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

On 16 October 2014, Spain was elected to occupy a non-permanent seat on the UNSC for the 2015/2016 term. According to the government, Spain’s presidency of December 2016 was “the most productive in the history of the Security Council”. In total, 15 resolutions were approved, three of which were proposed by Spain (legal cooperation in the fight against terrorism, non-proliferation, and human trafficking in armed conflicts). The President of the Government Mariano Rajoy chaired two Security Council debates: one on Women, Peace and Security (WPS) in October 2015 and one on human trafficking in conflict situations in 2016. Resolution 2331 (2016) was presented and drafted by Spain, and adopted unanimously on 20 December 2016 at an open debate led by its President of the Government. The government described the UNSCR 2331 as “a landmark text, the first of its kind, to combat trafficking in conflict situations as a terrorist practice. The resolution includes significant new measures related to the fight against sexual violence in conflicts.” During the debate, the President stated that Spain proposes a "paradigm shift" by "acknowledging that national judicial systems may break down in situations of conflict, and that action from the Security Council becomes necessary in these circumstances". He also proposed “exploring ways to strengthen the regulatory framework on sanctions, financial flows, and on protection and assistance for victims; and to design a more effective strategy in the fight against trafficking in conflicts”.

Understanding the role of the Spanish Government in the process of production and adoption of UNSCR 2231 brings insight into the framing of this new UNSCR on human trafficking. Whilst the UNSCR calls upon Member States “to address comprehensively victims’ needs, including the provision of access to medical, psychosocial assistance...”

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

1. The term “trafficking” will be used throughout the text to refer to human trafficking, often referred to as trafficking in human beings or trafficking in persons in different international documents.


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

Effectively, the resolution places trafficking within the UN security agenda and its aims to fight “extreme violence” and terrorism.10 In this way, UNSCR 2231 amplifies the already existing tensions in the different agendas that struggle to combat gender-based violence against women, in peacetime and in conflict, and human trafficking, especially of women and girls, namely (i) CEDAW and WPS (including the work of the Special Representative of the Secretary-General on Conflict Related Sexual Violence established under UNSCR 1888; (ii) the fight against trafficking in human beings, the criminalisation of traffickers and the protection of victims of trafficking; and (iii) the international peace and security agenda. While a UNSCR on trafficking is welcome as it provides recognition of trafficking at the highest level, it also raises questions as to why the UNSC has adopted an approach which seems to side-line a human rights approach to this issue.

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

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

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

Letter dated 2 December 2016 from the Permanent Representative of Spain to the United Nations addressed to the Secretary-General
will pay special attention to the process of adoption of Resolution 2331 (2016) and the role of the Spanish Government in this process. Second, it argues that as a human rights violation, the whole human rights legal architecture should apply when addressing human trafficking. Failure to incorporate the well-established legal framework on trafficking contributes to a fragmentation of the legal corpus governing trafficking, which potentially undermines the role of international human rights law in providing an effective response to the human rights violations of trafficking. It also argues that since trafficking in armed conflict is a form of gender-based violence, it comes within the four pillars of the UNSC’s agenda for WPS. Lastly, it explores the connections (and disconnections) between the Spanish leadership on WPS, the anti-trafficking UNSCR and the way the state is fulfilling its due diligence obligations towards victims of trafficking internally.

**FRAMEWORK AND TENSIONS**

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

Instruments that have dealt with human trafficking date back to the early 20th Century and the abolition of slavery. They include provisions within the Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention (the Slavery Convention, 1926) and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956). Human trafficking as a term in international law was first used in relation to “white slavery”, which referred to the recruitment of European and North American women into prostitution in the colonies of Asia, Africa and South America. The label “white slavery” was meant to distinguish the practice from 19th Century “black slavery.” Conservative attitudes towards women’s sexuality, and the fears that “white” women would be trafficked from Europe and North America for the purposes of prostitution by “other” men in the colonies have been argued to be among the reasons that led to the adoption of international measures. The International Agreement for the Suppression of the “White Slave Traffic” (1904) and the International Convention for the Suppression of the “White Slave Traffic” (1910) both include this language and approach. Additional tools of international law that include states’ obligations to combat the trafficking of persons include the Universal Declaration of Human Rights (1948), the International Covenants on Civil and Political Rights (1966), and the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949). It is significant to note that the first time that trafficking entered explicitly into a human rights treaty was in 1979 through article 6 of CEDAW, which provides that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.” Between 1979 and 2000, however, it is fair to say that the international law was slow to engage with trafficking. In 2000, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol) was adopted. The framework under which the Protocol was adopted (supplementing the UN Convention against Transnational Organised Crime) guided the actions to be taken by States, typically criminalising trafficking in human beings in their domestic laws and providing for jurisdiction over perpetrators. Although

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


15 Stoyanova, Human Trafficking and Slavery Reconsidered, 20.


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

The first regional instrument on trafficking was the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002). It framed trafficking as a human rights violation, but it only addresses sexual exploitation, named as prostitution. The entry into force of the Council of Europe Convention on Action Against Trafficking (the Warsaw Convention) in 2008 offered a wider framework by including different types of exploitation—exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs—and focusing on states’ obligations towards victims’ protection and the safeguard of their rights.

Alongside these regional developments, international human rights law has also recognised how some forms of trafficking disproportionately affect women and girls. There is a growing recognition that trafficking in women and girls is a form of violence against women and thus, of sex discrimination and a human rights violation. These instruments recognised that it is rooted in gender inequalities and asymmetric power relationships and, at the same time, it causes further gender-based discrimination and stereotyping, violence and sexual abuse.

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

Significantly, there is a growing body of evidence demonstrating that humanitarian crises such as armed conflicts and natural disasters can lead to an increase in trafficking in persons.

Trafficking can occur both in crisis-affected areas and out of crisis-affected areas, and people may be trafficked as combatants, in order to finance armed conflict, to provide sexual services, for forced labour, for forced marriage and, in some cases, to reinforce the enslavement of ethnic minorities. Large scale internal and cross-border movements caused by crises also create vulnerable populations that can become victims of trafficking.
Children, especially girls, become highly vulnerable to being trafficked in conflict situations.28 Worldwide, an alarmingly high number of children—both boys and girls—are in a forced labour situation as a result of trafficking.29 Trafficking for commercial sexual exploitation also affects girls at a large scale.30

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

**FRAMING OF UNSCR 2331**

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

The UN Secretary General had previously identified the nexus between conflict-related sexual violence and human trafficking and their cross-border dynamics in his report on conflict-related sexual violence, in which he provided information on smugglers demanding sex for “payment of passage” and on an evolving criminal infrastructure designed to exploit refugees through human trafficking, commercial sex and sexual slavery, including in the context of the current mass migration movements.32

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

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

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

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

UNSCR 2331 is clearly and narrowly focused on conflict-related trafficking. While recognition of trafficking as a threat to international peace and security is welcome, the resolution can be criticised for failing to draw upon the human rights framework which has developed to place obligations on states to combat a phenomenon which violates a host of fundamental human rights. While the impact of the resolution remains to be seen, the UNSC’s approach to the issue can further be criticised for segregating and distinguishing between trafficking when it happens in conflict-related contexts and when it happens in other contexts. Further, Resolution 2331 creates a hierarchy of victims by its affirmation “that victims of trafficking in persons … and of sexual violence, committed by terrorist groups should be classified as victims of terrorism with the purpose of rendering them eligible for official support, recognition and redress available to victims of terrorism, have access to national relief and reparations programmes.”

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

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

contribute factors that make persons vulnerable to trafficking in persons.”

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

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

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

Violence and conflict are also deeply gendered. Conflict is about a violent distribution of power where ‘culturally and historically specific understandings of power relationships are reproduced (and produced); ... Crisis of violence ... are not phenomena apart from normal underlying gender-based violence; rather there is an effect of ‘layered violence’, whereby pre-existing violence is exploded, exposing those targeted to ‘deeper and greater threats of harm and insecurity’.

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

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

UNSCR 2331 IN THE FRAMEWORK – FRAGMENTATION AND OTHER THREATS

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

36 United Nations Global Plan of Action to Combat Trafficking in Persons, Preamble.
40 “Violence against women and girls is a form of discrimination prohibited by the Convention and is a violation of human rights. Conflicts exacerbate existing gender inequalities, placing women at a heightened risk of various forms of gender-based violence by both State and non-State actors.” CEDAW, General Recommendation No. 30, para. 34. See also Security Council Meeting on Women, Peace and Security, S/PV.7704, 2 June 2016, http://undocs.org/S/PV.7704.
41 Christine Chinkin and Mary Kaldor, International Law and New Wars (Cambridge: Cambridge University Press, 2017), 496.
43 CEDAW, General Recommendation No. 30, para. 39.
Trafficking has also been framed from a migration control perspective in domestic legislation of many countries, given that victims are most commonly undocumented migrants. The consequence of this lens of migration is that human trafficking is often erroneously conflated with human smuggling and human trafficking victims are detained in immigration detention centres or treated as economic migrants.

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

The regulation of trafficking by states faces a tension between different approaches and interests. The tension oscillates between two poles – criminal prosecution and border and immigration control at one end and victims’ human rights protection at the other. In between these extremes are grey areas: asylum, ending gender-based violence, eliminating gender inequalities or protecting victims of crime. Understanding this tension is axiomatic as it permeates through the decision making and regulatory frameworks of trafficking of both states and regional organisations, and influences the measures they adopt to combat it.

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

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

45 Chinkin, “International Human Rights, Criminal Law and the Women, Peace and Security Agenda”.
49 The Rome Statute of the International Criminal Court states that the conduct described in the elements of the following crimes include trafficking in persons, in particular women and children: Article 7 (1) (c), Crime against humanity of enslavement; Article 7 (1) (g)-2, Crime against humanity of sexual slavery; Article 8 (2) (b) (xxi)-2 and Article 8 (2) (e) (vi)-2, War crime of sexual slavery.
cause such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent.50

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

Despite the direct or indirect involvement of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic personnel in trafficking activities having been pinpointed as an issue of concern in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, the UNSC is silent on this point.52 The only perpetrators that are considered are individuals and networks linked to terrorist groups. However, WPS experts and organisations have long been calling the attention of the UN apparatus to the problem of participation of peacekeepers in human trafficking and sexual violence in post-conflict areas.53 The UN Global Plan for Action also mentions the need to “investigate, prosecute and punish corrupt public officials who engage in or facilitate trafficking in persons and promote a zero-tolerance policy against those corrupt officials.”54

DISCONNECTED AGENDAS?
THE SPANISH EXAMPLE

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

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

51 United Nations Global Plan of Action to Combat Trafficking in Persons, para. 25.
54 United Nations Global Plan of Action to Combat Trafficking in Persons, para. 47.
Regarding the reception of refugees fleeing armed conflict, Spain agreed to receive 1,449 people from the Middle East and North Africa under resettlement schemes, but according to Amnesty International only 289 people, all Syrian nationals, had reached Spanish territory by December 2016. Likewise, in contrast to the commitment made to receive 15,888 people in need of international protection from Italy and Greece under the EU internal relocation programme, only 609 were relocated to Spain as of December 2016 according to the same source. Spain has failed to implement European Directives on stateless persons, asylum procedures and reception conditions. There continues to be no implementation of the Asylum Act, six years after its entry into force. As a result, asylum seekers across the country experience uneven access to the assistance they are entitled to.58

Protection and recovery measures accorded to trafficked women remain weak due to low numbers of officially identified victims. The US Department of State affirmed in 2011 that in Spain “(the) continued lack of formalised procedures for proactive identification increased the likelihood that unidentified victims were treated like illegal migrants and deported.”59 Although identification procedures have been set up in the country since 2011, the alarmingly low number of women that accept the reflection period that is offered to them demonstrates the inadequacy of the procedures. The low number of identified and effectively protected women is a result of Spain’s crime control model to tackling trafficking. The Ombudsperson expressed concern before Parliament in 2014 about the way in which identification has been undertaken and gave some data: in 2013, the police offered 736 reflection periods to trafficking victims and of those, 603 rejected the protection mechanism.60 Significantly, since 2013 this information has not been compiled or made public.

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

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

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The reality is that, while there is extensive literature on terrorism, “much remains speculative, unknown or uncertain” in the field of violent extremism. Most of the work conducted to date has focused on understanding why and how people become attracted to terrorist action—the so-called “radicalisation” trends—particularly which affects Western countries. From a feminist perspective, there is a concern that women’s rights are instrumentalised, their protection being used as an excuse to justify further military intervention, the application of sanctions or other coercive measures to punish those committing acts of trafficking in conflict-related areas, whereas when trafficking happens outside of conflict areas there seems to be much less interest to protect its victims.

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

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

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

CONCLUSIONS

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

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

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