, given the focus on state measures such as legislation and prosecution. This does not imply that considerations of human rights and women's rights are absent in such ideas of justice. Trafficking in human beings is still treated as a serious form of injustice, and the states can support the victims

themselves or support other states so they can do so. Yet, in the end, it is up to the states to decide whether and how this should be done.

*An impartiality idea of justice* refers to ideas by the EU that emphasise human rights over sovereignty rights in the context of trafficking in human beings. In these ideas, the human right's violation in the problem of trafficking is particularly stressed. Focus on gender is seen as necessary to ensure the universal right's entitled to human beings. Central here is that people being exposed to trafficking are entitled rights not because of citizenship, nor as means to solve state interests, but because of their status as a human being. This implies a more pragmatic approach to the state structure, opening up for more supranational authority and the possibility for individuals to bring legal charges against states.

*A mutual recognition idea of justice* emphasises the importance of dealing with contextually dependent practices and relationships when addressing the problem of trafficking. This implies taking into consideration how factors such as age, ethnicity, race or citizenship intersect with vulnerabilities connected to gender. In order to establish justice in the context of trafficking, the EU show that difference is another important factor in order to establish justice across individuals and groups. Ideally, this implies that the victims of trafficking are heard in the political process.

## Summary and clarification of ideal types

These operationalised ideas provide a framework for investigation of *how* ideas of gender justice might prevail in the EU's approach to trafficking – both regarding *what* the problem is represented to be, and *how* and by what *means* it should be solved. The main differences between the content of the ideas can be summed up in the weighing of justice for the states, individuals and groups. When it comes to gender, the division is between focus on state, focus on women or the relations to other types of vulnerability. The table below provides a summary of the central differences between the three ideas, related to the focus in the problem and solution, the understanding and tools, and more concretely how gender concerns are incorporated. It should be noted that the categories are not necessarily mutually exclusive. Take for example the variable 'tools': criminalisation and prosecution of trafficking activities might go hand in hand with universal victim assistance.

My findings of gender justice considerations in EU trafficking policy documents are based on references to the three different groups of justice variables interpreted in the texts. These reveal the occurrence of ideas of justice. However, I consider there to be different degrees of gender justice in the texts. I might find that some of the justice ideas are only mentioned in the problem definition of the texts, without any corresponding consideration in the solutions proposed to tackle it. Some might refer clearly to one idea orientation, while ignoring the gender aspect. Other might articulate a clear relation between the problem defined and the solution proposed, for example by saying that since trafficking is a problem with a strong gender dimension, there is a need to provide gender specific assistance to the victims. As regards ideas of gender justice as mutual recognition, I distinguish between ideas of justice related to gender *as well as* other types of vulnerability, and those where the *intersection between* gender and other types of vulnerability is addressed. The latter is considered a stronger commitment to *gender* justice as mutual recognition.

Table: Ideal types of three global gender justice idea orientations

Dimension	Variable	Justice as non-domination	Justice as impartiality	Justice as mutual recognition
PROBLEM	Focus	States	Individuals	Groups
	Under-standing	International crime	Human right's violation	Exploitation rooted in vulnerabilities within and between groups
	Gender	Traffickers as threat to gender justice	Trafficking as a case of gender inequality/ gender based violence	Vulnerability due to gender and other intersecting factors
SOLUTION	Focus	Non-interference	Autonomy and dignity	Due hearing
	Tools	Criminalisation, and prosecution of trafficking activities	Universal assistance to victims	Differentiated assistance to the victims – groups or form of trafficking
	Gender	The states define the content	Gender-specific support to the victims	Intersectional content of the victim-support

# Chapter 5

## 2009 – 2012 Victim-centred justice

In this chapter, I analyse ideas of justice in the central EU documents on trafficking in human beings from 2009 until 2012, a period characterised by the developing of the EU legal and policy framework on trafficking in human beings. In order to distinguish underlying ideas about what the injustice in trafficking is about, from ideas of what means a just approach to trafficking should be solved, I divide the analysis between ideas of trafficking as problem understanding and as policy solution, inspired by Mehta (2010). Further, I separate the documents targeting trafficking in general from key policy documents that target trafficking in EU external relations.

The background of the approach to trafficking in human beings in the first period can be seen as formed by two, interrelated factors. On one side there was a striking need for a new political and legal approach to combat trafficking in human beings (Symeonidou-Kastanidou, 2016). The first EU documents produced in the late 90ties and early 2000s emphasised criminal law as the solution to address the problem of human trafficking (Symeonidou-Kastanidou, 2016: 465). Provisions on protection of victims of trafficking was introduced first in 2002, and only partly addressed (Askola, 2007b: 209-212). The EU's approach to trafficking thus reflected the international approach to trafficking during that time as a 'transnational organized crime' (Symeonidou-Kastanidou, 2016: 465). Yet, despite these new legal tools, the



intensified cooperation and increased focus on the problem of trafficking in human beings, the problem escalated and the solutions provided by the member states seemed not adequate (Symeonidou-Kastanidou, 2016: 465).

The other important factor that actualised trafficking in human beings on the European agenda in this period was the economic and financial crisis, which led to an increased focus on the internal dimension of the trafficking problem: trafficking within the European Union. As elaborated in the Report on the impact of the economic crisis on gender equality and women's rights (European Parliament, 2013), the economic and financial crisis, and the following austerity measures, led to poor economic situations in many European countries, which further was reported to have contributed to vulnerability to trafficking (European Parliament, 2013: 7).

## **The problem**

In general, the presentation of the trafficking-problem found in this period reveals a primary focus on the individual victims of trafficking, in line with ideas of justice as impartiality. Despite a balance between understandings of trafficking as human rights violation and an international crime, the EU goes far in emphasising ideas of justice as impartiality over non-domination, although more so in the documents targeting trafficking in general than those relevant for trafficking in EU's external relations. Regarding ideas of justice as mutual recognition and acknowledging group-differences between the victims, these are most evident in relation to children and intersectional concerns related to gender are less evident. As will be further elaborated, the focus of gender is clearly present, yet the presence of and difference between such ideas vary significantly between documents in both categories.

## **Problem understanding in the general trafficking documents**

The Anti-Trafficking Directive (Council of the EU & European Parliament, 2011) is the central legal document on trafficking produced in this period. In general, the Directive goes far in emphasising justice as impartiality, with an understanding of the problem closely linked to the idea of trafficking as human rights violation (Council of the EU



& European Parliament, 2011: rec. 1, 4, 7).<sup>1</sup> The ideas found in the Directive reveals a rather broad-ranging understanding of trafficking, that picture it as universal threat, possibly affecting *all* individuals.

Given the two above-presented background factors, one would maybe expect the Directive to prefer a description of the problem that would be *entirely* in line with ideas of justice as impartiality, reflecting a human rights understanding of the issue. Although ideas in line with justice as impartiality are clearly emphasised, the Directive also points to ideas of non-domination. It draws a line to organised crime – which leads the attention towards the problem of the trafficker as source to injustice and thus a state-centred understanding of trafficking. The importance of the issue for the EU and the balance between the human rights understanding of the issue and the link to organised crime is well exemplified in the first recital of the Directive:

Trafficking in human beings is a serious crime, often committed within the framework of organised crime, a gross violation of fundamental rights and explicitly prohibited by the Charter of Fundamental Rights of the European Union.

(Council of the EU & European Parliament, 2011: rec. 1)

With regard to gender, the gendered nature of the problem is explicitly declared in the third recital of the directive. Interestingly, it does not refer to ‘women’ or ‘girls’ as more vulnerable, but ‘recognises the gender-specific phenomenon of trafficking’ and that women and men are often trafficked for different purposes’ (Council of the EU & European Parliament, 2011: rec. 3).

Intersectional concerns related to gender are hardly expressed, although contextual factors and vulnerabilities in relation to children are addressed several times. The expression ‘particular vulnerability’ is used only connected to children. Yet, other factors such as ‘gender, pregnancy, state of health and disability [...] *could* be taken into account when assessing the vulnerability of the victim’ (Council of the EU & European Parliament, 2011: rec. 12, my emphasis). Except for the focus on children, the ideas reveal a rather diluted approach to gender justice as mutual recognition. As also Lombardo and Rolandsen (2016: 370) notes, the Directive only provide very general phrasings (‘human

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<sup>1</sup> When I refer to the Directive, I use the abbreviation ‘rec’ for recital and ‘art’ for article.

beings', 'victims of trafficking', 'trafficked persons', etc.), giving little association to neither gender nor intersecting inequalities.

Despite the focus on children, and some indicators pointing in direction a problem understanding of trafficking rooted in cross-border crime, the overall problem-understanding of trafficking found in the Directive is clearly focused on the individual victims and points strongly towards ideas of justice as impartiality (Council of the EU & European Parliament, 2011: rec. 1, 4, 7, 11). The gender-dimension of the problem is declared in general terms, however, there is no mention of trafficking linked to the idea of gender-based violence, or link between women and for example the sex-industry. Nor is it the possible gendered causes or consequences of trafficking mentioned. This despite the note that there might be different 'push' and 'pull' factors to trafficking depending on the sectors concerned (Council of the EU & European Parliament, 2011: rec. 3).

To sum up, although the Directive goes far in emphasising general ideas of justice as impartiality, ideas of *gender* justice as impartiality related to the problem understanding are less apparent. The general formulations on trafficking as a human rights-violation and the lack of attention to gender and other social aspects (despite age), signals an understanding of trafficking that is closely linked to an idea of trafficking (and injustice) as violation of a *common* human dignity, across or despite genders or other social factors.

The focus on impartiality from the Directive continues in the Strategy. Here, trafficking is described as a 'severe violation of human freedom and dignity and a serious form of crime' that the states 'cannot address on their own' (European Commission, 2012: 2). The gendered nature of the problem is more strongly emphasised in the Strategy than in the Directive, pointing attention towards ideas of *gender justice* as impartiality. Most importantly, the idea of gender injustice as a cause to trafficking is highlighted in the reference to 'gender inequality and violence against women' as root to trafficking (European Commission, 2012: 3). That trafficking has a gender-dimension, and that vulnerability to trafficking, to different forms of trafficking and the consequences thereof is shaped by gender is also directly addressed (European Commission, 2012: 13). Furthermore, the gender dimension is presented through gender-aggregated statistics on trafficking (European Commission, 2012).

In addition to the formulations on gender justice related to impartiality, the Strategy goes far in emphasising the socioeconomic circumstances and the roots in other types of vulnerability, such as discrimination, poverty and age, that might foster trafficking in human beings (European Commission, 2012: 2, 3, 9, 14). Although the formulations are more in direction sidelining between vulnerabilities, intersecting vulnerability connected to gender is indirectly addressed one time, with regard to the Roma community (European Commission, 2012: 14). This is in line with Lombardo and Rolandsens (2016) finding that when addressing specific social groups, the EU policy makers are more likely to ‘face intersectionality issues’ (Lombardo & Rolandsen, 2016: 370). To sum up, ideas of gender justice in the Strategy can be seen as a combination of primarily impartiality and mutual recognition.

### Problem understanding in the external trafficking documents

The Action Paper define trafficking as a ‘serious crime’ and a ‘threat to human rights’ (Council of the EU, 2009: 7). Overall, the ideas under the problem dimension imply a balance between ideas of gender justice as non-domination, focusing on the threat the trafficker impose on women and other vulnerable groups (Council of the EU, 2009: 3, 7, 8) and ideas of gender justice related to the victims that can be located somewhere between impartiality and mutual recognition. Indeed, it is not always easy to identify in what gender justice-orientation the ideas belong. To give an illustration from the Action Paper:

Poverty, marginalisation, economic exclusion, social and gender inequality along with discriminatory practices against children and ethnic minorities as well as a desperate need to find a place that offers the hope of or prospects for a more prosperous future are the vulnerabilities that are commonly exploited by the traffickers when they set out to recruit or lure their victims.

(Council of the EU, 2009: 8)

First of all, the idea that the *traffickers* exploit people’s vulnerabilities is clearly evident, hence indicating ideas of justice as non-domination. Second, gender inequality is mentioned as a factor that increases vulnerability towards trafficking, and this wording thus

points to ideas of gender justice as impartiality. At the same time, gender inequality is not specified as a central part of the problem, but as one among other contributing factors or vulnerabilities. This thus point more in direction ideas of justice as mutual-recognition related to vulnerability rooted in group-differences in general, and not so much the gender-aspect in particular. Although it is further stated that women (and children) in particular are at risk of trafficking due to the above mentioned underlying causes, intersections between vulnerabilities are not directly addressed (Council of the EU, 2009: 8).

This vagueness between gender concerns and other inequalities is evident throughout the document. Whereas the vulnerability to trafficking due to gender is stated several times, it is always in relation to other types of vulnerabilities (Council of the EU, 2009: 5, 7, 8). Gender-based violence is brought up one time in relation trafficking in the Action Paper (Council of the EU, 2009: 17). Although this wording is strongly connected to ideas of justice as impartiality, the context in which it is presented reveals a different approach. In this context, gender-based violence is not linked to the general problem description of trafficking, but gender-based violence is mentioned as a factor that increase vulnerability to be exposed to trafficking. The emphasis on gender-based violence *prior* to trafficking points more towards considerations of vulnerability between groups, and to ideas of gender justice as mutual recognition.

Preventing and reducing trafficking in human beings and irregular migration is one of four pillars in the GAMM (European Commission, 2011: 7). Although the gender perspective, victim-focus and the importance of a human right centred approach is mentioned (European Commission, 2011: 16), the ideas of justice as non-domination overshadow the other concerns. Overall, the document has strong emphasis on the connection between trafficking and the problem of border-management. In this regard, ideas of justice as non-domination are complimented with ideas more related to justice as impartiality and justice for the victims. Human trafficking is addressed both as a case of irregular migration, threatening the states (European Commission, 2011: 15, 16, 17), and as a threat to safe and secure migration, pointing more towards protection of the migrants (European Commission, 2011: 15). Victims of trafficking are also mentioned as vulnerable migrants, together with unaccompanied minors, asylum-seekers and stateless persons, pointing towards ideas of justice as

mutual recognition (European Commission, 2011: 16). Yet, no connections between these vulnerabilities are addressed in the document.

In the Internal Security Strategy (European Commission, 2010c), the issue of trafficking in human beings is devoted considerable attention, with entirely emphasis on ideas of justice as non-domination. Trafficking is consistently described as a case of international crime, which further is defined as one of five central challenges to EU security in the years to come (European Commission, 2010c: 4). Other examples of international crimes listed in the Internal Security Strategy are money laundering, and trafficking of arms and drugs (European Commission, 2010c: 4). Human trafficking is also mentioned as an external security threat, together with drugs trafficking and terrorism (European Commission, 2010c: 3). The formulation of trafficking as a case of 'cross-border crimes' together with human smuggling and smuggling of illicit goods (European Commission, 2010c: 12) reveals a problem understanding of trafficking that focus more on the violations of the state (borders) than on the humans affected. In contrast to the problem understandings found in all the other documents from this period, ideas of gender justice as impartiality or mutual recognition are completely absent from the Internal Security Strategy.

Neither the EU Action Plan on Gender in Development (European Commission, 2010a) nor the Report on European Neighbourhood Policy (European Commission, 2010b) mention trafficking explicitly. The Gender Action Plan has however emphasis on gender-based violence as a global phenomenon with negative effects on women and girls (Commission, 2010a: 3), related to ideas of gender justice as impartiality.

## The solution

The ideas of justice found in the solutions to trafficking reflects a continuation of the impartiality approach to trafficking found in the problem understanding. The emphasis in the solutions is on holistic and human rights-based answers to the problem of trafficking, with varying attention to gender and other vulnerable groups. Ideas of (gender) justice as non-domination focusing on state-to-state solutions are still visible, especially in the documents targeting the external trafficking dimension.



## Solutions in the general trafficking documents

As is stated in the preamble of the Directive, the European Union sought 'an integrated, holistic, and human rights approach to the fight against trafficking in human beings' (Council of the EU & European Parliament, 2011: rec. 7). This focus and wording implies an impartiality perspective to the solutions, focusing on the autonomy and dignity of the individuals affected by the crime. The importance of a gender perspective when preventing trafficking and protecting the victims, is stated in the preamble (Council of the EU & European Parliament, 2011: rec. 3, 25), and in the first article of the Directive. In the third recital of the preamble, the link is drawn explicitly between the gender-specificity of the problem and the need for a solution that considers gender:

This Directive recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender-specific where appropriate.

(Council of the EU & European Parliament, 2011: rec. 3)

Despite this rather strong commitment, together with the statement in the first article that the Directive 'introduces common provisions, taking account the gender perspective', it remains unclear what this gender-specific assistance and support entails. In fact, none of the other articles in the Directive address the gender-dimension explicitly, and the rest of the Directive seems rather gender-blind. One could argue that the genre; the form and function of the text – a secondary law document – does not allow or open up for detailed descriptions of gender perspectives when it comes to measures related to trafficking. Yet, when comparing the focus on gender to the focus on children, the lacking focus on gender is striking. In contrast to gender, the importance of a children-focus is repeated throughout both the preamble and the articles of the Directive. To illustrate this: the word 'child' is mentioned 65 times in the Directive, whereas the words 'women' and 'gender' together are mentioned 7 times (the word 'girl' is not mentioned at all).

In general, a mutual recognition idea of justice would emphasise the importance of dealing with contextually dependent practices and relationships when addressing the problem of trafficking. Such ideas

are most evident in victim-support and with regard to the legal process in the Directive. The importance of considering the context in relation to the person concerned and the vulnerability of some groups - especially children - is highlighted throughout the Directive (Council of the EU & European Parliament, 2011: rec. 7, 12, 18, 22, 23, art. 2, 4, 11, 13, 14, 15). Yet, neither intersecting vulnerabilities related to gender nor intersections between other aspects of vulnerability are mentioned in the document.

The importance of informing victims about the consequences of their different actions and choices, as well as providing victims with assistance and support on a consensual basis is clearly stated throughout the text (Council of the EU & European Parliament, 2011: rec. 20, 21). The emphasis on informed consent point in the direction of the idea of justice as mutual recognition related to due hearing. This is further elaborated when it comes to giving victims of trafficking access to legal representation and counselling (Council of the EU & European Parliament 2011: rec. 19, art. 12). Yet, I consider it to be a degree of difference in the emphasis on mutual recognition between focus on counselling and an actual idea of due hearing, whereas the Directive point more in direction of the former.

Despite the lack of gender-focus throughout the document, the Directive goes a long way in emphasising general ideas of justice as impartiality. This is especially evident in the case of criminal investigations and procedures, where it is stated that a person 'should be provided with assistance and support [...] irrespective of his or her willingness to act as a witness' in criminal investigations (Council of the EU & European Parliament, 2011: rec. 18, see also art. 11). This implies an important distinction from justice as non-domination, as the focus on support for the victim - the individual - is placed above the importance of legal action against the trafficker, the latter considered merely as justice for states. Although prosecution of the trafficker might be important for the individual victim, I consider it insufficient to meet the criteria for justice as impartiality. The vulnerability of the victim on the trafficker is not only due to the trafficker's power over the individual, but also due to the individual opportunities to make decisions and decide for themselves in other relations in the society.

The inclusion of concrete measures towards identification and support of the victims therefore substantiates the shift to ideas of impartiality, not only in problem understanding, but also in ideas related to its solution. It is clear from the solutions presented in the Directive that the EU place trafficking within the sphere of victim-protection, above the state. Most striking with regard to ideas of justice as impartiality related to victim-support is that the Directive opens up for individual victims to claim compensation from the State (Council of the EU & European Parliament, 2011: rec. 19).

Although the emphasis on justice as impartiality is central in the Directive, ideas of justice as non-domination are far from absent. The Directive states that the protection of victims of human trafficking should be made in accordance with the 'basic principles of the legal systems of the relevant Member States' (Council of the EU & European Parliament, 2011: rec. 14). In addition, the focus on criminalisation of actions related to trafficking and the penalties presented in the Directive are very much linked to ideas of justice as non-domination, where the state is considered the provider of justice (Council of the EU & European Parliament, 2011: rec. 26, art. 4). Such focus is also evident in the emphasis on cooperation with third countries through support of anti-trafficking legislation. Most importantly, the Directive continuously emphasises that it is up to the states to define how treatment of victims of trafficking should be applied (Council of the EU & European Parliament, 2011: rec. 2, 20, 14, 30). The extent to which victim-support falls under the states' freedom thus remains unclear.

Whereas the Directive lacks a focus on gender throughout the solutions presented, the Strategy includes many references to the importance of gender-responsive content (European Commission, 2012: 4, 7, 8, 9, 13, 14). Yet, the ideas continue to balance emphasis between ideas of gender justice related to impartiality and ideas more related to mutual recognition. The references to other vulnerable social categories than gender, as found in the problem understanding of the Strategy, are also evident when it comes to ideas of gender justice in the solutions presented. The attention towards vulnerability due to factors such as age, pregnancy, health, disability and citizenship is evident along the whole solution-dimension, and illustrates consideration of some group differences between victims. This is mentioned for example in relation to the process of criminal investi-

gation and when it comes to different trafficking campaigns (European Commission, 2015: 10). Yet, the only mentioning of intersecting vulnerability is in relation to children ('diverse needs of diverse groups of children') and, as mentioned in the problem dimension, with regard to the Roma community (European Commission, 2012: 8, 14).

A noticeable example of commitment to justice as mutual recognition appears, however, in the note that victims of trafficking were included in the development of the Strategy (European Commission, 2012: 6). Although it remains unclear how strongly they were involved, the fact that victims of trafficking were invited to take part in the policymaking is a clear indication of the idea of due hearing.

Relevant international legal institutions are mainly addressed in the Strategy, where both multilateral instruments – related to non-interference – and more supranational instruments – focusing on the autonomy of the individual – are mentioned. The UN Palermo Protocol on Trafficking in Persons and the Council of Europe Convention on Actions against Trafficking in Human Beings are said to be the two most important international instruments (European Commission 2012: 5). In relation to ideas of justice as impartiality, it is especially interesting that the European Human Rights Court-case *Rantsev v Cyprus and Russia* (07/01/2010) is mentioned in the Strategy as an example of the clear obligations Member States have to take necessary steps to address trafficking and protecting the victims (European Commission, 2012: 5). The European Court of Human Rights can be considered to have some degree of supranational elements, as it opens up opportunities for individuals to hold states responsible in cases of injustice related to trafficking in human beings. In the case of *Rantsev v Cyprus and Russia*, the European Court of Human Rights reaffirms the state's obligation to abstain from punishing victims of trafficking when they have committed crimes. The case also declares that the states have obligations to identify, protect and assist victims of trafficking, and to bring the trafficker to justice (Piotrowicz & Sorrentino, 2016: 680). The reference to the European Court of Human Rights in general, and the case of *Rantsev v Cyprus and Russia* in particular, thus indicate a clear influence of ideas of justice as impartiality in the solution-dimension, focusing on autonomy and dignity for the victim over non-interference in state affairs.

## **Solutions in the external trafficking documents**

When it comes to solutions found in the documents explicitly targeting the external dimension of trafficking, the focus on justice as mutual recognition is less evident, and the approach reflects a balance between ideas of gender justice related to non-domination and impartiality.

The stated aim of the Action Paper is to enhance the action of the member states to combat trafficking, through partnership with third countries, regions and international organisations (Council of the EU, 2009: 10). This is in line with the basic focus of justice as non-domination: the state as provider of justice, and cooperation among states on a voluntary basis as the international mechanism that facilitates this on the global level. The attention to ideas of justice as non-domination are, however, complemented by a focus related to ideas of gender justice as impartiality. Throughout the Action Paper, ideas of a human rights approach to trafficking, including a gender perspective - where the victim is placed in the centre - is explicitly declared (Council of the EU, 2009: 5, 10, 19, 20). Yet, when it comes to the concrete tools proposed, the Action Paper stress the importance of existing cooperation agreements between countries within and outside the EU, and the involvement of actors such as Europol and Frontex (Council of the EU, 2009: 13-16). This underpins the focus on the state, borders and thus echoes ideas of justice as non-domination.

The approach to trafficking balanced between non-domination and impartiality found in the Action Paper (Council of the EU, 2009) is also reflected in the GAMM (European Commission, 2011). However, the focus on gender is less visible. The focus here is on partnerships between countries and actors more related to security and crime (such as Frontex). The Action Paper provides an archetypal example of solutions to individual rights following an idea of justice as non-domination, where human rights are expected to be protected through intergovernmental relations, with attention to state sovereignty. This is shown e.g. in the statement that the European Union through dialogue and cooperation with partners should 'strive to protect the human rights' of the migrants (European Commission, 2011: 16). More clear priority to ideas of justice as impartiality are however also evident, in that human rights of the migrants are prioritised as a cross-cutting issue under the GAMM (European Commission, 2011: 6). This migrant-centred approach also points to the ideas of justice as



mutual recognition. First, victims of trafficking and other vulnerable migrants are ought to be paid special attention in the solutions proposed (European Commission, 2011: 16). Second, the Action Paper points in direction of the idea of due hearing, by suggesting that further anti-trafficking strategies 'should be articulated and implemented through an enhanced dialogue with the diaspora, migrant groups and relevant organisations' within and outside the EU (European Commission 2011: 6). The specific needs of women and the importance of a gender perspective in policy implementation is mentioned only two times, both in general terms without any clear link to tools or strategy for combating trafficking (European Commission, 2011: 6, 24).

In the solutions proposed in the Internal Security Strategy (European Commission, 2010), the one-sided emphasis on justice as non-domination continues. Here, trafficking ought to be solved through border-management and cooperation with actors such as Frontex and Europol (European Commission, 2010: 12, 21), as well as in political dialogues with third countries and regional organisations (European Commission, 2010: 3).

## Summary

The overall impression of the documents analysed from this period is that all three ideas of justice are evident along both dimensions and under many variables. Yet, the emphasis on ideas of justice as impartiality is apparent, and it remains clear that the EU place the problem of trafficking in the sphere of victim-protection.

The emphasis on gender justice differs between the texts – most notably between the Directive and the Strategy. Whereas the link between the gender-dimension of the problem and the need for gender-responsive solutions is stated explicitly in the Directive, the rest of the document seems rather gender blind. Although the document goes far in emphasising ideas of justice as impartiality over justice as non-domination, the lack of recognition to gender throughout the document reveal a considerable weakness in the human rights approach. I here recall Martha Nussbaums argument that focus on gender is necessary to secure human rights for all. The lack of gender focus in the Directive (Council of the EU & European Parliament, 2011) is however weighed up by a strong focus on ideas of gender justice mostly in line with impartiality throughout the Strategy (European

Commission, 2012). With regards to ideas of gender justice as mutual recognition, the difference between groups is emphasised, though the focus on vulnerable groups goes more in direction complimenting - rather than combining - the gender focus. Only a few times, intersecting vulnerability is addressed in direct relation to gender.

In documents addressing the external dimension of trafficking in human beings, the ideas of gender justice reveals an approach that balance ideas of gender justice as non-domination with impartiality, although the focus on impartiality varies considerably between the documents. In these documents, the emphasis on gender is more evident in the problem dimension, than in the solutions presented.

It should be noted that ideas of a human rights and gender sensitive approach to human trafficking is not ground breaking in the European context. Locher (2007) found human rights and gender justice-related arguments in many EU policy documents since the 1990s. When it comes to the emphasis of such concerns relative to the attention devoted to ideas related to justice for the states, it is however clear that the central policy documents on trafficking produced between 2009 and 2012 marks a shift in balance that favours impartiality and individual victims over non-domination and state concerns. The documents in this period clearly recognise the obligations of European states towards trafficked people and those at risk of being trafficked. These obligations are not justified due to the states involvement in trafficking, but rather because of their failure to prevent trafficking, or to provide adequate assistance and protection to the victims (Piotrowicz & Sorrentino, 2016: 680).

# Chapter 6

## 2015 – 2018 State-centred justice

In 2015, various ‘push’ and ‘pull’-factors related to trafficking in human beings were actualised by the so-called ‘migrant crisis’, and once again the issue of trafficking was put on the EU agenda. Although there has been no legal change in the approach to trafficking, the EU has produced several documents targeting trafficking in human beings in general (European Commission 2016; 2017; 2018). Of them, the 2017 Communication is the most central document, as it follows up the Strategy (European Commission, 2012). The ‘migrant crisis’ is reported to have increased the risk of human trafficking in all three documents on the EU’s general approach to trafficking (European Commission, 2016, 2017, 2018). It is thus clear that the salience and public attention to the external dimension of the trafficking problem: trafficking coming from outside the EU, raised in this period. Also in the external documents, the problem of trafficking in relation to external migration is devoted considerable attention, and trafficking is central in more documents than in the previous period. Most notably trafficking is explicitly included both in the new ENP (European Commission & HR, 2015b) and the Gender Action Plan II (European Commission & HR, 2015a). Of the central policy documents targeting trafficking in EU external relations, most of them were produced around the peak of the so-called ‘migrant crisis’ in 2015-2016.

## The problem

As the main focus of trafficking shifts from internal to external relations, the weight shifted between ideas of justice shift from emphasis on impartiality and the victims to strong considerations of justice as non-domination and sovereignty concerns. In general, trafficking in human beings is understood to be a case of organised crime with strong implications for the states. Throughout the documents analysed in this period, trafficking is coupled to migrant smuggling as well as other crimes, creating a picture of the trafficked victim that is less characterised by innocence than in the former period. When it comes to gender, trafficking is not only seen as a threat to gender justice and justice of vulnerable groups. In this period, both trafficker networks and trafficking in itself are presented as threats to the states. This shift in victim-focus from the individual to the states exemplifies the strong emphasis on ideas of justice as non-domination.

## Problem understandings in the general trafficking documents

The problem understanding found in the policy documents targeting human trafficking in general after the so-called ‘migrant crisis’ reveals a clear shift to ideas of justice as non-domination. Whereas the Directive (Council of the EU & European Parliament, 2011) and the Strategy (European Commission, 2012) in the previous period had strong emphasis on the human rights aspect of the problem *linked* to organised crime, all three documents in the second period introduce human trafficking *as* an organised crime (European Commission 2016: 2, 2017: 1, 2018: 1). Only one time, in the First progress Report, trafficking is described as a ‘violation of fundamental rights’ (European Commission, 2016: 2).

As regards the gender-aspect, this is also less evident. The 2017 Communication is the only document stating explicitly that the problem has a gender-dimension (European Commission, 2017: 1), and link trafficking for sexual exploitation to ‘violence against women and children’ (European Commission, 2017: 8), thus pointing towards an idea of trafficking as a result of gender injustice in line with impartiality. Gender and violence against women are mentioned as factors which *might* exacerbate people’s vulnerability towards traffickers in the First Progress Report and in the 2017 Communication (European Commission, 2016: 2; 2017: 1), indicating an under-

standing that goes more in line with ideas of gender justice as mutual recognition. Other factors mentioned together with gender and violence are poverty, discrimination, age and lack of access to education, pointing towards attention to group differences and ideas of gender justice as mutual recognition. As regards the scope of these ideas of mutual recognition, only children are devoted considerable attention, and intersections between vulnerabilities are not addressed.

With regard to *how* the crime is understood, there is also a substantial difference compared to the documents from the previous period. This is not only evident in the stronger emphasis on trafficking as organised crime, but also the links drawn to other types of crimes.

The wording and focus in the 2017 Communication exemplifies this shift in crime-understanding well:

As traffickers' modus operandi is constantly evolving, the EU needs to tackle the links between trafficking in human beings and other crimes, including migrant smuggling, terrorism, corruption, drug trafficking, cybercrime and online sexual exploitation, production of material involving the sexual abuse of children, financial crime, document fraud, credit card fraud, and benefit fraud.

(European Commission, 2017: 1)

Most striking in this statement is that human trafficking is linked to very different kinds of crimes than those mentioned in the general documents on trafficking from the previous period. Whereas the documents targeting trafficking in general from the previous period did link trafficking to border-crossing criminality, the connections were more general. In the Progress Reports (European Commission 2016; 2018) and the 2017 Communication links to different kinds of international crime are far more evident. Most drastically, but less frequently mentioned, is the link between trafficking and terrorism (European Commission, 2017: 1, 7).

Throughout the documents analysed in this period, the link between trafficking and smuggling is emphasised to a larger degree than before. The only mention of the term 'smuggling' in the EU documents targeting trafficking in human beings in general from the previous period was in a footnote in the Strategy. Here, trafficking in human



beings was said to differ from human smuggling as trafficking 'involves the use of force and involves exploitation, and because there is no need to cross a border or be physically transported' (European Commission, 2012: 2). Although both actions involve violation of the law, smuggling, in contrast to trafficking, is always transnational, it involves *consent* and the smuggled person is free upon arrival (European Commission, s.a.). In the second period, both the First Progress Report (European Commission, 2016: 7, 8) and the 2017 Communication (European Commission, 2017: 1) address trafficking and smuggling as something alike. In the Second Progress Report, the link is mentioned, but as something the Member States report (European Commission, 2018: 5). The way in which smuggling and trafficking is linked here clearly points to ideas of justice as non-domination where the focus is on justice enabled within the state-frame, and the securing thereof. Whereas the focus could have been on the vulnerability of smuggled migrants to be trafficked, the focus is rather directed on the problem of traffickers and smugglers threatening and violating the state (borders).

This shift in focus to ideas of justice as non-domination is also apparent when it comes to how the gender aspect is presented in relation to the problem of human trafficking. Remarkably, the idea of traffickers as threat to gender justice is very evident in the documents targeting trafficking in general from this period. Overall, the problem of trafficking is no longer presented as something rooted *in* peoples vulnerabilities - including those related to gender - but rather the fact that the traffickers exploit them. This is very evident in the wording: traffickers 'exploit' (European Commission, 2016: 2; 2017: 1), they 'abuse' (European Commission, 2018: 1) and 'target' (European Commission, 2016: 9) the most vulnerable.

The increased focus on the process of trafficking, rather than the individuals affected is linked to a shift in victim-focus from individuals to states. Whereas the victims in the previous period were the trafficked persons, now also 'societies' and 'economies' are assumed to suffer from the crime (European Commission, 2016: 2; 2018: 1). The traffickers are not only exploiting individuals, they 'abuse asylum systems' and 'legitimate business structures' (European Commission, 2016: 9, 11). This shift in focus from individual human beings to the acknowledgement of the state as a victim of trafficking, clearly

demonstrates the emphasis of ideas of justice as non-domination and the focus on the state frame as guardian of justice.

The shift in victim-focus is further amplified by the increased link to trafficking as a security issue (see in particular European Commission, 2017).<sup>1</sup> The First Progress Report even describes trafficking as a 'significant security threat' (European Commission, 2016: 8). By linking the process of trafficking and smuggling, together with the strong emphasis on the state and security, the ideas of justice are not only limited to focus on the state and justice as non-domination; the attention is on the vulnerability of the *internal* states of the EU against the *external* threat of human trafficking. This illustrates well the obstacles that might occur in the approach to justice following the non-domination view, when promotion of human rights, or women's rights, collide with the principle of non-interference.

This victim-shift from individuals to states is also evident when it comes to ideas of justice more explicitly linked to gender. Most strikingly is the reporting of female victims of trafficking following the 'migrant crisis'. Here, the problem seems to be the fact that women are arriving in Europe, as much as - or even more than - those women being exploited (European Commission. 2016: 9; 2018: 5). This is well exemplified in the First Progress Report, where the EU warns of a 'worrying sharp increase in Nigerian women and girls leaving Libya'. Although 'concerns of an increased risk of trafficking for sexual exploitation' is noted, the problem is presented more as the fact that women and girls are leaving Libya and *coming to* Europe rather than that they are or might be exploited on their way (European Commission, 2016: 9).

Both progress reports have a large section devoted to statistics on trafficking. Female victims are reported to be the majority, whereas most of them are identified as being in the sex industry (European Commission, 2016: 4; 2018: 3). Women and girls trafficked for sexual exploitation are reported to be on the rise in both reports (European Commission, 2016: 6; 2018: 3, 5). Male victims of trafficking for sexual exploitation are also noted to be increasing, but only in the first

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<sup>1</sup> The word 'security' was mentioned only one time in the documents targeting trafficking in general in the first period, this was in the Strategy (European Commission, 2012: 10), however the link was not clear stated.

report (European Commission, 2016: 6). Despite the large overweight of female identified victims, and the identified huge gender differences in the different sectors and settings in which trafficking occur, none of the documents reveals ideas that touch upon the question of *why* this might be the case. Given the limited gender-focus in the rest of the problem-dimension in the reports, this is especially striking.

### Problem understandings in the external trafficking documents

All key policy documents targeting the external dimension of EU's trafficking approach are produced in 2015 and 2016, when the so-called 'migrant crisis' had its peak on the EU agenda. It is clear that the attention to the external dimension of the trafficking problem has increased. Notably, more of the documents that do not target trafficking exclusively, but still affect the EU's approach to trafficking in its external relations, devote attention to trafficking to a greater extent than the corresponding documents in the previous period. Whereas the report on the ENP and the Gender Action Plan I from the previous period did not mention trafficking at all, the revised version of the ENP from 2015 mention trafficking several times (European Commission & HR, 2015b), and the Gender Action Plan II (European Commission & HR, 2015a) devote considerable attention to trafficking in human beings. The problem of trafficking in human beings also appears to be more central in the other key policy documents targeting trafficking in its external dimension compared to the last period.

The increased attention to the external dimension of the trafficking problem is not the only change compared to the documents from the previous period. A particularly striking tendency compared to the previous period is it that the gender-dimension of the problem of trafficking is absent from all documents on EU's external relations, except for the EU Gender Action Plan II. In the EU Gender Action Plan II trafficking in girls and women as problem is addressed as (violation of) women's physical and psychological integrity (European Commission & HR, 2015a: 5). The Gender Action Plan reveals a problem understanding that clearly goes in line with ideas of gender justice as impartiality. Noteworthy, the idea of trafficking as a form of violence against women and girls is explicitly highlighted (European Commission & HR, 2015a: 6). Except for one reference related to gender

justice as non-domination ('[s]ocieties at large suffer' from violence against women and girls) (European Commission & HR, 2015a: 6), the document is devoted to a problem understanding of trafficking in women and girls in line with ideas of justice as impartiality.

In the remaining documents on EU's external relation, the shift to ideas of justice as non-domination is even clearer than in the general documents targeting trafficking in human beings from this period. In fact, no ideas related to justice as impartiality or mutual recognition can be found in relation to trafficking in the problem-dimension of these documents. The ideas of justice as non-domination found in the documents points towards state as claimant of justice, and two elements are central in the problem description: the linkage between smuggling and trafficking, and trafficking as a security problem.

The presented linkage between trafficking and smuggling found in the documents targeting trafficking in general continues with greater intensity in the key documents targeting the external dimension of the trafficking problem. The link between trafficking and smuggling is most frequently mentioned in the European Agenda on Migration (European Commission, 2015b). Every time trafficking in human beings is addressed – eleven times in six different sections – human trafficking is connected to people smuggling. The problem focus here is similar to the idea of traffickers as a threat to gender justice, although the focus on gender is replaced with the vulnerability of 'displaced persons' towards the traffickers (and smugglers) (European Commission, 2015b: 4). Also the interchanging shift in victim focus between individuals and state is evident here. The problem of trafficking is presented both as the matter that people are crossing the borders and coming to Europe (European Commission, 2015b: 6), and that traffickers exploit vulnerable migrants (European Commission, 2015b: 4, 8). The coupling of trafficking with irregular migration and people smuggling is also evident in the new ENP (European Commission & HR, 2015b: 3, 13), the EU Agenda on Security (European Commission, 2015a: 4, 12) and the Global Strategy for EU's foreign and security policy (EEAS, 2016: 30, 35, 38).

Whereas the above-discussed documents link human trafficking and smuggling more generally, mostly by addressing 'trafficking and smuggling' or 'traffickers and smugglers' interchangeably, the EU Action Plan against migrant smuggling is the only document that

spells out the presented link between trafficking and migrant smuggling explicitly. Here, trafficking and migrant smuggling are characterised as 'different yet interlinked crime(s)' (European Commission, 2015c). Although it also states that trafficking and smuggling are 'not easy to disentangle' as people smuggled on voluntary basis are vulnerable towards trafficking networks (European Commission, 2015c: 2, 6), the focus on the vulnerability of the smuggled people to be trafficked is not reflected in the rest of the problem understanding. Rather, the coupling of smuggling and trafficking as something alike prevails throughout the document (European Commission, 2015c: 2, 4, 6, 8). This illustrates well the shift in how trafficking is understood in this period. Whereas the problem understanding in the previous period distinguishes much clearer between trafficking and smuggling, focusing on the injustice of the individuals affected, the problem understanding in the second period also put the states at centre. When it comes to the violation of state borders, it seems of less importance whether this is performed by the trafficker or the smuggler.

The link between security and trafficking is the other coupling that is more evident in the documents targeting the external dimension of the trafficking problem in this period, turning the attention remarkably in direction ideas of non-domination and justice for the states. In the European Agenda on Security, trafficking in human beings is considered 'directly relevant' to security (European Commission, 2015a: 5). It should be repeated that also the Internal Security Strategy from 2010 (European Commission, 2010c) coupled trafficking to security. Yet, the link between trafficking and security concerns in that document was not as directly stated. In the Global Strategy (EEAS, 2016) and the new ENP (2015), the link between trafficking and the security of the European Union is still evident, albeit a bit toned down. In the Global Strategy, trafficking, together with smuggling and terrorism, is mentioned as potential 'spill-over(s)' of insecurity stemming from international conflicts (EEAS, 2016: 30). The new ENP refers to trafficking as one of more 'cross-cutting migration related security challenges', together with people smuggling, and border protection/management (European Commission & HR, 2015b: 13). Here, trafficking is also devoted considerable attention as a case of organised crime, which is threatening the 'stability in the wider region' (European Commission & HR, 2015b: 13). Albeit differences in the degree to which trafficking is considered a 'security



problem', the ways in which trafficking is coupled to security all have in common that the focus is on the vulnerability of the European states, and that the security implications of trafficking follows migration coming from outside the EU.

As previously mentioned, the gender dimension of the trafficking problem is excluded in all the above-discussed documents addressing trafficking in EU external relations, and the problem dimension in these documents are solely related to ideas balancing between justice as non-domination.

## The solution

The focus on non-domination continues under the solution-dimension, although considerations of the victims' rights and ideas of gender justice occasionally are present throughout the solutions presented. It is clear that the primary focus lies on non-interference in (European) state affairs, and that the autonomy and dignity of the victim comes in second line. Thus, action targeted at criminalising and prosecuting trafficking activities through state-to-state cooperation internally as well as externally seems to be the prioritised approach to the problem of trafficking.

## Solutions in the general trafficking documents

The shift from ideas of justice related to impartiality to justice as non-domination and more considerations of state sovereignty, as found in the problem dimension of the documents targeting trafficking in general, is also reflected in the main solutions presented. The solutions to trafficking found in the documents are centred around ideas of non-domination, with emphasis on non-interference in state affairs of the internal EU states, and the state as justice-provider through dismantling of trafficking networks and prosecution of traffickers. Although the main solutions focus on states and the external actions, ideas of gender justice as impartiality are also present. The priorities set forth in the 2017 Communication exemplify the balance between ideas of justice as non-domination and impartiality, as well as the increased focus on trafficking coming from outside the EU. The first priority is to 'step up the fight against organised criminal networks', the second priority is to 'provide access to and realise rights for victims of trafficking'. Finally, the aim to 'intensify a coordinated and consolidated response, both within and outside the

EU' illustrates how crucial the external trafficking dimension is to the solutions (European Commission, 2017: 3).

Preventing and combating trafficking is the main focus of solutions, and what is meant by this seems to point more in direction the eradication of the traffickers, rather than factors related to the victims. As this 'criminal chain must be broken' (European Commission, 2017: 1; 2018: 1), the EU focus on 'disrupting' the trafficker's business model (European Commission, 2017: 2), 'eradicate' the crime (European Commission, 2016: 1) and 'tackle trafficking in human beings' (European Commission, 2017: 2). Although these wordings clearly express the EU's emphasis on non-interference in *state affairs*, the focus on prosecution of traffickers is also justified by considerations of the individual victim. In the 2017 Communication, this is directly stated: 'Given the harm caused to the victims, prevention should remain the cornerstone of EU anti-trafficking action' (European Commission, 2017: 1). This illustrates well how solutions to justice for the victim is embodied in the non-domination approach to trafficking, and how the state (system) in this view is expected to provide justice for the individuals.

In order to dismantle criminal networks that facilitate human trafficking, the documents highlight the importance of tackling interrelated crimes to trafficking in human beings, including migrant smuggling (European Commission, 2016: 8; 2017: 1; 2018: 5). It remains clear that these criminal networks and interrelated crimes are considered to be substantially of *external* character. Here, the EU relies on cooperation and coordination between internal and external actions of the (Member) States (European Commission, 2016: 1; 2017: 2; 2018: 10). As elaborated in the 2017 Communication, the anti-trafficking angle should be included in 'all aspects of its [the European External Action Service] relations with third countries and in all relevant policy areas' (European Commission, 2017: 6). Gender equality is explicitly mentioned as one such relevant area, together with security and organised crime.

In the First Progress Report, trafficking is brought up as one of the main areas of cooperation with Africa, Western Balkans and Turkey (European Commission, 2016: 9), without further specification of what this cooperation involves. In the other two documents, EU development programmes and other external financing are mentioned

as important instruments in order to prosecute traffickers (European Commission, 2017: 4; 2018: 10). Another part of this external response to combat trafficking in human beings is the Common Foreign and Security Policy (CSDP) (European Commission, 2017: 4; 2018: 10), although none of the documents spell out in what way that should be done. Nevertheless, by referring to CSDP, the document opens up the subject to be tackled using military assets, in order to eradicate trafficking of human beings. This illustrates how attention to the external dimension of the trafficking problem in this period is accompanied by an increased emphasis on ideas of justice as non-domination, and solutions directed at justice for the (EU) states.

Although spelled out in different forms, the external actions proposed in the solutions to trafficking share a focus on prosecution of traffickers and stopping traffickers from coming to Europe. Often, prosecution of traffickers is combined with an emphasis on identification of the victims of trafficking. The First Progress Report express that states 'should step up efforts to investigate the crime, prosecute perpetrators and identify potential victims' (European Commission, 2016: 5). Identification of victims in order to prosecute the trafficker point to ideas of justice as non-domination, yet also the importance of identifying victims so they can exercise their rights is repeated throughout the documents thus pointing more towards justice as impartiality. However, challenges related to this, whether in member states, 'hotspots' (frontline Member States), third states or on EU border is clearly underlined. Especially, the presence of related crimes to trafficking, such as migrant smuggling and drug trafficking, is said to make it difficult to identify the victims of trafficking in human beings (European Commission, 2016: 8-9; 2018: 6).

In the 2017 Communication, turning trafficking in human beings into a 'high-risk, low-return' crime is considered important in order to disrupt the traffickers business chain (European Commission, 2017: 3). Justice through criminalisation of those who use the services of victims of trafficking is highlighted especially in the Progress Reports (European Commission, 2016: 13, 14, 2018: 3, 6, 7, 11). More concretely, such criminalisation efforts are exemplified as sanctions of employers (European Commission, 2016: 13, 2018: 4) and those who buy services from prostitutes (European Commission, 2016: 6, 14, 2018: 3, 7). Whereas the importance of reducing the demand in the 'sex industry' was mentioned in the 2012 Strategy, emphasis on criminalisation of

buying sex and problems of legalised 'prostitution' is first introduced in the second period. Although none of the documents relate this to gender explicitly, the terminology point to the feminist debate regarding criminalisation in the sex industry. Whereas those feminists arguing for legalisation and 'sex workers' rights consider trafficking for sexual exploitation a form of forced labour, the (neo)-abolitionists on the other side recognise no distinction between free and forced 'prostitution' and favour criminalisation of clients. In the EU, the EWL has been an important advocator of the latter position (Anderson, 2014: 360). Despite no mention of gender, the frequent referral to 'prostitution' in the second period thus indicate stronger emphasis on criminalisation of activities related to trafficking, and ideas of gender justice as non-domination. However, it should be noted that legal regulation of the sex industry is left outside EU competence (Allwood, 2018; Outshoorn, 2005).

As elaborated above, the core focus in solutions to trafficking found in the documents are centred on ideas of justice as non-domination. However, ideas of gender justice as impartiality are still evident in the solutions presented. The importance of ensuring a human rights-based, gender-specific and child-sensitive approach to the issue, as decided in the Directive, is also emphasised in the 2017 Communication (European Commission, 2017: 2, 5). The First Progress Report note that a 'victim-centred approach is at the heart of the EU anti-trafficking legislation and policy' (European Commission, 2016: 11), and that '[a]ll victims must be treated equally' (European Commission, 2016: 1). Except for these statements, the importance of securing victims' rights, autonomy and dignity seems to be more emphasised throughout the tools presented than in the main focus of solutions.

The importance of *protecting* victim's rights and improving victim's *access to* rights, as well as securing gender-specific assistance and support to the victims is emphasised in all three documents, pointing attention to ideas of gender justice as impartiality. The First Progress Report (2016) and the 2017 Communication states throughout the texts that the EU should, or do not to a satisfactory degree, provide gender-specific assistance and support to the victims of trafficking. At the same time, the presented gender-differences in different sectors and settings in which people are trafficked are not reflected in the solutions. Although 95% of the identified victims of trafficking for sexual exploitation are reported to be female (European Commission,

2018: 3), none of the general solutions to trafficking for sexual exploitation in the documents mention gender.

Although not as evident as in the 2012 Strategy, the importance of taking into account vulnerability between groups is also emphasised in the second period. Most of the references are to vulnerabilities of groups, such as the Roma community, as well as children and women. Yet, also ideas related to the need for solutions that take into account intersections between such vulnerabilities are evident, although the word 'intersection' is not formulated. Also in relation to children – a focus that continues during this period – ideas of justice as mutual recognition taking into account intersections of gender with other vulnerabilities can be found in the solutions. In the 2017 Communication, the European Commission stated that it would monitor and advise the Member States on the implementation of child-sensitive services at national level that take into consideration the gender, age and particular needs of each children (European Commission, 2017: 5). Although ideas of differentiated assistance and intersectional content are present, albeit to a limited extent, there is no mention of including the trafficked persons in the policy process, as done in the 2012 Strategy – and so ideas related to due hearing in relation to trafficking are absent.

The Second Progress Report stand out in that the focus on women and gender related to ideas of justice as impartiality are almost absent. Yet, here, ideas of gender justice as mutual recognition are clearly emphasised in focus on addressing contextually dependent practices and relationships in the proposed solutions to the increased number of women trafficked into sexual exploitation coming from outside the EU. Not only identification, but also assistance and protection of the victims appropriate to their gender, age and the form of exploitation is highlighted (European Commission, 2018: 5).

Overall, the focus on solutions to gender justice found in the documents imply a balance between ideas of gender justice as non-domination, with elements of gender justice as impartiality and even less as mutual recognition. The increased focus on the external dimension of the trafficking problem reveals an approach to trafficking focused on tackling, preventing and combating trafficking – while at the same time trying to secure the rights, as well as gender responsive support and protection of the victims.



## Solutions in the external trafficking documents

The solution to the trafficking problem found in the general documents based on ideas of justice as non-domination is emphasised to a larger degree in the external documents. Trafficking is here meant to be solved through the dismantling of the trafficking chain, which is closely linked to the smuggling chain, and is said to involve measures such as cooperation with third countries, regional organisations, external financial mechanisms and activities and actions under the CSDP.

The Gender Action Plan II is the only document where justice for the victims is addressed in line with ideas of gender justice as impartiality. Here, the proposed solutions to fight trafficking in human beings is investment in services for survivors and education in order to prevent and reduce vulnerabilities to trafficking - with particular focus on children. However, also references to ideas of gender justice as non-domination can be found in the emphasis on strong legislation against trafficking (European Commission & HR, 2015a: 26).

As regards the solutions found in the other documents, it should be noted that some of them highlight the importance of taking into account gender concerns in their actions in general. The new ENP states that the goal of the EU with all its partners is '(A)n independent, transparent and impartial judicial system' that guarantees 'equal access to justice, protection of human rights, gender equality and non-discrimination, and full application of the law' (European Commission & HR, 2015b: 5-6). This points to both ideas of gender justice as impartiality and mutual recognition. Also the Global Strategy states that the EU will mainstream human rights and gender issues across policy sectors and institutions (EEAS, 2016: 10, 51). However, considerations of gender are not reflected in the solutions to trafficking found in any of these documents. When it comes to the European Agenda on Migration, The European Agenda on Security and the EU Action Plan against migrant smuggling, none of them refer to gender in their solutions. In fact, none of these documents, except for the EU Action Plan against Migrant Smuggling where women are mentioned as a group of vulnerable smuggled migrants, refer to gender at all.<sup>2</sup> This, despite the fact that the European Agenda on Migration states that the EU aims to uphold 'international

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<sup>2</sup> I conducted a search on the words 'women', 'gender', 'sex' and 'female' in all documents.

commitments and values while securing our borders' (European Commission, 2015b: 2). Except for the European Gender Action Plan II, the documents thus reflect more general ideas of justice, than ideas of gender justice.

Common for all the solutions proposed in these documents is the focus on dismantling of the trafficking (and smuggling) networks in order to stop them from arriving the borders of Europe. As in the documents targeting trafficking in general, also the wordings here imply how crucial this is for the EU Member States: there is a need to 'fight', 'tackle' (European Commission & HR, 2015b: 13, 3), 'dismantle' and 'crack down on' smugglers and traffickers (European Commission, 2015b: 6-7). Broadly, the measures proposed as solutions to the trafficking problem in these documents can be divided into two groups: cooperation with third countries and work on the EU borders, whereas both of them rely heavily on ideas of non-domination, respectively focusing on solution to justice facilitated through the state system and the prevention of interference in the (EU) states.

Cooperation with third countries is presented as a central solution to the problem of trafficking in human beings in all documents except for the Gender Action Plan II. In the ENP, intensified cooperation with neighbourhood countries is considered crucial to tackle irregular migration, human trafficking and smuggling (European Commission & HR, 2015b: 3). Also in the Global Strategy, anti-trafficking work is mentioned in relation to relations with third countries and regions (EEAS, 2016: 34, 35, 38). Regarding the solutions directed at cooperation with third countries, it is a clear that the emphasis is on fighting the traffickers and smugglers. More concretely, this cooperation is directed at identifying, stopping and prosecuting such networks in third countries, through policy dialogues on security, trade and development cooperation, as well as the capturing and destroying of vessels before they are used by such networks (European Commission, 2015b: 4,6,9). Reducing the vulnerabilities of individuals to be trafficked through cooperation with third countries is however not mentioned in any of the documents. As set out in the European Agenda on Migration: 'Cooperation to crack down on the local and international criminal groups that control smuggling routes will be a major focus of the intensified cooperation' with third countries in order to fight against smugglers and traffickers (European

Commission, 2015b: 8-9). Although the focus is on external solutions facilitated by the state system and so in line with ideas of justice as non-domination, these measures are mostly directed at the state *system* as provider of global justice, and less on solutions directed at justice facilitated by the *states* themselves.

Measures more directly targeted at protecting the external borders of Europe against trafficking are central to both the European Agenda on Security and The European Agenda on Migration. The solutions here are mostly aimed at stopping the trafficking and smuggling networks on the borders or detect them once they have arrived Europe. Notably, these measures are not only presented as a fight against trafficking and smuggling networks per se, they are also seen as a part of border protection (European Commission, 2015b: 6). This illustrates well how the shift in victim-focus as found in the problem-dimension is manifested in the solutions. When sidelining the fight against trafficking with migrant smuggling and even irregular migration (European Commission, 2015b: 6), it is clear that the focus has shifted towards ideas of justice focusing on the states – namely the EU states. Whereas irregular migration, smuggling and trafficking involves different degrees of domination for the *individuals* affected (or involved), the fight against migrant smuggling and trafficking in human beings is presented as two sides of the same coin when it comes to violation of *state* borders.

The emphasised solution in the documents targeting the external dimension of the trafficking thus point more towards hindering the migrants - whether smuggled and are free upon arrival or victims of trafficking – to arrive to the EU, rather than supporting the dominated individuals. The effect of this approach might thus be to block the dominated victims of trafficking and the injustice in countries external to the EU.

Fighting trafficking in human beings and smuggling of migrants are not the only objectives in these solutions. The dismantling of trafficking networks are also presented as crucial to combat terrorism and other crimes (European Commission, 2015a: 4, 7). By presenting terrorism as one of the threats against which the EU solutions to trafficking should protect, the shift to focus on the state as a victim of trafficking is also clearly demonstrated in the solutions. The coupling of terrorism to trafficking takes two forms, both pointing towards eradication

of trafficking networks. On one side, the exploitation of vulnerable migrants by organised criminal networks is presented as a source to feed terrorism and cyber-crime financially (European Commission, 2015a: 12; European Commission, 2015c: 4). On the other side, actions by EU Agencies and Member State's authorities, and measures such as passenger name records are seen as crucial to prevent criminals (traffickers, smugglers or terrorists) from escaping detection (European Commission, 2015a: 7). Both point to the fight against trafficking networks as crucial to protect the (European) states from criminal networks. Yet, they also contribute to drive attention from the *dominated* trafficked individual to the foreign fighter as *source of domination*.

Although ideas of securing the state (borders) and non-interference is the main concern of the solutions targeted at the disruption of trafficker networks, these solutions are regularly justified in light of the individual victims of trafficking in human beings. Addressing the root causes of migration and to 'crack down' on smugglers and traffickers, is said to be in 'the interests of all' (European Commission, 2015b: 7). And, as stated in the European Agenda on Migration:

Action to fight criminal networks of smugglers and traffickers is first and foremost a way to prevent the exploitation of migrants by criminal networks. It would also act as a disincentive to irregular migration.

(European Commission, 2015b: 8)

In order to do so, these actions are meant to be turned from 'low risk, high return' operations into 'high risk, low return' ones (European Commission, 2015b: 8). Disrupting the trafficker and smuggler networks is also seen as crucial to prevent the loss of lives caused by smugglers and traffickers (European Commission, 2015c: 2). Although concerns of the individual victims is devoted attention in all documents, the ideas of justice still fall under the category of non-domination, as the focus is on the protection of the migrants *from* the trafficker, and not on the autonomy or dignity of the individuals neither in terms of rights nor in terms of support or assistance.

## Changes in ideas of gender justice

The overall impression of the documents analysed in face of the so-called 'migrant crisis' is that ideas of justice as non-domination, more or less directly related to gender, are far more central than in the previous period analysed. However, ideas of justice as impartiality – also directly related to gender – are still present throughout the documents targeting trafficking in general. When it comes to justice as mutual recognition, this is less evident in the second period. Most evident is still the focus on children as a vulnerable group. Although some considerations of attention to vulnerable groups and intersecting vulnerabilities can be found, the ideas continue to go more in line of sidelining different groups than addressing the vulnerabilities from an intersectional perspective. This echoes some of the concerns raised by scholars such as Kantola (2010) and Jaqucot (2010) that focus on different types of vulnerability not necessary lead to a greater recognition of the links and relationships between them, nor to the possible added or amplified forms of injustice.

The solutions to trafficking in this period are much more state- and sovereignty-oriented, focusing on the disruption of criminal trafficking and smuggling-networks as something alike. Nevertheless, considerations of the victims and ideas related to gender justice are still occasionally present. As this balance between ideas of impartiality and non-domination shift, so does the victim-focus. Whereas trafficking in the previous period was seen as a threat to individuals and their fundamental rights, the focus in the second period revolves around idea of the states as victims of trafficking. This points more to an approach to trafficking in line with justice as non-domination, rooted in the sphere of state protection.

While such links were mentioned in the documents targeting the external trafficking policies in the first period, they are more evident in the documents targeting the general documents on trafficking in the second period. Furthermore, the ideas revealed suggest a more limited approach to gender justice as non-domination than the one revealed in the first period, focused more on the continuation of the state system as facilitator of justice, rather than the states. Most striking is the strong coupling of trafficking with external security issues, and the increased coupling between trafficking and smuggling. Although these tendencies were not directly captured by the ideas specified in the analysis scheme, I consider them to be important



elements substantiating the idea shift in the variables *focus*, and the shift from justice of individual victims, to justice related to the state and considerations of non-interference. Indeed, as I will discuss further in the closing chapter, these tendencies substantiate a shift to a more limited approach to gender justice as non-domination, relying on the state *system* rather than the *states* as providers of justice.

Whereas trafficking and smuggling were completely separated in the first period, they are increasingly blended in the second period. By presenting smuggling and trafficking networks as the sole threat to justice for victims of trafficking, and the disruption of the trafficking networks as the solution, the EU's approach to justice places little responsibility at the level of the EU states. Although ideas of gender justice as impartiality related to victim's rights and support are emphasised in the solutions in the second period, the coupling of trafficking with smuggling found in the problem understanding has implications for the victims of trafficking as claimants of justice, especially for those coming from outside the EU.

By mixing trafficking and smuggling together, the EU creates an ambiguity about what the two concepts really are, and where the line between them should be drawn. Indeed, the coupling between the two creates a picture of the victims of trafficking that moves the attention from the dominated individuals to more autonomous opportunistic actors (or fortune hunters). By addressing trafficking and smuggling interchangeably without focusing on the vulnerability of smuggled individuals *to be* trafficked, victims of trafficking are presented as carrying some level of responsibility for the injustice they suffer due to their 'self-chosen' engagement in migrant smuggling. Indeed, this establishes a blurred line of injustice extending from the dominated trafficked individual, to the more 'voluntary' smuggled migrant, and to the extreme: a possible terrorist.

It is important not to disregard the horrible brutality people on the move often experience during a process of smuggling, and it is certainly important not to undermine the fact that people giving consent to be smuggled in the first place might be exploited by traffickers later. However, by referring to trafficking and smuggling interchangeably, the EU undermines the legal distinction between these phenomena. As elaborated in the 2011 Directive, the Union's legal approach to trafficking goes some distance in emphasising justice

as impartiality and universal victim's rights. By creating uncertainty about who are trafficked and who are smuggled, the EU weakens its self-proclaimed responsibility to protect *all* victims of trafficking (see e.g. Council of the EU & European Parliament, 2011: Art. 1).

In the solutions to the problem of trafficking, although more so in the first than in the second period, considerable attention is devoted to ideas that go along with gender justice as impartiality and even gender justice as mutual recognition, emphasising gender sensitive support for the victims, and considerations of (other) vulnerable groups. Yet, this has little effect when it comes to justice for the victims of trafficking if they are not identified as such. The uncertainty established by coupling smuggling with trafficking affects the victims of trafficking coming from *outside* the EU the most, as smuggling by definition entails a border-transcending element. This approach hence contributes to a differentiation in external and internal victims of trafficking as claimants of justice, and marks a shift from the more general justice-orientation in the first period.

Furthermore, this raises the important question: How can victims of trafficking be identified among more autonomous smuggled individuals? The importance of identifying the victims is, as previously mentioned, emphasised to a large extent in the documents in the second period. However, it is not clear in what way this should be done. Here, it is useful to go back to the definition of trafficking and smuggling as provided by the EU. Whereas the border-crossing is a central element that distinguish trafficking and smuggling from each other, making the problem of trafficking in human beings more than a question of migration, this distinction makes less sense when applied on external trafficking. When viewed in light of the other main differences between trafficking and smuggling, distinguishing border-crossing trafficking from smuggling seems hard as long as the persons are on the move. Where trafficking involves coercion or deception and exploitation (European Commission, 2011: art. 2), smuggling on the other side differs in the involvement of consent and that the smuggled person is free once the final destination is reached (European Commission, s.a.). Considering that smuggled people might be affected by violence during the process of smuggling, the most important shift from smuggling to trafficking lies in the question of whether the person is free upon arrival. It thus appears

easier to distinguish the victim of trafficking from the more autonomous smuggled person once the journey has ended.

Yet, when the emphasised solution by the EU to external trafficking is to prevent and hinder people to reach their goal in the first place, by disrupting the trafficking and smuggling networks, it becomes harder to detect the 'real' victims of trafficking. Indeed, when EU's central tools to combat trafficking in human beings hampers the possibility of identifying the victims of trafficking crossing borders, the promises of gender-responsive content and support to the victims becomes less relevant. Whereas this is of less importance to victims of trafficking *within* the EU, it certainly has implications on the victims of trafficking coming from *outside* of the EU.

The balance between disruption of trafficking and smuggler networks and protection of victims is evident in both documents targeting the external dimension of trafficking, and the documents targeting trafficking in general, although in the latter ideas of gender justice in line with impartiality are even more evident. As part of this approach to trafficking coming from outside the EU, (female) migrants are seen as targets of injustice by the smugglers and traffickers, yet, at the same time victims of trafficking, confused with smuggled migrants or even terrorists, are depicted as threats to justice for states in general, and the EU member states in particular. This echoes Aradau (2004) account of a securitisation of trafficking in which victims of trafficking are seen as both 'risky subjects' and 'subjects at risk'.

# Chapter 7

## Discussion and conclusion

From the starting point that the EU seeks to promote gender equality and justice globally, this report aimed to answer to what extent and how ideas of justice are evident in the EU's approach to trafficking in human beings, and how these ideas have changed when faced with the so-called 'migrant crisis'. In this final chapter, I will first sum up the central findings of the analysis of EU documents on trafficking in human beings. Then I situate the findings and the theoretical framework elaborated in the report within the greater debate on gender and global justice, and the literature on gender in EU's external relations. I then go on to reflect on some implications raised by the analysis on the EU as promoter of global gender justice in the case of trafficking. Finally, I conclude with some suggestions for further research.

### Main findings

The first period is characterised by a comprehensive legal and policy framework to trafficking that goes far in emphasising ideas of justice as impartiality. The problem of trafficking is placed in the sphere of victim-protection, and the states are seen as responsible for providing the victims' rights and assistance. Consideration of gender in relation to the victims' autonomy and dignity is clearly spelled out both in the problem dimension and in the solutions, although the references to

ideas of gender justice in the Directive (Council of the EU & European Parliament, 2011) are less and far more general than those found in the Strategy (European Commission, 2012). The ideas revealed in this period went far in emphasising gender justice as impartiality, with elements of mutual recognition. That said, ideas of gender justice as non-domination were still present, although more so in the documents targeting the external trafficking aspect than the internal.

In the second period, when faced with the so-called 'migrant crisis', the balance shift to heavy emphasis on ideas of justice as non-domination, and the problem of trafficking is placed more in the sphere of (EU) state protection. Ideas of gender justice as impartiality continue in the documents targeting trafficking in general in this period, although to a lesser degree and more in the tools than in the main focus of solutions. When it comes to ideas of mutual recognition, concerns of vulnerable groups and intersecting vulnerabilities are less evident than in the first period, although still present. In the documents targeting the external dimension of the trafficking problem ideas of impartiality and mutual recognition are entirely absent in relation to trafficking, except for the Gender Action Plan II.

The problem understanding in the second reveals a shift from focus on trafficking as a human rights violation, to trafficking as a source of injustice to the states. An increased linkage between trafficking and migrant smuggling accompanies this shift. Whereas smuggling and trafficking were strictly divided in the first period, they are presented as more or less two sides of the same coin in the second period. This is also reflected in the solutions: the EU seems to blame smugglers and traffickers for the migrant crisis in general, and the injustice of trafficked people in particular. The proposed tools to solve this is thus to disrupt and stop the trafficker and smuggler networks from coming to Europe. Although ideas of gender justice as impartiality and considerations of the victims' rights still are evident, the solutions proposed indicate that the responsibility of the state's no longer lies in protecting and assisting the victims per se, but to protect them from the traffickers (and smugglers) through state-to-state activities.

At the same time, the analysis of EU policy documents on trafficking between 2009 and 2018 found that justice considerations regarding gender continuous in both periods. This confirms the expectation laid out in the background chapter that gender justice would consist an



important part of the EU's approach to trafficking. Yet, the analysis also revealed that arguments related to gender justice take different forms, and that despite the general shift to more ideas of non-domination, trafficking remained a site of contestation between ideas of gender justice related to the state, to universal rights or women rights, and more considerations towards different vulnerable groups. This suggests that the question of global gender justice not only requires a focus on *whether* gender justice is promoted, but *how*.

## Theoretical and empirical contributions

My study contributes to the research on how the principle of gender equality shapes the EU's external relations and to the theoretical debate on gender and global justice. The topic of the report - trafficking in human beings - is at the heart of such themes. Trafficking is a clear example of gender injustice in a globalised world, and it is a highly 'gendered' policy field on the EU political agenda. The simultaneously internal and external nature of the problem allows for investigating a tension between promotion of gender justice internally and globally in the case of trafficking. Following a 'before' and 'after' logic in what Yin (2014) would consider a longitudinal case study, I focus on the change in how ideas of gender justice are integrated in EU policy documents on trafficking when the focus is moved from trafficking within the EU to trafficking coming from outside Europe, when faced with the so-called 'migrant crisis'. My study contributes to the knowledge on how the EU weighs considerations of the state as justice provider, universal solutions, and considerations of group differences and/or intersecting inequalities when promoting gender justice globally, in the case of trafficking.

Whereas the literature on gender in EU's external relations have provided a lot of insight into questions of whether or why gender is more or less incorporated - or mainstreamed - in politics, this report redirects the question of gender in EU's external relations to also consider *how* gender is promoted. The report contributes theoretically and analytically by an alternative approach that allow us to take into account the complexity of gender justice, and the normative dilemmas involved in the promotion thereof. Acknowledging that justice is a contested concept, and gender equality likewise, I elaborated a theoretical framework based on three conceptions of global justice, as provided by the GLOBUS framework: justice as non-domination, as impartiality and as mutual recognition. Drawing on different feminist

theoretical contributions, this report contributes to the GLOBUS project with a theoretical elaboration and concretisation of what these conceptions of global justice might entail from a gender perspective. By building bridges between global justice theory, feminist theoretical contributions and the field of international relations, this report not only contributes with a more nuanced picture of the EU's promotion of justice and gender equality on the global level. The analytical framework and theoretical propositions developed and demonstrated in this report also have implications beyond the specific field of gender in EU foreign policy, as it is of relevancy for both the broader scholarly debate on gender and global justice, and the literature on gender in foreign policy.

The case of EU's trafficking policies has indeed shown that there are several issues – such as state-centred, or even military, solutions focusing on women, and tensions between group and more universal gender-directed assistance to the victims – that should be taken into account and that would be lost without reflection on the complexity of how gender justice is promoted. Thus, applying these conceptions add analytical value for research on the promotion of global gender justice.

As mentioned in the introduction of the report, there is a gap in the literature on the EU's trafficking policies in the aftermath of the so-called 'migrant crisis'. My study has contributed empirically to fill this by bringing new insights into how ideas of gender justice are integrated in and shape the EU's approach to trafficking between 2009 and 2018. As expected, the documents revealed a shift in attention from the internal to the external dimension around 2015. The study thus provides empirical knowledge into how ideas of gender justice are evident in the EU's approach to trafficking in times when the internal dimension of the trafficking problem is most central, and how these ideas change when the focus moves to trafficking coming from outside the EU. In such a manner, the analysis provides insight into the question of how gender is promoted when the focus shifts from internal relations to global affairs.

## Global gender justice in the case of trafficking

The focus on this report has been on ideas of gender justice, under the assumption that actors are carriers of different ideas, which can be interpreted in text. By deploying an idea-analytical perspective, there is also an underlying assumption that those ideas might influence policymakers and, in this empirical case, the further legal and on-ground approaches towards trafficking in human beings. In this regard, it is useful to note that the identified shift to non-domination has been accompanied by practical political actions such as the EU Naval Force Mediterranean (EUNAVFOR Med) Operation Sophia - the first EU military operation under the CFSP targeting smuggling and trafficking of people (Garelli & Tazzioli, 2018; Wylie, 2018). Although not explicitly addressed in any of the documents targeting trafficking from this period, Operation Sophia was introduced in 2015 in order to combat smuggling and trafficking of people from Libya to the EU (Garelli & Tazzioli, 2018).

Operation Sophia indeed reflects some of the central ideas found in the documents. First, it is an operation targeting both traffickers and smugglers simultaneously. Second, the introduction of military means reflects the stronger emphasis on trafficking as a state-security issue. Third, the balance between the aim of targeting traffickers and smugglers, yet at the same time protecting victims is still very evident. With the aim of providing stability in the Mediterranean region, the mission mandate has been to contribute to 'disrupt the business model of human smuggling and trafficking networks' and 'prevent the further loss of life at sea' (EEAS, 2015).

I will argue that the approach to trafficking seen in the final period, rooted in ideas of justice as non-domination, raise some interlinked deficits with regard to the EU as a promoter of global gender justice also when viewed *from* the perspective of justice as non-domination. Whereas the conception of non-domination claim to respect the integrity and sovereignty of states and their system of protecting rights, it is clear that this approach creates a challenge when the problem has a border-crossing character, such as trafficking coming from outside the EU (Eriksen, 2016: 11). Additionally, when the injustice in trafficking is perceived as to involve some kind of risk for the states - as the problem understanding in both general and external trafficking documents from this period reveals - state concerns might conflict with the aim to promote justice among individuals. In line

with this argument, it should be no surprise that obstacles occur when aims of promoting human – or women’s – rights collide with the emphasis on non-interference (Sjursen, 2017).

Although this shift was partly expected, it is clear from the ideas of gender justice found in the EU’s approach to trafficking in the period after the so-called ‘migrant crisis’ that the interpretation of justice as non-domination is rather limited compared also to the documents targeting the external dimension of the trafficking problem in the first period. Whereas these also focused on the *states* as facilitators of justice, the focus in the second period seems more directed at the *state system* as provider of global justice. I here recall Jagers’ (2005, 2009) account of global gender justice rooted in an unjust state-system.

A state system-approach to justice allows indeed for some discipline of unjust states in the form of pressure from other states (Nussbaum, 2006: 313). Yet, rather than supporting or disciplining third states in which the trafficking occur to reduce the (gendered) violence, inequality and poverty that enable people to be trafficked in the first place (ref. Hughes, 2000; EIGE, 2018), the ideas of non-domination revealed indicates an approach more directed at hindering the potential victims of trafficking and the injustice from coming to Europe. The effects of this turn to non-domination in the trafficking field, including the linkages between trafficking and smuggling, the presentation of trafficking as a security problem and the introduction of military means such as in the case of Operation Sophia, thus point to an interpretation of non-domination that is moving closer to regulations that might increase the risk of domination.

## Suggestions for further research

As mentioned in the introduction and background chapter of the report, there are few studies on the EU’s approach to trafficking under or in the wake of the so-called ‘migrant crisis’. This report has found that there is a shifting balance in ideas of justice integrated in political texts towards ideas of (gender) justice as non-domination, emphasising justice secured by the state system. The on-ground implications of these changes have only been discussed briefly in relation to Operation Sophia. For purposes of inference, there is a need to go more into detail on how this idea-shift affects concrete policies. This can be done by, for example, investigating concrete cases of the EU’s on-ground policies on trafficking, such as Operation Sophia.

One of the central findings of the report – that smuggling and trafficking went from being treated as two separate phenomena in the first period to be increasingly mixed in second period – has only been discussed in light of justice-implications in the case of trafficking and the victims thereof. One question raised by the finding in this report is thus whether (and how) these tendencies have implications for (gender) justice of other migrants, especially those who are smuggled into Europe.

Finally, this study takes the case of trafficking as its empirical basis when investing the EU as promoter of global gender justice. Trafficking provides an exception in EU policy fields associated with gender in that it affects internal and external relations of the Union simultaneously. It is clear that the difference in how gender justice is promoted between the two periods is impacted by the shift in focus from trafficking *within* the Union to trafficking coming from countries *outside* Europe. Thus, there would be a lot to gain from comparing ideas or discourses on justice in other policy fields when the focus moves from internal to external relations.



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# GLOBUS Reports

- 4: Vera Sofie Borgen Skjetne: "The EU as Promoter of Global Gender Justice. Combating Trafficking in the Face of the 'Migrant Crisis'"
- 3: Lea Augenstein: "The Western Argument Wins: A Postcolonial Critique of Conceptions of Global Justice as Mutual Recognition"
- 2: Joachim Vigrestad: "Partnerships for Sustainable Trade? The EU's Trade and Sustainable Development Chapters in the Context of Global Justice"
- 1: Enrico Fassi and Sonia Lucarelli (eds): "The European Migration System and Global Justice: A First Appraisal"

The European Union (EU) has committed to promote justice and gender equality on the global level. This report examines the EU's promotion of these goals through an analysis of its approach to trafficking in human beings. Building on theories of global justice and different feminist theoretical contributions, the report asks how and to what extent ideas of gender justice are evident in the EU's policy documents on trafficking in human beings, and how these ideas changed when faced with the so-called 'migrant crisis'.

The report finds that the EU's approach to trafficking following the 'migrant crisis' changed from a victim-centered view of justice - highlighting universal ideas of gender justice - to a state-centered view of justice. Two tendencies are central to this shift: 1) the shift to see trafficking and smuggling as something alike, and 2) the focus on trafficking as a security problem. The report also finds that despite this overarching change, the EU still devoted considerable attention to universal gender justice ideas and recognition of group differences. Hence, this report argues that there is a need to redirect the discussion on gender in the EU's external relations to consider how gender justice is promoted, acknowledging that promotion of gender justice takes different forms, involving different normative dilemmas.

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