

# Strategic Compliance in the Shadow of Transnational Anti-Trafficking Law

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*The enactment of the Trafficking Victims Protection Act (“TVPA”) in 2000 marked the beginning of the ongoing systematic attempt by the United States of America to combat human trafficking transnationally. Through this Act, the United States employs a regime of positive and negative incentives aimed at pressuring other countries to comply with its minimum anti-trafficking standards. Very little empirical research has sought to understand how countries in the transnational shadow of the TVPA react to its requirements. Scholarship has especially neglected anti-trafficking efforts relating to the protection and rehabilitation of trafficking survivors, devoting significantly more attention to the TVPA’s prevention and prosecution components. In an attempt to address this substantive and methodological lacuna, this Article reports a first-of-its-kind study. It analyzes the impact of the TVPA and U.S. anti-trafficking policy on a state’s approach to noncitizen trafficking survivors within its borders. By interviewing officials, activists, professionals, and survivors of human trafficking in Israel, and by analyzing policy and legal documents and reports, the study highlights the effectiveness of the United States’ transnational pressure in motivating Israeli authorities to assist trafficking survivors. Nevertheless, the study also reveals the ability of a pressured country to develop compliance strategies that allow it to satisfy U.S. demands while preserving sovereignty over its borders. Further, the*

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*study points to the often-ignored power of trafficking survivors to mobilize both the domestic legal system and global human rights discourse to their advantage and highlights how their notions of successful protective measures differ from those of the U.S. and Israeli governments. Finally, on a theoretical level, based on the empirical findings, the Article presents an innovative typology of compliance strategies and illuminates the importance of differentiating between “compliance” and “success,” which are so often confused in literature on global governance in general and on the TVPA in particular. The findings and theoretical insights presented in the Article highlight the need to develop a model that treats superpower states, weaker states, and the survivors of human rights violations themselves as significant players in global normmaking.*

## INTRODUCTION

Trafficking in persons has attracted much attention over the last decade and a half.<sup>1</sup> On the one hand, this phenomenon can be seen as the epitome of the dark side of globalization because it is linked to transnational organized crime,<sup>2</sup> illegal trade,<sup>3</sup> illicit migration, migrant smuggling,<sup>4</sup> and human rights violations.<sup>5</sup> On the other hand, the struggle against human trafficking can also be perceived as an example of committed international and transnational cooperation. In particular, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (“Palermo Protocol”),<sup>6</sup> and the U.S. Trafficking Survivors Protection Act (“TVPA”)<sup>7</sup>—both of which were drafted at the beginning of the third millennium and demand the prevention of trafficking, the prosecution of traffickers, and the protection of trafficking survivors—can be

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1. MARIE SEGRAVE, SENJA MILIVOJEVIC & SHARON PICKERING, *SEX TRAFFICKING: INTERNATIONAL CONTEXT AND RESPONSE 1* (2009); see also Hila Shamir, *A Labor Paradigm for Human Trafficking*, 60 *UCLA L. REV.* 76, 78–79 (2012); Janie A. Chuang, *Exploitation Creep and the Unmaking of Human Trafficking Law*, 108 *AM. U. J. INT’L L.* (forthcoming 2015), available at <http://ssrn.com/abstract=2315513>, archived at <http://perma.cc/BU3M-S3MB>.

2. SEGRAVE ET AL., *supra* note 1, at 7.

3. See generally ASIF EFRAAT, *GOVERNING GUNS, PREVENTING PLUNDER 193, 193–94* (2012) (discussing the American campaign against human trafficking, which culminated in the passage of the Torture Victims Protection Act, in the context of other global efforts to eliminate illicit trade).

4. See ANNE T. GALLAGHER, *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING 1–2* (2010).

5. *Id.* at 3–5.

6. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, 2237 U.N.T.S. 319, T.I.A.S. 13127 [hereinafter Palermo Protocol].

7. Pub. L. No. 106-386, div. A, 114 Stat. 1466 (codified as amended in scattered sections of 18 U.S.C. & 22 U.S.C.), amended by Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (codified at 18 U.S.C. § 1595 & 22 U.S.C. § 7109(a) (2006)), Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006) (codified in scattered sections of 18 U.S.C., 22 U.S.C. & 42 U.S.C.), and William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified in scattered sections of 8 U.S.C., 18 U.S.C. & 22 U.S.C.) [hereinafter TVPA].

understood as evidence of a global commitment to an uncompromising battle against human trafficking and the protection of its survivors.<sup>8</sup> Indeed, almost all nations have transplanted<sup>9</sup> international anti-trafficking norms into their national legal systems, especially through the criminalization of trafficking.<sup>10</sup> However, as will be detailed in Part I, these international and transnational efforts have been criticized normatively as well as pragmatically.

This paper contributes to the critical examination of transnational efforts to combat human trafficking and their local transplantations by focusing on Israel's compliance with international anti-trafficking norms, and in particular with the requirement that receiving states protect trafficking survivors. This focus is justified because of the relative lack of empirical study of domestic responses to global normmaking in general, as compared to the attention that global mechanisms receive.<sup>11</sup> In particular, there is also a relative neglect of the protection component of anti-trafficking—as opposed to the prevention and prosecution components—in the rich literature on anti-human trafficking legislation and enforcement.<sup>12</sup>

The Israeli case study presented in Part II reveals, on the one hand, the effectiveness of the U.S. transnational anti-trafficking regime in creating a discursive transformation that shifts local authorities' perception of trafficked persons from criminals who should be deported to survivors deserving protection in special rehabilitative shelters. Indeed, Israel is but one example of Anne Gallagher and Janie Chuang's claim that the scope, influ-

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8. Shamir, *supra* note 1, at 78–79. *Cf. id.* at 80 (recognizing these efforts, but arguing that they should be replaced by efforts to change the structure of the labor markets, as “human trafficking is better understood as predominately an issue of economic labor market exploitation”). Other international efforts include the 2002 European Trafficking Convention and the 2011 Association of South East Asian Nations Progress Report on Criminal Justice Responses to Trafficking in Persons. See Anne T. Gallagher & Janie Chuang, *The Use of Indicators to Measure Government Responses to Human Trafficking*, in GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH QUANTIFICATION AND RANKING 317, 317–22 (Kevin Davis et al. eds., 2012) (discussing various global efforts to develop and implement indicators to measure compliance with international anti-human trafficking law).

9. See generally Symposium, *Histories of Legal Transplantations*, 10 THEORETICAL INQUIRIES IN L. 299 (2009) (discussing the notion of legal transplantation, which will not be developed here).

10. See U.N. OFFICE ON DRUGS AND CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 82–83 (2012), available at [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf), archived at <http://perma.cc/VG59-G5QK> (indicating that by 2012, 134 countries had added to their national penal codes offences criminalizing all or most forms of human trafficking, and an additional nineteen countries had added legislation criminalizing some forms of trafficking in persons).

11. Terence C. Halliday, *Recursivity of Global Normmaking: A Sociolegal Agenda*, 5 ANN. REV. SOC. SCI. 263, 284 (2009) (“It still remains quite rare in any discipline for accounts of global normmaking in an issue area to give as much attention to national and local politics as the global politics with which it is in tension.”).

12. DAPHNA HACKER & ORNA COHEN, RESEARCH REPORT: THE SHELTERS IN ISRAEL FOR SURVIVORS OF HUMAN TRAFFICKING 19 (2012) (submitted to the U.S. Department of State), available at <http://www2.tau.ac.il/InternetFiles/news/UserFiles/The%20Shelters%20in%20Israel.pdf>, archived at <http://perma.cc/FV23-MPME>. This is so despite the fact that worldwide, protection policies for the survivors of trafficking are significantly less developed and are slowest to improve, when compared to anti-trafficking prevention and prosecution policies. See *infra* note 58 and accompanying text.

ence, and authority of other global anti-trafficking initiatives, including the Palermo Protocol, pale in comparison to those of the TVPA.<sup>13</sup> On the other hand, the Israeli case study also reveals the ability of a country pressured by the TVPA to develop compliance strategies. This Article offers an innovative typology to describe such strategies, including “over compliance,” “split compliance,” “hybrid compliance” and “isolating compliance.” These strategies allow Israel to satisfy U.S. demands while preserving its sovereignty over its borders.

By “over compliance” I mean a strategic choice by the pressured country to offer protection to people who otherwise would not necessarily have met the TVPA definition of survivors of trafficking. “Over compliance” allows a pressured country to ensure the perception of compliance rather than resistance to U.S. pressure. By “split compliance” I refer to a strategy by which the pressured country presents a bifurcated and contradictory response: while one part of its government faithfully implements the TVPA, the other part promotes the deportation of aliens, including trafficking survivors. A “hybrid compliance” strategy describes a situation whereby the same governmental body performs both protective and harmful measures toward survivors of trafficking. Finally, an “isolating compliance” strategy follows the TVPA’s requirements while, at the same time, trying to ensure that trafficking survivors do not integrate into the pressured country’s society. These strategies point both to the shortcomings of the TVPA in addressing the complexities of human trafficking, and more generally to the limits of transnational power when it poses a threat to a state’s sovereignty.

In addition, the Israeli case study points to competing notions of successful protective measures between the United States, Israel, and different groups of trafficking survivors; furthermore, it highlights recent developments that demonstrate the power of trafficking survivors to mobilize both the domestic legal system and global human rights discourse to their advantage, in a way that forces the host country to relax its isolating compliance strategy toward noncitizen trafficking survivors.

Hence, the Israeli case study leads to two theoretical arguments that are relevant to the discussions surrounding the dynamics and effectiveness of transnational normmaking. First, the findings illuminate the need to differentiate between “compliance” and “success,” which are often confused within the literature on global governance in general, and with regard to the TVPA in particular. Second, the findings reveal the need to develop a theoretical model that treats superpower states, weaker states, and the survivors of human rights violations as significant players in global human rights normmaking.

Part I briefly presents the normative framework of the TVPA, the current debate over its legitimacy and efficiency, and relevant theories relating to

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13. See Gallagher & Chuang, *supra* note 8, at 326.

compliance with international human rights norms. Part II details the four compliance strategies used by Israel in the face of U.S. pressure to protect survivors of trafficking, which mitigate the tension between the transnational pressure and the sovereign's interests. Part III focuses on the survivors' perspectives and actions. It reveals how trafficking survivors' preferred protective measures differ from the definitions of "success" that Israel, the United States, and academics employ, and the importance of differentiating between "compliance" and "success," which are often confused in the literature. Finally, the Conclusion of this Article synthesizes the findings presented in Part III with the findings presented in Part II to highlight the Israeli case study's contribution to the theorization of the processes and outcomes of global normmaking.

### I. THE TVPA INCENTIVE REGIME IN THEORETICAL AND EMPIRICAL CONTEXT

In October 2000, U.S. President Bill Clinton signed the TVPA in an attempt to provide a transnational framework to solve the global problem of human trafficking.<sup>14</sup> The TVPA focuses on "severe forms of trafficking in persons," which are defined as: the "recruitment, harboring, transportation, provision, or obtaining of a person," for "the purpose of a commercial sex act" that "is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age"; or for "labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."<sup>15</sup> The TVPA is centered on what academics and policymakers call the three Ps framework, according to which combating human trafficking must include the prevention of trafficking, the prosecution of traffickers, and the protection of survivors of trafficking.<sup>16</sup>

Among other measures aimed at eliminating trafficking in humans around the world, the TVPA established a regime of positive and negative

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14. See, e.g., EFRAT, *supra* note 3, at 178–90 (providing a history of the advocacy surrounding the TVPA's passage).

15. TVPA, *supra* note 7, 22 U.S.C. § 7102(9)–(10) (2000).

16. See, e.g., U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 6* (2009), available at <http://www.state.gov/documents/organization/123357.pdf>, archived at <http://perma.cc/3CWC-4Q79> [hereinafter 2009 TIP REPORT]; Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sections to Combat Human Trafficking*, 27 MICH. J. INT'L L. 437, 449 (2006); Ayla Weiss, *Ten Years of Fighting Trafficking: Critiquing the Trafficking in Persons Report through the Case of South Korea*, 13 ASIAN PAC. L. & POL'Y J. 304, 310 (2012). In 2009, the United States State Department added a fourth P—Partnership. See *Partnerships*, U.S. DEP'T OF STATE, (Jan. 29, 2014), <http://www.state.gov/j/tip/4p/partner/index.htm>, archived at <http://perma.cc/CPE5-GYCD>; Frances Bernat & Tatyana Zhilina, *Trafficking in Humans: The TIP Report*, 5 SOC. COMPASS 452, 458 (2011). Cf. Mohamed Y. Mattar, *Comparative Models of Reporting Mechanisms on the Status of Trafficking in Human Beings*, 41 VAND. J. TRANSNAT'L L. 1355, 1404 (2008) (mentioning additional Ps—Provision and Participation—as important pillars of anti-trafficking efforts).

incentives,<sup>17</sup> which scholars have labeled “carrot” and “stick,”<sup>18</sup> and “tough love.”<sup>19</sup> On the one hand, the TVPA secures U.S. government funds to support overseas projects aimed at combating human trafficking and the rehabilitation of trafficking survivors. On the other hand, the TVPA threatens to sanction countries that do not comply with the “U.S. minimum standards” for eliminating trafficking by denying them foreign assistance from the U.S. government and by opposing assistance that might be provided to noncomplying countries by global financial organizations such as the World Bank.<sup>20</sup> The U.S. minimum standards include: anti-trafficking legislation criminalizing “severe forms of trafficking in persons”; punishments commensurate with those for grave crimes for sex trafficking involving force, fraud, coercion, rape, kidnapping, or death or in which the survivor is a minor; punishments sufficient to deter trafficking for any knowing commission of any other act of “severe forms of trafficking in persons”; and “serious and sustained efforts to eliminate severe forms of trafficking in persons,” including, among other measures, investigation, prosecution, reporting to the U.S. government, protection of survivors, and co-operation with other governments.<sup>21</sup>

This supervision regime is based, first and foremost, on the U.S. State Department’s annual Trafficking in Persons Reports (“TIP Reports”), which rank nations in three tiers according to their compliance with the U.S. minimum standards.<sup>22</sup> Countries that meet the minimum standards in combatting human trafficking within their borders are placed in the top tier.<sup>23</sup> Countries that have taken tangible steps to combat trafficking but fail to meet the minimum standards are classed in the second tier, which also includes a secondary category: the Watch List.<sup>24</sup> The Watch List serves as a warning to nations that are liable to be demoted to the third and lowest tier.<sup>25</sup> The third tier includes countries that are not making adequate efforts

17. TVPA, *supra* note 7, 22 U.S.C. §§ 7107, 7110(d) (2000).

18. Melissa Holman, *The Modern-Day Slave Trade: How the United States Should Alter the Survivors of Trafficking and Violence Protection Act in Order to Combat International Sex Trafficking More Effectively*, 44 TEX. INT’L L. J. 99, 110–13 (2008).

19. Mark P. Lagon, *The Global Abolition of Human Trafficking*, 12 GEO. J. INT’L AFF. 89, 94 (2011).

20. See *supra* note 17. On the positive and negative incentives structure of the TVPA, see Chuang, *supra* note 16; Ann T. Gallagher, *Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the US Trafficking in Persons Report*, 12 HUM. RTS. REV. 381, 387–90 (2011); Susan W. Tiefenbrun, *Sex Slavery in the United States and the Law Enacted to Stop It Here and Abroad*, 11 WM. & MARY J. WOMEN & L. 317, 359–75 (2004–2005).

21. TVPA, *supra* note 7, 22 U.S.C. § 7106(a).

22. See, e.g., U.S. DEP’T STATE, TRAFFICKING IN PERSONS REPORT 43–44 (2014), available at <http://www.state.gov/documents/organization/226844.pdf>, archived at <http://perma.cc/VG59-G5QK> [hereinafter 2014 TIP REPORT]; Chuang, *supra* note 16, at 453.

23. 2014 TIP REPORT, *supra* note 22, at 43.

24. *Id.*

25. *Id.*

to address trafficking in their territory.<sup>26</sup> Placement in the third tier can lead to the imposition of the economic sanctions mentioned above.<sup>27</sup>

This attempt by the United States to regulate and monitor other countries' responses to human trafficking has earned it monikers such as the "watchdog of human trafficking around the world,"<sup>28</sup> and the self-appointed "global sheriff."<sup>29</sup> More importantly, the U.S. effort has prompted debate concerning the legitimacy of its approach, as well as efforts to evaluate its effectiveness. On the one hand, Frances Bernat and Tatyana Zhilina argue that the TVPA and the TIP Reports are a success because they nudged the attention of governments toward the issue of human trafficking by collecting data, encouraging discourse, and threatening sanctions through Tier 3 status stigmatization.<sup>30</sup> Likewise, Chuang has argued convincingly that the unilateral economic sanctions regime motivated an unprecedented number of countries to pass anti-trafficking laws and to develop domestic infrastructures that meet the U.S. minimum standards.<sup>31</sup>

Susan Tiefenbrun's relatively systematic investigation also supports claims for the TVPA's positive impact.<sup>32</sup> She attempted to measure the impact of the TVPA through an analysis of official U.S. documents, interviews with U.S. officials, and available statistics concerning the numbers of human trafficking survivors, criminal prosecutions, and assistance programs.<sup>33</sup> She concluded that "there is no doubt that the TVPA in general, and the Department of State TIP Reports in particular, have had a positive effect on many foreign governments."<sup>34</sup> This effect is manifested by substantial U.S. funding of foreign anti-trafficking programs, and in the worldwide increase in anti-trafficking legislation and convictions of traffickers.<sup>35</sup> Tiefenbrun, along with others,<sup>36</sup> also interpreted the move of sev-

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26. *Id.*

27. *Id.* at 44.

28. Sarah Leevan, *Comparative Treatment of Human Trafficking in the United States and Israel: Financial Tools to Encourage Survivor Rehabilitation and Prevent Trafficking*, 6 CARDOZO PUB. L. POL'Y & ETHICS J. 773, 775 (2008).

29. Chuang, *supra* note 16.

30. Bernat & Zhilina, *supra* note 16, at 457–58.

31. Chuang, *supra* note 16, at 464. Nevertheless, Chuang has found that until 2007, the reports gave more credit to governments that made an effort to combat sex trafficking than to those who focused on trafficking for nonsexual purposes, and that only since the 2007 report did the reports also highlight the need to combat labor trafficking. See Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1706 n. 211 (2010).

32. See generally Susan W. Tiefenbrun, *The Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does the Law Deter Crime?*, 2 LOY. UNI. CHI. INT'L L. REV. 193 (2004–2005).

33. *Id.* at 195–96.

34. *Id.* at 210.

35. See Tiefenbrun, *supra* note 20, at 359–78.

36. See, e.g., Holman, *supra* note 18, at 113.

eral countries from lower to upper tiers as additional evidence of the TVPA's positive impact.<sup>37</sup>

On the other hand, there are scholars who accuse the United States of using the reports as a mechanism to label the nonwestern world as a deviant "Other"<sup>38</sup> while masking domestic trafficking and abuse,<sup>39</sup> and who claim that the United States sets a higher standard for other countries than it does for itself.<sup>40</sup> Critics also suggest that the uniform solution imposed on all foreign countries is insufficiently sensitive to specific national socioeconomic and cultural characteristics, and consequently is liable to cause harm to those it allegedly seeks to rescue.<sup>41</sup> Moreover, some argue that the methodology utilized in the reports is faulty,<sup>42</sup> and that the ranking—and hence the attendant sanctions—are biased and manipulated according to U.S. political interests.<sup>43</sup>

An illuminating example that supports these critical claims is Ayala Weiss's study of South Korea's ranking.<sup>44</sup> Though South Korea did not have an anti-trafficking law until 2004, the State Department moved it from Tier 3 to Tier 1 in 2002.<sup>45</sup> It has continued to enjoy the highest-tier ranking ever since.<sup>46</sup> Weiss argues that this is so even though South Korea does not comply with the U.S. minimum standards, given that it criminalizes only sex-related trafficking, does not have severe and deterring punishments for sex traffickers, and does very little to block trafficking demand, which comes particularly from U.S. military bases located on South Korean territory.<sup>47</sup> Weiss claims that South Korea's Tier 1 ranking—like the high-tier ranking of the United Kingdom, Sweden, and Germany, which also lack

37. Tiefenbrun, *supra* note 32, at 215.

38. Jonathan Todres, *Law, Otherness, and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 623–29 (2009). Cf. Dina Francesca Haynes, (Not) Found Chained to a Bed in a Brothel: Conceptual, Legal and Procedural Failures to Fulfill the Promise of the Trafficking Survivors Protection Act, 21 GEO. IMMIGR. L. J. 377, 356 (2006–2007) (arguing that discourse surrounding human trafficking "others" survivors).

39. Jonathan Todres, *Law, Otherness, and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 630–31 (2009).

40. See generally Haynes, *supra* note 38 (discussing the failure of the United States to fully implement the TVPA domestically). It was only in 2010 that the United States included itself in the U.S. State Department's annual Trafficking in Persons Report and it has ranked itself ever since in the top category of Tier 1. See Bernat & Zhilina, *supra* note 16, at 458 (arguing that the U.S. ranking in Tier 1 is an indicator that even Tier 1 nations are not free of human trafficking, as the U.S. is a source, destination, and transit country for trafficked persons). For a detailed account of the characteristics of human trafficking in the United States and of governmental efforts to combat it, see ALISON SISKIN & LIANA SUN WYLER, *TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS 20–36* (2010), available at <http://fas.org/sgp/crs/misc/RL34317.pdf>, archived at <http://perma.cc/N6K6-8DPK>.

41. See Rhacel Salazar Parreñas, *Trafficked? Filipino Hostesses in Tokyo's Nightlife Industry*, 18 YALE J.L. & FEMINISM 145, 169 (2006).

42. See Bernat & Zhilina, *supra* note 16, at 455–57.

43. Haynes, *supra* note 40, at 362.

44. Weiss, *supra* note 16.

45. *Id.* at 325–26.

46. *Id.* at 328.

47. *Id.* at 328–29.

laws that criminalize nonsexual trafficking—is evidence that “being a U.S. ally can be an unspoken positive factor in a country’s ranking.”<sup>48</sup>

Marina Zaloznaya and John Hagan, who studied anti-trafficking practices in Belarus, voice an even harsher criticism of U.S. transnational anti-trafficking attempts. Based on their findings, they argue that the Belarusian government performs an anti-trafficking “crusade” to consolidate its authoritarianism<sup>49</sup> and to hide its ongoing human rights violations from the international community.<sup>50</sup> The TIP Reports fail to acknowledge these motivations and their harmful outcomes, and grant the Belarusian government legitimation it does not deserve. Hence, Zaloznaya and Hagan argue, the Belarus case study demonstrates the ability of oppressive regimes to reverse the usual power dynamics between the ranker and the ranked, to the advantage of the latter.<sup>51</sup>

The debate between the supporters of the TVPA and its critics notwithstanding, there is limited empirical knowledge of the TVPA’s impact on different countries beyond the number of anti-trafficking laws and criminal procedures initiated against alleged traffickers.<sup>52</sup> Especially neglected is the third of the three Ps: protection of survivors of trafficking. Under the U.S. guidelines, protection must include three Rs: rescue, rehabilitation, and reintegration.<sup>53</sup> Arguably, this component of combating human trafficking is the most complex of the three Ps, not only because the task is very demanding in itself, but also because it does not overlap with a nation’s interests in minimizing crime and in preventing illegal immigration, as prevention and prosecution do.<sup>54</sup> On the contrary, because in many cases trafficking includes a move from the survivor’s country of origin to another country,<sup>55</sup>

48. *Id.* at 337.

49. Marina Zaloznaya & John Hagan, *Fighting Human Trafficking or Instituting Authoritarian Control? The Political Co-optation of Human Rights Protection in Belarus*, in GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH QUANTIFICATION AND RANKING, *supra* note 8, at 350. For example, in the name of anti-trafficking efforts, the Belarusian government legislated laws that restrict its citizens’ freedom of movement, expression, and occupation. *See id.* at 344.

50. *See id.* at 346 (calling the Belarusian government’s compliance with anti-trafficking norms an illustration of a “selective compliance” strategy).

51. *Id.* at 363.

52. *See* Gallagher & Chuang, *supra* note 8, at 341 (stating that there is little data measuring the TIP Reports’ impact in individual countries and that “the limited research undertaken thus far provides little useful guidance on this point”). This is part of a more general empirical lacuna related to the national and local axes of the “glocal.” *See* HALLIDAY, *supra* note 11, at 384 (“It still remains quite rare in any discipline for accounts of global normmaking in an issue area to give as much attention to national and local politics as the global politics with which it is in tension.”).

53. 2009 TIP REPORT, *supra* note 16.

54. In a similar vein, Hila Shamir suggests that the states that ratified the Palermo Protocol were chiefly concerned with transnational crime and illegal immigration and not with human rights or workers’ rights, and that with regard to trafficking survivors’ protection, the Protocol uses mostly nonbinding formulation. Delegates from destination countries rejected proposed mandatory obligations to safeguard the human rights of nonnationals, preferring instead to leave such protections to the discretion of each state. *See* Shamir, *supra* note 1.

55. *See, e.g.*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 40 (2012), available at <https://www.unodc.org/documents/data-and-analysis/glotip/Traffic->

and the latter is expected to address the survivor's needs for rescue and rehabilitation<sup>56</sup>—at least until reintegration into the country of origin is possible<sup>57</sup>—the TVPA creates a conflict between the protection of survivors and the destination country's interest in protecting its borders from “illegal immigrants.” Indeed, in a review conducted in 2011, Seo-Young Cho, Axel Dreher, and Eric Neumayer found that, worldwide, trafficking survivors' protection policies are significantly less developed and are slowest to improve, as compared with anti-trafficking prevention and prosecution policies.<sup>58</sup> This is so even though the TVPA was ahead of the international community in trying to develop compliance indicators related to survivor protection, and despite the TIP Reports' move beyond the TVPA formal indicators by identifying “protection” as a central platform of the U.S. anti-trafficking policy approach.<sup>59</sup> The Israeli case study reported in Part II is aimed at addressing the empirical lacuna and the neglect of the protection component by reporting the findings of a first-of-its-kind study of the protection measures adopted by a country reacting to pressure from the TVPA.

Moreover, the debate over the TVPA's effectiveness can be seen as part of a larger discussion about compliance with international human rights norms.<sup>60</sup> Indeed, one can detect a growing attention paid by researchers of global normmaking to the difference between commitment to and compli-

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ing\_in\_Persons\_2012\_web.pdf, archived at [perma.cc/3739-CGCY](http://perma.cc/3739-CGCY) (reporting that “73 percent of survivors of trafficking in persons detected around the world are exploited in countries not their own.”).

56. See generally SEGRAVE ET AL., *supra* note 1, at 95–121 (describing the international legal framework for the rehabilitation of trafficking survivors in destination countries and providing case studies of rehabilitation programs).

57. See generally *id.* at 160–219 (discussing the policies and procedures of repatriation of trafficking survivors and their rehabilitation and reintegration upon their return).

58. Seo-Young Cho, Axel Dreher & Eric Neumayer, *The Spread of Anti-Trafficking Policies: Evidence from a New Index*, 10 (CESifo, Working Paper No. 3376, 2011), available at <http://www.uni-goettingen.de/en/207218.html>, archived at <http://perma.cc/C597-S3CY>.

59. See, e.g., 2009 TIP REPORT, *supra* note 16; Gallagher & Chuang, *supra* note 8, at 339 (This is in comparison to the Palermo Protocol, in which “the international legal obligation on states to protect and support survivors of trafficking was only vaguely recognized and almost entirely devoid of substantive content.”). An especially relevant example to this paper is the “Core Principles for Shelters Programs,” published in U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2010), available at <http://www.state.gov/j/tip/rls/tiprpt/2010/142750.htm#8>, archived at <http://perma.cc/FX2R-9ZEQ> [hereinafter 2010 TIP Report]. Through these principles, the U.S. government guides governments and NGOs to establish shelters that will address trafficking survivors' need for “some combination of comprehensive services, including psychological, medical, legal, educational, life skills, vocational, and translation/interpretation.” *Id.* According to the principles, effective shelter programs should offer: “access to family, friends, and the community outside the shelter; power to decide their own recovery plan; comfortable accommodations resembling a residence, not a jail; respectful treatment as individuals with rights, not as criminal offenders; respectful, caring, and qualified staff; and opportunities to work and the ability to leave the shelter at will.” *Id.* The principles also include guidelines for “a tailored recovery plan” that should be offered to each survivor, and include: “individualized case management; intake as well as needs and risk assessments; cultural and linguistic considerations; confidentiality; safety and safety planning; and, re-integration services.” *Id.* These guidelines can be seen as part of what Gallagher and Chuang call “shadow indicators.” Gallagher & Chuang, *supra* note 8, at 332.

60. See, e.g., RYAN GOODMAN and DEREK JINKS, *SOCIALIZING STATES, PROMOTING HUMAN RIGHTS THROUGH INTERNATIONAL LAW* (2013) (mapping three major mechanisms that induce states to comply with international human rights law: material inducement, persuasion, and acculturation).

ance with international norms—that is, between declarations and actions.<sup>61</sup> One well-known example is the work of Thomas Risse and Kathryn Sikkink, who offer a theoretical model to explain the conditions under which international human rights regimes—and the principles, norms, and rules embedded in them—are internalized and implemented domestically.<sup>62</sup> According to their model, the first step in the domestic integration of human rights norms occurs when a transnational advocacy network succeeds in gathering enough information about a repressive state to enable it to publicize the state's human rights violations.<sup>63</sup> In the next stage, the repressive state, which has now been placed on the international agenda of the human rights network, denies the legitimacy of attempts to interfere in its internal affairs.<sup>64</sup> If international pressure continues, the pressured country will move to the third stage, which includes cosmetic changes to the policy in question.<sup>65</sup> These changes are strategic and aimed at easing international pressure.<sup>66</sup> This stage may lead to the flourishing of local groups able to mobilize the international network and prompt an enduring change in the state's human rights policy, or it may lead to a backlash and increased repression.<sup>67</sup> In the fourth stage, which Risse and Sikkink label “prescriptive status,” all the relevant domestic actors acknowledge the legitimacy of the human rights norms, at least discursively.<sup>68</sup> According to Risse and Sikkink, the domestic-transnational-international networks must maintain pressure on the targeted state to ensure that the legitimizing discourse will be transformed into the fifth and final stage of rule-consistent behavior.<sup>69</sup>

Asif Efrat presents another theoretical framework relevant to an analysis of state compliance with the TVPA, devoting more attention to the pressured state than do Risse and Sikkink. Efrat argues that the dynamics of international regulation of illicit trafficking are shaped by a state's preferences on the one hand, and the distribution of power in the global sphere on the other. First, the state shapes its preferences according to its economic interests, ideology, and internal political struggles.<sup>70</sup> Second, the state interacts with other states through conflict and negotiation.<sup>71</sup> The international regulation that subsequently emerges will be the outcome of the

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61. This model has been used in several studies. See generally Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices: Introduction*, in *THE POWER OF HUMAN RIGHTS* (Thomas Risse et al. eds., 1999); *THE PERSISTENT POWER OF HUMAN RIGHTS: FROM COMMITMENT TO COMPLIANCE* (Thomas Risse et al. eds., 2013).

62. Risse & Sikkink, *The Socialization of International Human Rights Norms into Domestic Practice*, *supra* note 61, at 1.

63. *Id.* at 22.

64. *Id.* at 22–24.

65. *Id.* at 25–28.

66. See *id.* at 26–27.

67. *Id.* at 25.

68. *Id.* at 29–31.

69. *Id.* at 31.

70. EFRAT, *supra* note 3, at 56.

71. *Id.* at 22–47.

power distribution between the states involved.<sup>72</sup> Powerful governments are able to change the preferences of weaker governments by economic and reputational coercion—that is, by economic sanctions and rewards, and by intentionally tarnishing the violating state’s good name in the global community.<sup>73</sup> One might add military coercion as an additional strategy available to powerful governments to ensure compliance.<sup>74</sup> All this notwithstanding, history teaches us that even military force cannot guarantee compliance with human rights norms.<sup>75</sup> Indeed, Sonia Cardenas argues that states remain very strong players in the global era and are unlikely to dramatically moderate their sovereignty as a result of external human rights norms.<sup>76</sup>

Risse and Sikkink treat theories that center on international power imbalance, or that argue for the dominance of the sovereign, as “alternatives” to their theory.<sup>77</sup> Even though these two kinds of theories are themselves in conflict, the findings presented in Part II suggest that they can and should be perceived as complementary to Risse and Sikkink’s model, because the evolution from the first to the fifth stage of their model is neither deterministic nor necessarily linear. In this, I will join recent studies demonstrating that states can simultaneously commit to and violate human rights norms, and have compliance choices that are determined in light of internal and external forces.<sup>78</sup> Furthermore, I will offer the term “strategic compliance” and an innovative typology of different kinds of compliance strategies—“over,” “split,” “hybrid,” and “isolating”—that emerged from the empirical findings, to further problematize the often-assumed dichotomy and tension between compliance with international norms and sovereignty. I will show that while the U.S. incentive regime substantially affected Israel, causing it to shift its perception of survivors of human trafficking from unwanted criminal aliens to survivors deserving shelter, Israel simultaneously managed to preserve its paramount interest in preserving an ethnic immigration policy that is unwelcoming to non-Jewish immigrants.

72. *Id.* at 47–56.

73. *Id.* at 50–52.

74. See e.g., Thomas Risse & Stephen C. Ropp, *The Socialization of International Human Rights Norms into Domestic Practice: Introduction*, in *THE PERSISTENT POWER OF HUMAN RIGHTS*, *supra* note 61, at 3 (referring to the emergence of the Responsibility to Protect, a new international norm requiring international military intervention where state governments are unwilling or unable to protect their citizens from gross human rights violations).

75. See Constanze Letsch et al., *Syrian Kurds Say Air Strikes Against Isis Are Not Working*, *THE GUARDIAN*, Oct. 6, 2014, available at <http://www.theguardian.com/world/2014/oct/05/air-strikes-isis-not-working-syrian-kurds>, archived at <http://perma.cc/6FCE-3PS7>. The fact that ISIS is not a recognized state emphasizes the challenges of global human rights normmaking in the face of new fundamentalist forces.

76. See SONIA CARDENAS, *CONFLICT AND COMPLIANCE: STATE RESPONSES TO INTERNATIONAL HUMAN RIGHTS PRESSURE* 131–32 (2007).

77. Risse & Sikkink, *supra* note 61, at 35–36.

78. See CARDENAS, *supra* note 76, at 37–65; Zaloznaya & Hagan, *supra* note 49, at 345–364.

Finally, the Israeli case study reported below points to the potential incongruence between normative definitions of successful protection measures espoused by global forces and pressured counties, and survivors' own notions of successful protection. Indeed, listening to the survivors of human trafficking and immigration-related abuse reveals the different viewpoints and subjective definitions of "successful protection." Moreover, and notwithstanding the above, I will show in Part III that actions taken by the survivors of trafficking themselves have directly shaped the recent protective measures taken by Israel, highlighting the need to add survivors of human rights violations as an explanatory variable in the theoretical models of humanitarian global normmaking. Thus, by providing an in-depth qualitative study of a country pressured by transnational normmaking, this paper contributes to the theoretical discussion concerning the variables that affect compliance with these norms, and demonstrates the possibly conflicting definitions of success regarding the enforcement of such norms.

## II. THE ISRAELI CASE STUDY

A country that found it much harder to climb the tier ladder than South Korea—even though it is also a U.S. ally<sup>79</sup>—is Israel. In its first TIP Report, published in 2001, the United States placed Israel in the lowest tier due to incoming sex trafficking, stating, "Israel is a destination country for trafficked persons, primarily women" and "[t]he Government of Israel does not meet the minimum standards for combating trafficking in persons, and has not yet made significant efforts to combat the problem, although it has begun to take some steps to do so."<sup>80</sup> Between 2002 and 2011, the United States ranked Israel in Tier 2,<sup>81</sup> and in 2006 warned it against a return to

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79. See, e.g., Mark R. Clyde, *Israel-United States Relations*, in ISRAELI-UNITED STATES RELATIONSHIP 21–22 (John E. Lang ed., 2006). The harsher scrutiny of Israel's compliance with the TVPA, when compared to other U.S. allies such as South Korea and the United Kingdom, see *infra* note 139, might be attributed to Israel's relative weakness in the international sphere, as well as to the United States' general caution in its relations with Israel, motivated by international criticism of its support of Israel despite the ongoing conflict between Israel and Palestine. However, these are hypotheses, which might be confirmed only by an intense fieldwork within the U.S. bureaucracy and diplomacy dealing with the TIP Reports, which, of course, are highly unlikely to be accessible for research.

80. U.S. DEP'T OF STATE, SURVIVORS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000: TRAFFICKING IN PERSONS REPORT 88 (2001), available at <http://www.state.gov/documents/organization/4107.pdf>, archived at [perma.cc/2UGQ-YGVU](http://perma.cc/2UGQ-YGVU) [hereinafter 2001 TIP REPORT]. See generally Gabriel Cavaglian, *Trafficking in Women for Sex in a Glocal Context: The Case of Israel*, in WHO PAYS THE PRICE? FOREIGN WORKERS, SOCIETY, CRIME AND THE LAW 201 (Mally Shechory et al. eds., 2010) (discussing women trafficked to Israel for prostitution).

81. The TIP Reports focus on Israel as a destination country for trafficked individuals as there is no documented phenomenon of human trafficking of Israelis. See 2001 TIP REPORT, *supra* note 80; U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2002), available at <http://www.state.gov/documents/organization/10815.pdf>, archived at <http://perma.cc/37CF-7K6W> [hereinafter 2002 TIP REPORT]; U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2003), available at <http://www.state.gov/documents/organization/21555.pdf>, archived at <http://perma.cc/FY5D-BVAC>; U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2004), available at <http://www.state.gov/documents/organizational>

Tier 3 by placing it on the “Watch List,” because of Israel’s “failure to provide evidence of increasing efforts to address trafficking, namely the conditions of involuntary servitude allegedly facing thousands of foreign migrant workers.”<sup>82</sup> While the 2006 report’s emphasis on Israel’s neglect of labor-related abuse was correct, subsequent reports, until 2012, failed to acknowledge the many anti-trafficking steps Israel took during that period.<sup>83</sup> The reports also did not recognize that since 2008, Israel has been an exceptional example of a country that managed to almost completely eliminate sex-related trafficking into its territory.<sup>84</sup> It was only in 2012 that

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zation/34158.pdf, archived at <http://perma.cc/2CNU-8CUW>; U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT (2005), available at <http://www.state.gov/documents/organization/47255.pdf>, archived at <http://perma.cc/848V-MPHC>; U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT (2006), available at <http://www.state.gov/documents/organization/66086.pdf>, archived at <http://perma.cc/YK8J-VHXP> [hereinafter 2006 TIP REPORT]; U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT (2007), available at <http://www.state.gov/documents/organization/82902.pdf>, archived at <http://perma.cc/D3GS-EAYL> [hereinafter 2007 TIP REPORT]; U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT, COUNTRY NARRATIVES: H–R (2008), available at <http://www.state.gov/documents/organization/105658.pdf>, archived at <http://perma.cc/8Y28-27VC>; 2009 TIP REPORT, *supra* note 16; 2010 TIP REPORT, *supra* note 59; U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT, COUNTRY NARRATIVES: D–I (2011), available at <http://www.state.gov/documents/organization/164454.pdf>, archived at <http://perma.cc/ZX4G-5E8Z>; U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT, COUNTRY NARRATIVES: D–I (2012), available at <http://www.state.gov/documents/organization/192595.pdf>, archived at <http://perma.cc/A5LD-DSTL> [hereinafter 2012 TIP REPORT]; U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT, COUNTRY NARRATIVES: D–I (2013), available at <http://www.state.gov/documents/organization/210739.pdf>, archived at <http://perma.cc/VYV6-VMN5> [hereinafter 2013 TIP REPORT]; 2014 TIP Report, *supra* note 22. However, some prominent feminist scholars argue that pimping also constitutes trafficking. See, e.g., Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271, 299–300 (2011); Maria Rabinowitz, *Overview of Israel’s Activity in the Area of Human Trafficking: Dealing with Women Trafficking 4* (Knesset Research & Info. Ctr., 2013) (Isr.), available at <http://www.knesset.gov.il/mmm/data/pdf/m03296.pdf>, archived at <http://perma.cc/WCN2-86V9>.

82. 2001 TIP REPORT, *supra* note 80, at 145.

83. HACKER & COHEN, *supra* note 12, at 33–48.

84. In 2004, after the connection between organized crime in Israel and trafficking in women for prostitution was proved, the government decided to take vigorous action to eradicate the phenomenon. The Israel Police made a concerted effort to raid and close brothels, to deport women trafficked for prostitution back to their country of origin (before their right to rehabilitation was recognized), to arrest hundreds of people suspected of trafficking in women, and to prosecute dozens of offenders. See Interview with Superintendent Raanan Caspi, Supervision Officer, Israel Police National Investigations Office, in Lod, Isr. (Dec. 22, 2010). There is general agreement among officials, activists, and scholars that these actions, also motivated by the pressure put on Israel by the TVPA and the TIP reports, made a decisive contribution to reducing trafficking in women for prostitution into Israel. Since 2008, very few new cases have emerged in which it is suspected that non-Israeli women have been trafficked for prostitution. See Rabinowitz, *supra* note 81, at 4; Limor Ezioni, *The Legal Change in the Trafficking in Women Offence in Israel: The Practical Future Goes Through the Theory*, 6 SHAREI MISHPAT 161, 164 (2013); Rita Haikin & Hannah Safran, *Between the traffic in women and prostitution: Evolution of a social struggle* (2013) (Isr.); MINISTRY OF PUBLIC SAFETY, INTER-MINISTERIAL REPORT HEADED BY DIRECTOR GENERAL OF THE MINISTRY OF PUBLIC SAFETY SAYS THE STATE OF ISRAEL HAS SUCCEEDED IN GREATLY REDUCING THE INCIDENCE OF HUMAN TRAFFICKING FOR THE SAKE OF PROSTITUTION, (2011) (Isr.) (on file with author). *But cf.*, 2014 TIP REPORT, *supra* note 22 at 215 (stating that “53,000 Eritrean and Sudanese migrants and asylum seekers, most of whom arrived to Israel through the Sinai in Egypt, are highly vulnerable to forced labor and sex trafficking in Israel, due to their lack of formal work status and pressure to repay their family and friends for the large debts owed for the ransoms paid to free them from criminal groups in Egypt’s northern Sinai.”). The Report does not, however, reveal its sources and references; there is no reliable source that this author is aware of that provides evidence of sex trafficking

Israel secured placement in Tier 1; it retained this placement in 2013 and in the most recent 2014 report.<sup>85</sup>

This study sheds light on Israeli actions taking place in the shadow of the U.S. normmaking and ranking processes from the perspective of the pressured country. This Article focuses on one of the Ps—the protection of survivors of human trafficking—and one of the three Rs within it: rehabilitation.<sup>86</sup> As the findings will make clear, protecting the survivors of trafficking interrelates with both preventing trafficking and prosecuting traffickers, and the rehabilitation of survivors depends upon their rescue and reintegration. Hence, although the study follows the U.S. tripartite scheme, it also demonstrates its superficiality.

Due to the complex and dynamic nature of the research field, the study relied on qualitative research tools that allowed for the in-depth, holistic, and naturalistic investigation of practices and justifications.<sup>87</sup> We conducted individual interviews with: (1) sixteen policy makers and professionals in official bodies and nongovernmental organizations who either developed and executed or challenged the policy relating to the rehabilitation of survivors of human trafficking in Israel; and (2) fifteen women and fifteen men residing in the two Israeli shelters designated for survivors of human trafficking at the time of the interview, or who had resided in the shelters in the past. In addition, we held group discussions with the social workers employed at the shelters. Finally, we analyzed extensive written materials, including laws, Knesset (Parliament) protocols, governmental de-

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of Eritrean and Sudanese migrants and asylum seekers in Israel if one does not perceive prostitution as sex trafficking. Recently, the Hotline for Refugees and Migrants argued that the perceived success in eliminating sex trafficking has led to the relaxation of enforcement measures against sex trafficking in Israel, resulting in the “apparent resurgence of trafficking in women for sex work, in a different configuration than . . . [has been previously] observed.” This NGO further argues that Israel has failed to investigate this new phenomenon and deports the women who were apparently trafficked before trafficking circumstances can be studied. See *Slavery and Trafficking in Persons in Israel*, HOTLINE FOR REFUGEES AND MIGRANTS, <http://hotline.org.il/en/slaverytip/>, archived at [perma.cc/9U23-YW4k](http://perma.cc/9U23-YW4k). Non-sex trafficking, on the other hand, has gained much less attention and there is little state effort to prevent the abuse of labor migrants by their employers. See HACKER & COHEN, *supra* note 12, at 43–44, 62, § 8.2; Rabinowitz, *supra* note 81, at 4; Limor Ezioni, *supra*, at 164. Likewise, much remains to be studied regarding conditions of sex work of Israelis, and to what extent that may amount to human trafficking. See *infra* note 137; HACKER & COHEN, *supra* note 12, at § 3.5.

85. See 2012 TIP REPORT, *supra* note 81; 2013 TIP REPORT, *supra* note 81; 2014 TIP REPORT, *supra* note 22.

86. Some of the project’s findings were published as part of an evaluation report that was submitted to the U.S. Department of State. See HACKER & COHEN, *supra* note 12.

87. By that, the study reported here follows Goodman and Jinks’s insight that qualitative research is extremely valuable in studying the dynamics of state compliance with international norms, see GOODMAN & JINKS, *supra* note 60, at 51–52, and Chuang’s call for qualitative research to measure “whether the actions taken by a government result from a genuine commitment to eradicate trafficking” and the internalization of anti-trafficking norms, or merely “serve as expedient cover against the threat of U.S. economic sanctions,” see Chuang, *supra* note 16, at 465. On qualitative research in general, see THE SAGE HANDBOOK OF QUALITATIVE RESEARCH (Norman K. Denzin & Yvonna S. Lincoln eds., 2011). On qualitative research in law, see Lisa Webley, *Qualitative Approaches to Empirical Legal Studies*, in THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH 926 (Peter Cane & Herbert M. Kritzer eds., 2011).

cisions, ministerial directives, court decisions, and official and nongovernmental organization (“NGO”) reports, as well as the Israeli sections of all TIP Reports.<sup>88</sup> We recorded and transcribed forty of the forty-six interviews and analyzed them together with stenographs of the other interactions and the legal documents and reports. In order to enhance the reliability of the findings, we sent them to key informants before theorization, and integrated insights gained from their feedback into the data.<sup>89</sup> The findings reported here were gathered mostly from 2010 to 2011. Since the research field is highly dynamic, it is possible that some aspects have already changed, thereby justifying additional and ongoing research. Indeed, in Part III, I will discuss the recent success of survivors in pressuring Israeli authorities to open a rehabilitation day center in addition to the shelters. Although not thoroughly investigated, this development, which managed to crack Israel’s “isolating” strategy, is so significant that it should not be ignored.

#### A. *The Dominance of U.S. Pressure*

Israel became a destination for sex trafficking for women from the former Soviet Union (“USSR”) in the mid-1990s. Until 2008—when Israel managed to defeat this kind of trafficking—the sex industry smuggled thousands of women into Israel for the purpose of sex labor.<sup>90</sup> In November 1997, the Israel Women’s Network published the first report on the phenomenon.<sup>91</sup> In the recommendation section of the report, it urged the Israeli government to stop jailing survivors, and instead to provide them with social services and assistance.<sup>92</sup> Three years later, in May 2000, Amnesty International published a report documenting sex trafficking in Israel, which blamed the Israeli government for failing to address the problem and

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

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

90. See Nomi Levenkron & Yosi Dahan, *Women’s Trafficking in Israel Under the Protection of the Law* 24 *THEORY AND CRITICISM* 9, 22–23 (2004); Ezioni, *supra* note 84, at 164. For a discussion of the virtual elimination of international sex trafficking into Israel since 2008, see *supra* note 84.

91. See MARTINA VANDENBERG, ISRAEL WOMEN’S NETWORK, *TRAFFICKING OF WOMEN TO ISRAEL AND FORCED PROSTITUTION: A REPORT* (1997) (Isr.), available at <http://www.edu-negev.gov.il/mad/marianak/marpad-new/htm/shavinon/shivion15.htm>, archived at <http://perma.cc/UDV4-9C5X>. For an excerpt of the report in English, see Israel Women’s Network, *Trafficking of Women to Israel and Forced Prostitution*, 17 *REFUSE* 26 (1998), available at <http://pi.library.yorku.ca/ojs/index.php/refuge/article/viewFile/21990/20659>, archived at <http://perma.cc/SB65-3FSR>.

92. See VANDENBERG, *supra* note 91, at recommendations 13–14.

for violating the survivors' human rights.<sup>93</sup> Among other recommendations, the report urged Israel to recognize trafficked women as survivors rather than as offenders, to ensure their safety—in particular the safety of those who testify against their traffickers—and to open a shelter where they could live while awaiting deportation. The report also called for survivors to be provided with legal aid, psychological counseling, and medical services.<sup>94</sup> Member of Knesset Zehava Galon immediately brought this report to the attention of the Knesset.<sup>95</sup> One month later, the Knesset nominated Knesset Member Galon to be the Chairwoman of a special committee to investigate the phenomenon of trafficking in women.<sup>96</sup> In her interview for this study,<sup>97</sup> she recalled that it was not only the Amnesty report that motivated her to argue in the Knesset for the need for this committee, but also a television program that showed an “auction” in which pimps bought women smuggled into Israel.<sup>98</sup> In July 2000, several months before the TVPA was enacted, the Knesset added a new offence to its penal code criminalizing trafficking for the purpose of prostitution.<sup>99</sup>

In September 2000, the Israeli Attorney General at the time, Elyakim Rubenstein, initiated a multi-ministerial team to discuss the phenomenon of trafficking in women in Israel.<sup>100</sup> The team members included high-ranking officials from the Ministry of Justice, the Israeli Police, the Interior Ministry, the Labor and Welfare Ministry, and the Ministry of Foreign Affairs.<sup>101</sup> During the team's deliberations, several court decisions criticized the state authorities for imprisoning survivors of sex trafficking who were awaiting the opportunity to testify against the traffickers; the courts or-

93. See AMNESTY INT'L, HUMAN RIGHTS ABUSES OF WOMEN TRAFFICKED FROM COUNTRIES OF THE FORMER SOVIET UNION INTO ISRAEL'S SEX INDUSTRY 1-2 (2000), available at <http://www.amnesty.org/en/library/asset/MDE15/017/2000/en/2f2fb1c7-df52-11dd-89a6-e712e728ac9e/mde150172000en.pdf>, archived at <http://perma.cc/93ZJ-6UHD>.

94. See *id.* at 16-17.

95. DK (May 23, 2000) (Isr.), available at [http://knesset.gov.il/tql/knesset\\_new/knesset15/HTML\\_28\\_03\\_2012\\_09-20-03-AM/20000523@108-00MAY23@009.html](http://knesset.gov.il/tql/knesset_new/knesset15/HTML_28_03_2012_09-20-03-AM/20000523@108-00MAY23@009.html), archived at <http://perma.cc/P5VS-S3PQ>.

96. See *Parliament Investigation Committee on Trafficking in Women*, KNESSET (2008), [http://www.knesset.gov.il/committees/heb/docs/sachar\\_main.htm](http://www.knesset.gov.il/committees/heb/docs/sachar_main.htm), archived at <http://perma.cc/A5S3-RV3M>.

97. Interview with Zehava Galon, Knesset Member, in Tel Aviv, Isr. (Jan. 11, 2011).

98. Israeli television station Channel 2 broadcasted this program by Gal Gabai on January 28, 2000, and the following week at the Knesset plenum, Knesset Member Galon and other Knesset Members discussed the show, and, appalled by what they saw, called for the elimination of sex trafficking into Israel. See DK (Feb. 2, 2000) (Isr.), available at [http://knesset.gov.il/tql/knesset\\_new/knesset15/HTML\\_28\\_03\\_2012\\_09-20-03-AM/20000202@080-00FEB02@010.html](http://knesset.gov.il/tql/knesset_new/knesset15/HTML_28_03_2012_09-20-03-AM/20000202@080-00FEB02@010.html), archived at <http://perma.cc/R9YN-BTEZ>.

99. See Penalty Code (Amendment no. 56), 5760-2000, SH No. 1746 p. 226, art. 2 (Isr.) (stating that an “offense” for the purposes of the money laundering statute includes prostitution) and Penal Code, 5737-1977, SH No. 864 p. 226, art. 199-205 (Isr.) (criminalizing the procurement, inducement, and sheltering of prostitution).

100. See generally INTER-MINISTERIAL TEAM, THE REPORT OF INTER-MINISTERIAL TEAM FOR THE COPING WITH AND MONITORING OF THE PHENOMENA OF TRAFFICKING IN WOMEN FOR PROSTITUTION 3 (2002) (Isr.), available at <http://zik.co.il/3pe>, archived at <http://perma.cc/8ZVN-LEDL> [hereinafter REPORT OF THE INTER-MINISTERIAL TEAM].

101. *Id.* at 34.

dered the government to release the survivors and provide them with livelihood resources. Authorities continued to immediately deport survivors who were unwilling to testify, but changed their policy toward those who participated in legal proceedings against the trafficker by placing them in hostels.<sup>102</sup> In November 2001, the Israeli government signed the Palermo Protocol,<sup>103</sup> which shares the three Ps framework with the U.S. TVPA,<sup>104</sup> but offers a wider definition of trafficking.<sup>105</sup>

The Inter-Ministerial Team submitted a report in November 2002, including this reflexive and remorseful statement in its introduction:

This report is written with the background of a conceptual revolution in Israeli society. Society has moved from an ambivalence toward prostitution in general to an unequivocally severe attitude against trafficking in women for prostitution . . . . We are witnessing the first signs of another revolution, and this is in society's attitude toward the survivors of trafficking of women. When the phenomenon was first detected, the enforcing authorities did not treat these women as survivors who need special aid, but as illegal aliens that should be deported from Israel as soon as possible. This treatment led to their arrest and placement in detention centers and the women's jail, until their removal from the country. The state did not develop special assistance services for these survivors, and did not shape techniques to encourage them to submit complaints in an active and systematic manner. However, in recent years we have witnessed a growing and deepening shift in this treatment, and a growing recognition that these women are first and foremost felony survivors, whom one must hurry to assist.<sup>106</sup>

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102. In 2001, sixty-two women stayed at hostels while waiting to testify. Between January and September 2002, 109 women stayed at the hostels while awaiting testimony. See REPORT OF THE INTER-MINISTERIAL TEAM, *supra* note 100, at 14; LEVENKRON & DAHAN, *supra* note 90. However, the Knesset Investigation Committee on Women Trafficking found that although the police issued new directives mandating that all survivors awaiting testimony be placed in hostels, it continued to arrest and detain many of them. See KNESSET INVESTIGATION COMMITTEE ON WOMEN TRAFFICKING, FINAL REPORT § B.1.2 (2005) (Isr.), available at [http://www.knesset.gov.il/committees/heb/docs/sachar\\_final\\_2005.htm](http://www.knesset.gov.il/committees/heb/docs/sachar_final_2005.htm), archived at <http://perma.cc/V5PF-5PEN>.

103. Israel ratified the Protocol on July 23, 2008. Palermo Protocol, *supra* note 6.

104. See *id.* art. 4 (“This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offenses established in accordance with article 5 of this Protocol, where those offenses are transnational in nature and involve an organized criminal group, as well as to the protection of survivors of such offenses.”); TVPA, *supra* note 7, 22 U.S.C. § 7101(a) (“The purposes of this chapter are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”).

105. Compare *id.* art. 3 with TVPA, *supra* note 7, 22 U.S.C. §§ 7102(9), 7102(10).

106. REPORT OF THE INTER-MINISTERIAL TEAM, *supra* note 100, at 4.

The team recommended establishing a special shelter to provide emotional, medical, and legal assistance for female survivors of sex trafficking.<sup>107</sup> The Israeli government adopted this recommendation shortly after the team released the report.<sup>108</sup>

One might expect that the reports from the Israeli Women's Network and Amnesty International, media coverage of the trading in women's bodies for prostitution, and certainly Israeli courts' decisions and the decision to sign the Palermo Protocol, would be credited for this change of heart and protective measures. However, the research findings clearly demonstrate that U.S. pressure, manifested by Israel's placement on the lowest tier in the first TIP Report published during the team's deliberation in July 2001, was the primary driving force that moved Israeli authorities from treating the foreign women working in the sex industry as unwanted criminal aliens to perceiving them as survivors deserving shelter.<sup>109</sup> Ada Pliel-Trossman, a member of the Inter-Ministerial Team on Behalf of the Labor and Welfare Ministry<sup>110</sup> who later supervised the shelters, reflected on the work of the team:

The issue of women being trafficked for prostitution came up, and swiftly captured the public's imagination, along with the U.S. Department of State initiative that marked and graded countries concerning this. And we were awarded the lowest grading. . . . And then the matter of the U.S. Report came up, which stated that if we were not upgraded by at least one tier there will be economic sanctions on Israel. This was taken quite seriously.<sup>111</sup>

Similarly, when we asked other interviewees what motivated Israel to assist trafficking survivors, there was a consensus among officials, professionals, and activists, who stated: “[T]he [change in] treatment of survivors of human trafficking started with American pressure that we do something

107. REPORT OF THE INTER-MINISTERIAL TEAM, *supra* note 100, at 25–28.

108. Establishment of a Shelter for the Survivors of Human Trafficking for the Purpose of Prostitution, Decision No. 2806 of the 29th Gov't (Dec. 1, 2002) (Isr.) [hereinafter Government Decision no. 2806], available at <http://tinyurl.com/ntoxpuj>, archived at <http://perma.cc/9XT3-D5NX>.

109. This is not to say that local NGOs, feminist politicians, judges, and journalists did not contribute to the discursive shift and protective measures related to trafficking survivors. See HACKER & COHEN, *supra* note 12, at 33–34, 41–43, 48–54. For a thesis emphasizing the influence of governance feminism, rather than U.S. pressure, on the Israeli response to human trafficking, see generally Hila Shamir, *Anti Trafficking in Israel: Nationalism, Borders, Markets*, in GOVERNANCE FEMINISM: AN INTRODUCTION (Janet Halley, Prabha Kotiswaran, Rachel Rebouche & Hila Shamir eds.) (forthcoming 2015).

110. This Ministry was later split into the Ministry of Industry, Commerce and Employment (now called the Ministry of Economy), and the Ministry of Social Affairs and Social Services. See Sara Zvovner & Amos Oltver, *Selected Data on the Ministry of Welfare for the Years 2002 and 2003* 1 (Knesset Research & Info. Ctr., 2004) (Isr.), available at <https://www.knesset.gov.il/mmm/data/pdf/m01121.pdf>, archived at <http://perma.cc/L7MV-GS6E>. As will be detailed in Part II(C), the latter is now responsible for the shelters for survivors of human trafficking.

111. Interview by Orna Cohen with Ada Pliel-Trossman, Member of the Inter-Ministerial Team on behalf of the Labor and Welfare Ministry, in Tel Aviv, Isr. (Dec. 20, 2010).

about it”;<sup>112</sup> “it started with the Americans, the Americans pressured us into establishing the shelter”;<sup>113</sup> and there was “enormous pressure by the U.S. government. We were told that the Americans are threatening to reduce the foreign aid and that a shelter must be opened.”<sup>114</sup> Hanny Ben Israel, a lawyer from one of the leading NGOs campaigning for the rights of migrant workers, even argued that “it started with the Americans. Only with the Americans. There was no internal motivation to assist immigrants in cases of severe exploitation.”<sup>115</sup>

Interestingly, some of the interviewees making these and similar comments did not want to be mentioned by name in connection with this point, as though the Israeli fear of U.S. sanctions and the impact of the TIP Report on Israeli human trafficking policy is a secret or an embarrassment. This was the case even though scholars reported that Israeli anti-trafficking actions were first and foremost motivated by the fear of U.S. sanctions under the TVPA long before the interviews with these informants took place.<sup>116</sup> Moreover, in the Inter-Ministerial Team Report itself, the team takes pride in the fact that the cooperation it initiated among different state organs led to the information flow and new initiatives that resulted in the U.S. State Department upgrading Israel from Tier 3 to Tier 2 in 2002, five months before the team submitted its own report.<sup>117</sup> Hence, some of the interviewees’ embarrassment in relation to U.S. pressure is consistent with Gad’s conclusion, informed by the 2002 Knesset discussions, that Israel’s elected representatives wished to portray the “conceptual revolution” in relation to the survivors of sex trafficking as an independent Israeli development and as proof of its humanistic character, rather than the outcome of international pressure.<sup>118</sup> Moreover, the interviewees’ embarrassment in admitting the impact of U.S. pressure corresponds with Efrat’s conclusion that the Israeli authorities’ response to the TIP Report was motivated first and foremost by “reputational coercion”—that is, by fear of “the tarnishing of Israel’s image as an enlightened, democratic, and law-abiding country that respects human rights,” rather than by the fear of economic sanc-

112. The interviewee asked to remain anonymous on this point.

113. Interview with Michal Yosef, Head of the Border Control and Crossings Unit, The Population & Migration Authority, in Jerusalem, Isr. (Jan. 5, 2011).

114. The interviewee asked to remain anonymous on this point.

115. Interview with Orna Cohen with Hanny Ben Israel, Legal Advisor, Worker’s Hotline, in Tel Aviv, Isr. (Nov. 25, 2010).

116. See Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335, 362–64 (2006); Leevan, *supra* note 28, at 787–88; Limor Gad, *From “Importing Prostitute” to “Women Trafficking”: Global Discourse Patterns in the Struggle against Women Trafficking in Israel 53* (2000) (unpublished M.A. Thesis, Hebrew Univ., Isr.).

117. 2002 TIP REPORT, *supra* note 81, at 12; REPORT OF THE INTER-MINISTERIAL TEAM, *supra* note 100, at 5–6.

118. Gad, *supra* note 116 at 32–33.

tions.<sup>119</sup> According to Gallagher and Chuang, Israel is not alone in this fear, as “governments worldwide appear to be very concerned over how well they rank according to US standards and about the reputational impact of their respective rankings.”<sup>120</sup>

U.S. involvement in the establishment of the shelter for trafficked women was not only through the “stick” of the TIP Reports, but also through a “carrot” of financial aid. Member of Knesset Zehava Galon recalled in her interview that in her fight to establish the shelter, she “pressed the Americans” to become more involved.<sup>121</sup> Indeed, although the government agreed to establish the shelter, “nothing happened until the Americans’ assistance, until the Americans gave \$200,000.”<sup>122</sup> Rachel Gershoni, the National Anti-Trafficking Coordinator on Behalf of the Ministry of Justice during the relevant period, also recalled that it was this sum given by the U.S. government that helped turn the Israeli governmental decision to establish the shelter in 2002 into a reality two years later, when the *Ma’agan* (Harbor) shelter for trafficked women opened.<sup>123</sup>

In the case of *Atlas*, the shelter for male survivors of human trafficking, the data once again reflected the strong impact of U.S. pressure on the Israeli authorities’ attention to survivors of human trafficking. As mentioned above, in June 2006, the United States placed Israel on the “Watch List” and cautioned Israel against falling back to Tier 3 as a result of its alleged failure to address the trafficking of foreign migrant workers.<sup>124</sup> Since the 1990s, Israel has been a destination country for hundreds of thousands of labor migrants,<sup>125</sup> some exposed to severe exploitation at the

119. Efrat, *supra* note 3, at 205; see also Assaf Likhovski, *Argonauts of the Eastern Mediterranean: Legal Transplants and Signaling*, 10 THEORETICAL INQUIRIES IN L. 619, 621, 650–51 (2009) (arguing that legal transplantation brings prestige and is a way to signal enlightenment).

120. Gallagher & Chuang, *supra* note 8, at 340–41.

121. Interview with Zehava Galon, *supra* note 97.

122. See *id.* Knesset Member Galon also recalled her “use of the Americans” to embarrass the Israeli government and to make it take the American sanctions threat seriously. She did so by inviting U.S. officials to discussions at the Knesset Investigation Committee on Women Trafficking. She especially recalled the media attention that the U.S. Ambassador to Israel’s visit to the committee received. *Id.* Rachel Gershoni also mentioned the significance of the U.S. \$200,000. Interview with Rachel Gershoni, Nat’l Anti-Trafficking Coordinator, Ministry of Just., in Jerusalem, Isr. (Nov. 30, 2010).

123. Interview with Rachel Gershoni, *supra* note 122.

124. 2006 TIP REPORT, *supra* note 81.

125. The increase in the number of migrant workers in the 1990s was the outcome of the Israeli government’s plan to replace Palestinian laborers in construction and agriculture with labor migrants, following the Palestinian uprising in 1987, known as the First Intifada. See Assaf Shapira, *Labor Migrants in Israel*, 67 KNESSET, available at <http://tinyurl.com/agcg38z>, archived at <http://perma.cc/4DKZ-LYKM>. In 2008, it was estimated that 115,000 documented and 107,000 undocumented migrant workers lived in Israel. See Gilad Natan, *Labor Migrants and Survivors of Human Trafficking: Governmental Policy and the Activities of the Immigration Authority* (Knesset Research & Info. Ctr., 2009) (Isr.), available at <http://www.knesset.gov.il/mmm/data/pdf/m02294.pdf>, archived at <http://perma.cc/D25G-384T>. This is about ten percent of the Israeli labor force. See Central Bureau of Statistics, *Labour Force Surveys*, in STATISTICAL ABSTRACT OF ISRAEL 2013 (2013), available at [http://www.cbs.gov.il/reader/shnaton/templ\\_shnaton.html?num\\_tab=st12\\_01x&CYear=2013](http://www.cbs.gov.il/reader/shnaton/templ_shnaton.html?num_tab=st12_01x&CYear=2013), archived at <http://perma.cc/4UJD-CHU4>.

hands of their employers.<sup>126</sup> However, Israel only began to substantially address this problem after the 2006 TIP Report.

Four months after the report, in September 2006, the Knesset enacted the Prevention of Human Trafficking Law,<sup>127</sup> thereby establishing trafficking of humans, detention in conditions of slavery, and forced labor as criminal offenses, with penalties ranging from seven to twenty years' imprisonment.<sup>128</sup> The law also encouraged the award of compensation for survivors as part of criminal proceedings against the trafficker,<sup>129</sup> and established a fund to deposit proceeds from property confiscated from traffickers. These funds were then to be distributed to survivors who cannot execute a compensation decision received against their trafficker.<sup>130</sup> The law further established that the state would provide survivors of trafficking and slavery with free legal aid.<sup>131</sup> Moreover, in February 2007, the Israeli government agreed to adopt the National Plans to Combat Human Trafficking prepared by a special committee of the General Managers of the relevant Ministries, which included a recommendation to establish a rehabilitation shelter for

126. Unlike in the case of survivors of sex-related trafficking—who are perceived as such by the mere fact that they are non-Israeli sex workers—categorizing a non-sex-related labor migrant as a survivor of trafficking, slavery, or forced labor, is a complex, evidence-based process, handled primarily by the police. Hence, unlike the estimates concerning the number of women who were trafficked to Israel, there are no reliable estimates of the number of labor migrants who have been abused by their Israeli employers, as many might not approach the police or become known as survivors to the authorities. Whether the abuse of some migrant workers that *do* complain (or are detected by the authorities) amounts to human trafficking and slavery is a point of contention between the Israeli authorities and NGOs. See HACKER & COHEN, *supra* note 12, at 64–66; Letter from Hanny Ben Israel, Legal Advisor, Workers' Hotline, to Rachel Gershoni, Nat'l Anti-Trafficking Coordinator, Ministry of Just. (Jan. 17, 2010) (on file with author).

127. Prohibition of Trafficking in Persons (Legislative Amendments) Law, 5767-2006, SH No. 2067 p. 2 (Isr.), translation available at <http://www.hsph.harvard.edu/population/trafficking/israel.traf.06.pdf>, archived at <http://perma.cc/WQ3H-YN7G> [hereinafter Prohibition of Trafficking in Persons Law]; see also MINISTRY OF JUSTICE, STATE OF ISRAEL, TRAFFICKING IN PERSONS IN ISRAEL 2 (April 2011), available at [http://www.ungift.org/doc/knowledgehub/resource-centre/Governments/Israel\\_Ministry\\_of\\_Justice\\_TIP.pdf](http://www.ungift.org/doc/knowledgehub/resource-centre/Governments/Israel_Ministry_of_Justice_TIP.pdf), archived at <http://perma.cc/X4P4-J92W>.

128. Prohibition of Trafficking in Persons Law, *supra* note 127, art. 1(7)–(9) (adding articles 374(a) and 375(a) and replacing article 376). The inclusion of forced labor and slavery in the anti-trafficking law correlates with what Janie Chuang calls the “exploitation creep,” led by the U.S., which collapses trafficking with these two other phenomena. See Chuang, *supra* note 1.

129. Prohibition of Trafficking in Persons Law, *supra* note 127, art. 1(12) (adding article 377(c)).

130. *Id.* art. 1(12) (adding articles 377D and 377E). The ways the funds would be distributed should have been decided by a special committee. See Penal Regulations, Management of the Designated Fund for Care of Confiscated Property and Fines Imposed in Files of Human Trafficking and Slavery Conditions, 2009, KT 558, available at <http://www.moital.gov.il/NR/exeres/8F810C35-A4D0-4057-A2E5-996A184361EA.htm>, archived at <http://perma.cc/W4CC-HCSZ>. However, this fund has experienced difficulties in operation because too little money was confiscated to allow for its distribution. See DEP'T OF JUSTICE, FORFEITURE FUND DESIGNATED FOR FORFEITED PROPERTY AND FINES IN CASES OF HUMAN TRAFFICKING AND ENSLAVEMENT (Isr.), available at <http://index.justice.gov.il/Units/Trafficking/ForfeitureFund/Pages/ForfeitureFund.aspx>, archived at <http://perma.cc/696R-8FDV>.

131. Prohibition of Trafficking in Persons Law, *supra* note 127, arts. 3–4.

survivors of slavery, trafficking for slavery, and trafficking for forced labor.<sup>132</sup>

The United States acknowledged these substantial efforts in the 2007 TIP Report, which left Israel in Tier 2 but removed it from the Watch List.<sup>133</sup> Still, Israel was rebuked for not providing “forced labor survivors with adequate protection services, such as shelter.”<sup>134</sup> It took an additional two years to open the shelter for survivors of slavery, trafficking for slavery, and forced labor.<sup>135</sup> As in the case of *Ma’agan*, the interviewees stated that they doubted it would have been established without ongoing U.S. pressure. For example, Ada Pliel-Trossman recalls:

The American reports [stated]: You are taking very good care of women who were hurt by sex trafficking, you have done well, but what about slavery? So we scored less points because of the slavery. So we had another brainstorming session, and we concluded: if there are also women in slavery, and if the issue of sex trafficking lessens, then we will have one shelter for women that will cater to both kinds [of exploitation], and one shelter for men.<sup>136</sup>

Two activists voiced criticism of the negative outcomes of the U.S. pressure. Nomi Levenkron, a leading anti-trafficking activist lawyer, argued that U.S. pressure has harmed women in prostitution, both non-Israelis and Israelis, since it leads to humiliating police raids.<sup>137</sup> Furthermore, Hanny Ben Israel, a lawyer from the Worker’s Hotline, claimed that the Bush Administration focused mainly on controlling populations that were crossing borders, thereby emphasizing the need for a response to more extreme cases

132. National Plans to Combat Human Trafficking, Gov’t Decision No. 2670 (Feb. 2, 2007) (Isr.) [hereinafter Government Decision no. 2670], available at <http://tinyurl.com/obtyrvv>, archived at <http://perma.cc/7S7N-HQCP>.

133. 2007 TIP REPORT, *supra* note 81, at 121 (noting that “the government passed crucial amendments to its anti-trafficking law that comprehensively prohibit all forms of trafficking in persons, including involuntary servitude and slavery. In addition, the government extended legal assistance to survivors of trafficking for involuntary servitude, and passed a national action plan to combat trafficking for forced labor.”).

134. *Id.*

135. RINAT DAVIDOVICH, A WORKER NEEDED: ACTIVITIES REPORT ON THE SERVICES FOR VICTIMS OF HUMAN TRAFFICKING 8, 13 (2009) (Isr.), available at <http://atlas-shelter.org.il/AllSites/857/Assets/darush%20oved%202009.pdf>, archived at <http://perma.cc/J2RF-TKT8>.

136. Interview by Orna Cohen with Ada Pliel-Trossman, *supra* note 111.

137. Interview by Orna Cohen and the author with Nomi Levenkron, former Legal Advisor at the Hotline for Migrant Workers, in Tel Aviv, Isr. (Dec. 22, 2010); see also Nomi Levenkron, *What a Law Student Has to do in a Brotbel? Reflections on Legal Clinics, Policemen, and Women who Work in Prostitution*, 17 HAMISHPAT 161 (2013) (Isr.). Likewise, Shamir argues that the anti-sex-trafficking campaign related to non-Israeli women had mixed effects on local prostitution. On the one hand, it raised general concern over sex workers’ abuse, which led to state-funded programs for Israeli women who wish to exit prostitution. On the other hand, it led to increased police harassment of Israeli prostitutes. See Shamir, *supra* note 109. Other possible effects of the TVPA pressure on internal prostitution in Israel, such as a potential increase in magnitude due to “supply shortage” of non-Israeli prostitutes, or higher payment for sex services induced by the same reason, are yet to be studied.

of trafficking.<sup>138</sup> This may have indirectly encouraged Israel to abandon and deport many survivors of the not-so-severe manifestations of labor migration abuse that are caused, among other factors, by the state itself. Two officials voiced another kind of concern, regarding a too harsh judgment of Israel. One of them—who asked to remain anonymous on this point—criticized the 2010 TIP Report for failing to recognize Israel’s success in stopping international sex trafficking and the free legal aid it provides to survivors. This interviewee—as well as Superintendent Raanan Caspi,<sup>139</sup> who was responsible for the field of human trafficking in Israel on behalf of the Police National Investigations Office between 2002 and 2010—suggested that the TIP Reports judge Israel more harshly when compared to other countries. This anonymous interviewee went on to explain that if the Israeli authorities perceived the Reports as unreliable, they would be less motivated to comply with U.S. standards.<sup>140</sup> Despite these concerns, both individuals did not question the basic legitimacy of U.S. interference in Israel’s internal affairs; like the other interviewees, who voiced no criticism over the U.S. incentive pressuring regime, they accepted the rules of this transnational political framework as a given.<sup>141</sup>

Thus, thanks to U.S. pressure, since 2009 Israel has operated two shelters for survivors of human trafficking and slavery, one for women and one for men.<sup>142</sup> The shelters are designated for non-Israelis, who can be admitted if

138. Interview with Hanny Ben Israel, *supra* note 115. This claim echoes the argument made by several scholars that singling out human trafficking and ignoring the fact that it represents the extreme end of a spectrum of labor-, gender-, and immigration-related exploitations, to which nation states contribute by their labor and immigration laws, results in assistance to the very few and the forsaking of the many to discrimination, exploitation, and oppression. See, e.g., Catherine Dauvergne, *Globalization Fragmentation: New Pressures on Women Caught in the Immigration Law-Citizenship Law Dichotomy*, in *MIGRATION AND MOBILITIES: CITIZENSHIP, BORDERS, AND GENDER* 333, 342–44 (Seyla Benhabib & Judith Resnik eds., 2009); Shamir, *supra* note 1, at 102–04.

139. Interview with Raanan Caspi, *supra* note 84 (noting that Israel is judged by higher standards compared to its neighbors such as Egypt, Syria, and Jordan).

140. The interviewee asked to remain anonymous on this point.

141. Following the completion of our fieldwork, we heard in informal conversations with activists the argument that Israel’s upgrading to the upper tier in 2012 was not solely because of its anti-trafficking efforts, but rather a consequence of the U.S. political decision to upgrade Egypt and its political inability to leave Israel below Egypt. We have no information to validate or refute this claim, but it is an indication that some Israeli activists share the claim found in the literature on the politicization of the TIP Reports, see *supra* note 43 and accompanying text, and perceive both Israel and Egypt’s placement in the upper tier as inappropriate. See also Interview with Caspi, *infra* note 139.

142. The 2007 governmental decision to establish a shelter for survivors of slavery and trafficking for slavery and forced labor also included the decision to open three apartments in different parts of Israel. Five or six people capable of working could live in each apartment for up to thirty days while an alternative employer was located. See HACKER & COHEN, *supra* note 12, at 36–37. However, the apartments were closed after they remained empty for approximately one year. *Id.* at 37. After the end of the research period, three apartments were reopened as part of the services provided for trafficking survivors. *Id.* at 37 n. 78. “As distinct from the target population noted in the 2007 government decision, the apartments are now intended for eighteen women who have spent a considerable period of time in the *Ma’agan* Shelter and are ready to lead independent lives.” *Id.* Moreover, as will be detailed in Part III, in mid-2013 a third shelter was established for eighteen female survivors of human trafficking. See E-mail from Meirav Shmueli, Nat’l Anti-Trafficking Coordinator, Ministry of Justice, to author (Jan. 19, 2014, 13:08 IST) (on file with author).

the police decide there is preliminary evidence that they were trafficked.<sup>143</sup> If the survivor participates in legal proceedings against the alleged trafficker, she or he can stay at the shelter for as long as the investigation and trial are ongoing. If she or he does not participate, a one-year rehabilitation permit will be issued.<sup>144</sup> Survivors of trafficking can receive a rehabilitation visa if they do not enter a shelter, but it is much more difficult because the applicant must demonstrate rehabilitation plans that a therapeutic professional supports.<sup>145</sup> Moreover, a rehabilitation visa alone will not provide the health and social services available at the shelters.<sup>146</sup> Hence, the shelters, rather than integration within the community, are the principal rehabilitation route open for survivors of trafficking in Israel.

From interviews with women and men who stayed in the shelters, my colleague Orna Cohen and I learned that the shelters provide a comprehensive basket of services, including housing, adequate food, generous medical care, and free legal aid across a wide range of issues relating to the residents' presence in Israel.<sup>147</sup> From interviews with the shelters' staff, we learned about their intensive efforts to secure the necessary work permits for the residents, to locate decent places of employment, and to accompany the residents as they settle into new positions within the labor market.<sup>148</sup> Finally, the women's shelter—but not the men's—provides residents with therapeutic assistance.<sup>149</sup>

A review of the TIP Reports and the academic literature concerning rehabilitation services for survivors of human trafficking around the globe reveals that U.S. pressure on Israel yielded a unique, and relatively gener-

143. Government Decision no. 2806, *supra* note 108, art. 1; Government Decision no. 2670, *supra* note 132, art. 3(c). Though the governmental decisions relate to all survivors of trafficking, slavery, and forced labor regardless of nationality, the ongoing assumption of the authorities is that there is no local phenomenon of trafficking in Israel. See *supra* note 81. Indeed, during the research period, only one Israeli national was staying at the shelters; however, she was only there because she had been moved from a battered women's shelter to avoid being recognized. See Interview with Rinat Davidovich, Manager of the Shelters, at *Ma'agan* Shelter, Isr. (October 24, 2010); Informal interviews with anonymous shelter staff, *Ma'agan* Shelter, Isr. (2010–2011).

144. Ministry of the Interior, Procedure for Processing Victims of Trafficking in Women Who Wish to Testify, Population Administration Procedure No. 6.3.0006 (Aug. 1, 2005) (Isr.), available at <http://www.piba.gov.il/Regulations/163.pdf>, archived at <http://perma.cc/UFZ9-U6HX>; Ministry of the Interior, Procedure for Granting Status to Victims of Trafficking in Women on Humanitarian Grounds, Population Administration Procedure No. 6.3.0007 (June 1, 2006) (Isr.), available at <http://www.piba.gov.il/Regulations/164.pdf>, archived at <http://perma.cc/Q6K4-WGUG>; Ministry of the Interior, Procedure for Granting Status for Victims of Slavery and Trafficking for Slavery and Forced Labor, Population Administration Procedure No. 6.3.0008 (June 6, 2010) (Isr.), available at <http://www.piba.gov.il/Regulations/165.pdf>, archived at <http://perma.cc/C5Z5-MW26>.

145. Procedure No. 6.3.0007, *supra* note 144, art. B.3.4; Procedure No. 6.3.0008, *supra* note 144, art. B.3.2(3).

146. See Government Decision no. 2806, *supra* note 108.

147. HACKER & COHEN, *supra* note 12, ch. 4.

148. *Id.* § 5.2.3.

149. *Id.* at 121. For a detailed description of all these services and a critique of their unjustified gendered dimensions, see Daphna Hacker, Yaara Levine-Fraiman & Idan Halili, *Ungendering and Regendering Shelters for Survivors of Human Trafficking*, 3(1) SOC. INCLUSION 35 (2015).

ous, response. In Israel the shelters are distinctively designated for survivors of human trafficking and totally funded and supervised by the state, whereas in most other countries there are no special shelters for survivors of human trafficking, or only shelters for survivors of sex trafficking, and the existing shelters are not necessarily supervised or funded by the state.<sup>150</sup> Moreover, unlike some other countries, Israel does not predicate eligibility for admission to the shelters—or residence for up to a year—upon cooperation with the authorities and testimony against traffickers, and allows the residents freedom of movement with only limited restrictions.<sup>151</sup>

Indeed, Rinat Davidovich—who managed the two Israeli shelters on behalf of an NGO that the state appointed for this task from when they opened until the end of 2010—takes pride in the shelters and argues that the Israeli experience can be inspirational to other countries, including the United States:

First of all, I look at the success in the sense that the state of Israel has all these services on offer. I can tell you, as someone who traveled to many conferences around the world, that people [in other countries] have much to learn from us. And you know, I have arrived at conferences expecting to learn, but found myself teaching. Even in the United States where the TIP Reports are produced, I was at a “Combat Trafficking” workshop in 2006, organized by the U.S. State Department,<sup>152</sup> which brings people from all over the world, about 30 representatives, and teaches them about human trafficking and the American experience. In many locations in the United States, they put female survivors of trafficking in shelters for battered women. Just amazing, no specific and tailored treatment.<sup>153</sup> And you know, I remember re-

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150. See HACKER & COHEN, *supra* note 12, §§ 2, 10.1 (reviewing assistance services to trafficking survivors in other countries); SEGRAVE, MILIVOJEVIC & PICKERING, *supra* note 1, at 95–121. See generally RUTH ROSENBERG, BEST PRACTICES FOR PROGRAMMING TO PROTECT AND ASSIST SURVIVORS OF TRAFFICKING IN EUROPE AND EURASIA, U.S. AGENCY FOR INT’L DEV. (2008), available at <http://www.nexusinstitute.net/publications/pdfs/Prevention.pdf>, archived at <http://perma.cc/E4AB-6PQ2>. For an analysis of programs for trafficking survivors in the United States, see Rachel Shigekane, *Rehabilitation and Community Integration of Trafficking Survivors in the United States*, 29 HUM. RTS. Q. 112 (2007).

151. Both shelters have a night curfew and the women’s shelter also monitors unemployed residents’ exit from the shelter during the day. See MA’AGAN SHELTER, MA’AGAN PROCEDURES 10–11 (on file with author); ATLAS SHELTER, ATLAS PROCEDURES 10 (on file with author); MA’AGAN SHELTER, MA’AGAN RESIDENCE AGREEMENT 1–2 (on file with author).

152. Part of the “carrot” side of the incentive regime the United States used included invitations for Israeli officials and activists to anti-trafficking training programs. Another interviewee, Nomi Levenkron, also reported participating in such a program. See Interview by Orna Cohen and the author with Nomi Levenkron, *supra* note 137.

153. Not all U.S. states have designated shelters for survivors of human trafficking; furthermore, not all those that do fund them from public resources, nor do they have shelters for both sex- and labor-related trafficking, and for women, men, and children. See CTR. FOR WOMEN POL’Y STUD., REPORT CARD ON STATE ACTION TO COMBAT INTERNATIONAL TRAFFICKING (2007), available at [www.centerforwomenpolicy.org/documents/ReportCardonStateActiontoCombatInternationalTrafficking.pdf](http://www.centerforwomenpolicy.org/documents/ReportCardonStateActiontoCombatInternationalTrafficking.pdf), archived at <http://perma.cc/9WE9-EL56>. For a discussion of the use of domestic violence shelters for trafficking

turning from there astonished! In 2006 we had only existed for two years. So I think that this is a great achievement by the State of Israel, with the comprehensive treatment of survivors, because all the authorities are recruited to assist. Medical, legal, and social aspects [are] now also [received] by survivors of slavery.<sup>154</sup>

According to the Risse and Sikkink's five stages model presented in Part I, Israel moved from the first stage of ignoring the phenomenon of trafficking during the 1990s while global and local NGOs began to monitor it; to the third stage of cosmetic changes, when it established a Knesset committee and amended the Penal Code in 2000; to the fourth stage, when it experienced a discursive transformation wherein authorities shifted from perceiving trafficked persons as criminals to be deported to perceiving them as survivors deserving protection; and, finally, to the last stage of behavioral change in the form of establishing shelters. Moreover, it is clear that what moved Israel from commitment to compliance, that is, to actual protective deeds, was U.S. pressure. Indeed, it may be argued that at least when it comes to Israel, U.S. pressure is—to use Gramsci's term<sup>155</sup>—a hegemonic force; the country did not even experience the second stage of Risse and Sikkink's model, never denying the legitimacy of attempts to interfere in its internal affairs. The local players within the Israeli field relevant to the protection of survivors of human trafficking did not substantially challenge the transnational rules of the game that the United States set. Hence, the data support Efrat's findings regarding the U.S. influence on Israel's anti-trafficking efforts,<sup>156</sup> as well as his general theory that emphasizes the sig-

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survivors as well as one trafficking-specific organization in the United States, see Shigekane, *supra* note 150, at 126–32. The Coalition to Abolish Slavery and Trafficking (“CAST”) opened the first shelter in the United States intended for trafficking survivors in 2004 in Los Angeles. This shelter offers housing, clothing, food, information, legal advice, psychotherapy, health services, vocational training, and other services. See *Serving the Survivors*, COALITION TO ABOLISH SLAVERY & TRAFFICKING, <http://www.castla.org/client-services-program>, archived at <http://perma.cc/WPG7-Z6U3>; Shigekane, *supra* note 150, at 130–32. Polaris, an NGO working for survivors of human trafficking, recently conducted a survey on the availability of sheltered beds for survivors of human trafficking offered by NGOs, concluding that all over the United States, there are 527 beds designated exclusively to survivors of human trafficking and an additional 1,115 beds in shelters that serve survivors of human trafficking together with other populations. See POLARIS PROJECT, SHELTER BEDS FOR HUMAN TRAFFICKING SURVIVORS IN THE UNITED STATES (2012), <https://na4.salesforce.com/sfc/p/300000006E4S9liF7eeqnlT97HRFH4FvCSI5v4>, archived at <https://perma.cc/6BX4-A6TE>.

154. Interview with Rinat Davidovich, *supra* note 143.

155. According to Gramsci, hegemony is not just the manifestation of power, but includes an ideology that convinces the oppressed to accept the situation as a given and even as serving their interests. See Robert W. Cox, *Gramsci, Hegemony, and International Relations: An Essay in Method*, in GRAMSCI, HISTORICAL MATERIALISM, AND INTERNATIONAL RELATIONS 60–62 (Stephen Gill ed., 1993). Although the United States is mentioned as a hegemonic power in the global anti-trafficking sphere in relation to other countries, see Chuang, *supra* note 1, the Israeli case study demonstrates the unique hegemonic situation described by Gramsci because of the extent of Israel's compliance with U.S. norms regarding trafficking, see *infra* Parts II(B) and II(C).

156. EFRAT, *supra* note 3.

nificance of global power relations and the impact of superpowers, such as the United States, on transnational and national regulations.

Nevertheless, as discussed above, Efrat does not neglect the preferences of the pressured country. Indeed, as will be detailed in the following sections, U.S. pressure by no means eases Israel's anxiety over preserving its borders from non-Jewish immigration. While this anxiety is at the heart of Israel's mission to preserve itself as the land of the Jewish people,<sup>157</sup> it is but one example of the overall "borders anxiety" experienced by other countries of immigration destination.<sup>158</sup> Since the survivors of trafficking in Israel are non-Israeli, non-Jewish "foreigners," their protection and rehabilitation might undermine the Israeli policy of setting clear borders between the Jewish-Israeli collective and those who do not belong to it. Thus, the challenge for Israel lies in satisfying U.S. demands for the protection of survivors of human trafficking and achieving compliance with its standards,

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157. Israel was established in 1948, after the United Nations recognized the Jewish people's right to a nation state in Palestine. See G.A. Res. 181 (II), U.N. G.A.O.R., 2d Sess., Supp. No. 11, U.N. Doc. A/RES/181 (Vol. I) (Nov. 29, 1947). In its declaration of independence, Israel defines itself as a Jewish and democratic state. See Declaration of Independence, 5 Iyar, 5708, May 14, 1947, translated in *Declaration of Establishment of the State of Israel*, ISRAEL MINISTRY OF FOREIGN AFFAIRS, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx>, archived at <http://perma.cc/NN5D-VSB3>. It also later defined itself as such in its Basic Laws. See, e.g., Basic Law: Human Dignity and Liberty, 5752-1992, SH No. 1391 (Isr.), available at [https://www.knesset.gov.il/laws/special/eng/basic3\\_eng.htm](https://www.knesset.gov.il/laws/special/eng/basic3_eng.htm), archived at <https://perma.cc/C6TN-Q7YL>. As a Jewish state, any perceived threat to the Jewish majority, including that of non-Jewish immigration, is conceptualized as a security and existential threat to the state's Jewishness, manifested in its immigration policy (one that grants automatic citizenship to Jews and makes it extremely hard for non-Jews to immigrate), its treatment of its Arab minority (who are discriminated against and enjoy very few group rights), and its ongoing control of the Palestinians in the West Bank and the Gaza Strip, all of which have prompted heated debate. On one side are those who argue that Israel's ethnic preference is still manifested within a democratic framework. See, e.g., Ruth Gavison, *Jewish and Democratic? A Rejoinder to the "Ethnic Democracy" Debate*, 4 ISR. STUD. 44 (1999); Sammy Smooha, *The Model of Ethnic Democracy: Israel as a Jewish and Democratic State*, 8 NATIONS & NATIONALISM 475 (2002). On the other side are those who argue that Israel is an ethnocracy rather than a democracy. See, e.g., Yoav Peled, *Citizenship Betrayed: Israel's Emerging Immigration and Citizenship Regime*, 8 THEORETICAL INQUIRIES IN L. 603 (2007); Oren Yiftachel, "Ethnocracy" and Its Discontents: Minorities, Protests and the Israeli Polity, 26 CRITICAL INQUIRY 725 (2000). For a discussion of this debate, see Yoav Peled & Doron Navot, *Ethnic Democracy Revisited: On the State of Democracy in the Jewish State*, 20 ISR. STUD. F. 3 (2005).

158. Notwithstanding Israel's uncommon upfront acknowledgment of its discriminatory ethnic policy, the growing anxieties of receiving countries all over the globe regarding the economic, cultural, and ethnic implications of immigration indicates that Israel is not alone in its border anxiety and fear of the "other." On the U.S. anxiety, see Linda K. Kerber, *The Stateless as the Citizen's Other: A View from the United States*, in *MIGRATION AND MOBILITIES: CITIZENSHIP, BORDERS, AND GENDER*, *supra* note 138, at 76. Indeed, liberal and democratic countries such as Italy and Australia are willing to harm basic human rights of immigrants in the name of their right to secure their borders from illegal aliens. See, e.g., Philip Willan, *Italian Navy 'Let Immigrants Drown'*, THE GUARDIAN, (Mar. 9, 2002), available at <http://www.theguardian.com/world/2002/mar/09/philipwillan>, archived at <http://perma.cc/8FTQ-QH66> (model for Italy); *Italy Immigration Law Prompts Lampedusa Rescue Row*, EURO NEWS (Oct. 5, 2013), available at <http://www.euronews.com/2013/10/05/italy-immigration-law-prompts-lampedusa-rescue-row/>, archived at <http://perma.cc/SYM2-MFLD> (model for Italy); *Australia Blocks Second Immigrant Ship*, GLOBAL TAMIL NEWS (Dec. 4, 2011), available at <http://www.globaltamilnews.net/GTMNEditorial/tabid/71/articleType/ArticleView/articleId/71025/language/en-US/Australia-blocks-second-immigrant-ship.aspx>, archived at <http://perma.cc/4TW3-K96N> (model for Australia).

whilst at the same time maintaining an exclusionary ethnic immigration policy. Based on the findings, I argue that the Israeli government does so through four compliance strategies: “over,” “split,” “hybrid,” and “isolating” compliance. These strategies bring back to the forefront Cardenas’s warning, mentioned in Part I, not to forsake too quickly the power of the national sovereign and its significance within the global humanitarian normmaking endeavor.

### B. “Over” Compliance

As stated in Part I, the TVPA relates only to “severe forms” of trafficking, which must include three components: (1) particular action, which comprises recruitment, harboring, transportation, provision, or obtaining of a person; (2) certain means, which comprises force, fraud, or coercion; and (3) certain ends, which comprises commercial sex acts, labor, or services.<sup>159</sup> In this section, I will argue that Israel “over complies” with the TVPA due to pressure from the United States to protect survivors of human trafficking. By “over compliance” I mean granting shelter to women and men whom Israel could have argued are not survivors of trafficking according to the U.S. minimum standards.

As the TIP Reports’ rhetoric illustrates, establishing the shelters is not enough to satisfy the U.S. pressure to perform protection compliance; the state must demonstrate that the shelters are occupied. The TIP Reports not only detail how many beds there are in each shelter, but also how many women, men, and children stay at them during the reported year.<sup>160</sup> It is evident from the reports that the United States would likely interpret the empty beds as a failure on the part of Israel in identifying and assisting survivors. However, another possible interpretation for empty beds could be that there is no longer severe human trafficking in Israel, at least as defined by the TVPA. Indeed, I will argue that Israel could have insisted that it has no eligible survivors for sheltering under the minimum U.S. standards, but instead has chosen to practice “over compliance.”

The residents in the shelters fall into three distinct groups: First, the most veteran residents in the shelters during the research period were women who came to Israel from the former USSR and who worked as prostitutes.<sup>161</sup> The Israeli formulation of survivors of trafficking departs from the TVPA’s explicit standard. The TVPA mentions “force,” “fraud,” “coercion,” or minority status as necessary components of severe sex trafficking. However, the study reveals that the Israeli authorities formulated an under-

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159. See *supra* note 15.

160. See generally TIP REPORTS 2001–2014, *supra* note 81.

161. In 2010, nine of the thirteen survivors of sex trafficking residing at *Ma’agan* were staying at the shelter for more than a year. See VIKI GOLTSMAN, BLACK SCREEN: SUMMARY OF ACTIVITIES OF THE SHELTERING SERVICES FOR SURVIVORS OF TRAFFICKING (2010) (Isr.), at 13, available at [http://atlas-shelter.org.il/AllSites/857/Assets/masah\\_shahor\\_2010.pdf](http://atlas-shelter.org.il/AllSites/857/Assets/masah_shahor_2010.pdf), archived at <http://perma.cc/9Z5M-64R7>.

standing that every woman from the former USSR who is unlawfully present in Israel, and who is found in a brothel or a “discreet apartment,” was almost certainly trafficked for prostitution and is entitled to enter the shelter and stay in it.<sup>162</sup> Hence, the Israeli policy entrenched an expansive interpretation of trafficking. Under this definition, any woman that knowingly came to Israel for the purpose of prostitution is also a trafficking survivor eligible for accommodation and care in a shelter, regardless of the circumstances in which she arrived in Israel.

Moreover, because Israel has managed to almost totally eliminate sex trafficking from abroad,<sup>163</sup> all the women in this group residing at the shelter at the time of the research came to Israel before 2008, and arrived at the shelter after living in Israel for several years without being trafficked.<sup>164</sup> Arguably, the time that elapsed since the incidence of trafficking is proof that these women are not currently victims and are already rehabilitated. Indeed, the Ministry of Interior raised this exact claim in its attempt to block rehabilitation visas for a few of the women who arrived at the shelter.<sup>165</sup> However, the Ministry’s policy changed in 2006, and the current policy is that a woman is entitled to enter the shelter even if several years have elapsed since the trafficking. The passage of time in itself is not proof that she does not need rehabilitation services.<sup>166</sup>

An example demonstrating the meaning of this expansive definition is the case of Sonia,<sup>167</sup> who arrived in Israel in 1995 from Ukraine, at the age of fifteen. She told the staff at the shelter that prostitution traffickers tricked her into believing that she was coming to Israel to work as an *au pair*. She escaped from the traffickers and worked undocumented for five years, cleaning and caring for elderly people, until the Migration Police caught and deported her. After her deportation, she contacted an Israeli man who agreed to forge documents that allowed her to reenter Israel, in

162. Interview with Raanan Caspi, *supra* note 84; Interview with Zehava Galon, *supra* note 97; Interview with Michal Yosef, *supra* note 113. This presumption was due, among other factors, to the position of the court, which stated that consent to prostitution does not negate the possibility of trafficking for prostitution. See CA 1609/03 Borisov v. State of Israel, 58(1) PD 55 [2003] (Isr.); see also Office of the State Attorney, Guidelines of the State Attorney’s Office to the District Attorneys, 4(B) (Jan. 1, 2003) (Isr.), available at [http://www.knesset.gov.il/committees/heb/docs/sachar6\\_a.pdf](http://www.knesset.gov.il/committees/heb/docs/sachar6_a.pdf), archived at <http://perma.cc/MW4F-XWXF>.

163. See *supra* text accompanying note 84.

164. See GOLTSMAN, *supra* note 161; Interview with Sigalit Zohar, Coordinator for Survivors of Trafficking in Humans, Legal Aid Div., in Tel Aviv, Isr. (Nov. 23, 2010).

165. Interview with Sigalit Zohar, *supra* note 164.

166. See Interview with Sigalit Zohar, *supra* note 164; Interview with Michal Yosef, *supra* note 113.

167. All the residents at the shelters have been given pseudonyms, to protect their privacy. Their stories are based on the interviews conducted by Orna Cohen, Ella Keren, or myself, as well as on information Orna Cohen and I gathered from the social workers at the shelters. In order not to burden the residents with the need to retell their distressing stories, in the interviews with them we focused on their experience at the shelter and relied on staff to learn about their past. On the ethical dimensions of research of trafficking survivors, including the need to guard their privacy, see Cwikel & Hoban, *supra* note 88, at 310–11.

return for her working in prostitution. This Israeli man sold Sonia to a brothel, after which she escaped, was arrested, and then deported again. She subsequently entered Israel illegally for the third time, and met a married Israeli man who informed on her to the Migration Police after he impregnated her. While in prison, and after experiencing a miscarriage, Sonia went on hunger strike, and only then did the Israeli government refer her to the shelter, underweight and in seriously impaired psychological condition. Thanks to the state legal aid she received, Sonia was granted a permit allowing her to remain in Israel, at the shelter, for one year for the purpose of rehabilitation. During her stay at the shelter she became pregnant, and gave birth to a baby who suffered from a rare condition that would lead to death by the age of about two years. The baby was hospitalized in a vegetative state, and the state permitted Sonia to remain in the shelter until her child's condition became clear, even though the rehabilitation year she was entitled had ended and she was due to be deported to Ukraine.

As this tragic case demonstrates, not only did the Israeli policy shift from deportation to rehabilitation, the shelter was now open to women who were trafficked more than a decade ago, who entered Israel illegally with the intention of working in prostitution, and who required a relatively long stay at the shelter for humanitarian reasons. These women are not recent survivors of the commercial sex industry, induced to participate by force, coercion or fraud, as suggested by the U.S. definition of victims of sex trafficking.<sup>168</sup> On the contrary, they were women who secured their freedom several years ago, either because they managed to escape their traffickers, because the trafficker was caught by the Israeli authorities, or because an Israeli spouse “rescued” them. Hence, the Israeli authorities could have argued, in relation to several of the women granted admission to the shelters as past survivors of trafficking, that they were not eligible for protection under the minimum U.S. anti-trafficking standards; however, they chose not to promote this line of argument and rather decided to allow these women entry to the shelter, thereby performing “over compliance.”

Second, the largest population to receive services from the shelters during the research period was labor migrants who entered Israel legally from Asian countries (mainly Thailand and the Philippines), and who suffered severe abuse at the hands of their employers. Of the seventy-eight residents referred to the shelters in 2010, most were from Asian countries and were referred to the shelters due to preliminary evidence of slavery.<sup>169</sup> A typical example of a labor migrant who came to *Atlas* Shelter is Santhat, born in 1980, who grew up in rural Thailand. Santhat completed nine years of schooling and is married with two children. His family remained in Thailand when he came to Israel. Santhat stated that he paid the equivalent of approximately \$4,500 on the black market in order to come to Israel. Upon

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168. TVPA, *supra* note 7, 22 U.S.C. § 7102(14).

169. GOLTSMAN, *supra* note 164, at 13, 37.

arrival, he started work on a *moshav* (a cooperative agricultural village) in central Israel. During the nine months he spent on the *moshav*, his employer forced him to work almost seventeen hours a day, seven days a week. He lived together with four other workers in a flimsy caravan, and had to share one toilet and one shower with all the other workers employed by the farmer. The farmer provided him very little food, and Santhat had to purchase food with his own money. The employer was also delinquent in paying his salary. One of the workers contacted a local NGO and requested assistance. The NGO contacted the police, who raided the place of work, took eleven workers, and collected testimony from them against the employer. Later, the state transferred the workers to the shelter.

Among the female migrant workers at the shelter, there is no “typical” story, as the backgrounds of the residents vary widely, including the circumstances in which they came to Israel. The stories of Luciana and Lilia illustrate the differences between the female migrant workers who come to the shelter. Luciana was born in Brazil in 1964, and from the age of twelve worked in agriculture to support her impoverished family. She is divorced and has two sons. For twenty years, a Jewish family employed Luciana as a domestic worker in Brazil. In 2004, her employer sent Luciana to Israel with a tourist permit to care for her employer’s mother. Her employer promised her a salary of \$600 a month—less than the minimum wage set by Israeli law.<sup>170</sup> During the six months she spent in Israel—after which she returned to her employer in Brazil—her employer did not pay her any wages, and moved her from house to house to serve members of her employer’s extended family, during which she suffered humiliating treatment. Thereafter, Luciana’s employer repeatedly sent her to Israel to care for relatives, and each time the promised payment failed to materialize. On one occasion, a relative of Luciana’s employer who visited Israel discovered the conditions of slavery in which she was being held, and contacted the Brazilian embassy. When the other relatives learned of this, they abandoned Luciana and warned her not to go to the police. With the assistance of the Brazilian embassy and the NGO Hotline for Migrant Workers,<sup>171</sup> Luciana was admitted to the shelter.

Lilia, who is the same age as Luciana, is married and has two children of her own, as well as the three children of her partner. She came to Israel from the Philippines with a tourist permit to work as a caregiver and domestic employee. She related that her employer did not provide her with sufficient food, gave her a vegetable storeroom by way of accommodation, verbally abused her, and would not let her take a shower every day or use the wash-

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170. In 2004, the minimum wage in Israel per month was 3,335 NIS. In 2015, it is about 4,300 NIS. See *Minimum Wage Table*, HILANTECH, <http://www.hilan.co.il/calc/minimumwagecalculator.aspx>, archived at <http://perma.cc/T2YB-HYZJ>.

171. This NGO is now called Hotline for Refugees and Migrants. See *Hotline for Refugees and Migrants*, HOTLINE FOR REFUGEES AND MIGRANTS, <http://hotline.org.il>, archived at <http://perma.cc/LMD5-UEFS>.

ing machine to launder her clothes. When the elderly man she was caring for fell ill, Lilia met another migrant worker from the Philippines at the hospital, who gave her a telephone number to call for assistance. Lilia assumed that this was the number of an NGO, but it emerged that it was actually a police phone number. Her employer hid her, together with another employee, but the police found them, interviewed them as witnesses, and transferred them to the shelter.

In these three cases—as in all the other instances in which migrant workers came to the *Atlas* and *Ma'agan* shelters to escape the disgraceful working conditions to which they were subjected by their employers—the employers were not prosecuted for human trafficking (at least up to the end of the research period).<sup>172</sup> Indeed, except in a small number of cases, such as that of Luciana, it is not clear that the harsh employment conditions could be classed as “obtaining of a person for labor or services, through the use of subjection to force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery,” as the TVPA defines severe non-sex-related trafficking.<sup>173</sup> Again, the Israeli authorities could have refused residency at the shelters in the cases in which they concluded that there was no sufficient evidence for persecuting the employer for human trafficking. However, they choose to create a lower entry bar for sheltering than that which is required for the prosecution of traffickers, as part of their “over compliance” strategy.

Third, the newest group in the shelters is a small fraction of the thousands of people who have crossed into Israel from Sinai in Egypt since 2007, seeking work and asylum because of poverty and war in their native countries in Africa.<sup>174</sup> This flow of unauthorized immigration has diminished substantially only recently, after Israel constructed a fence along its border with Egypt.<sup>175</sup> The few that reach the shelters are among those who have been tortured by kidnappers, go-betweens, and border smugglers en route to Israel.<sup>176</sup> In many cases, kidnappers, go-betweens, and border smugglers employed torture in order to pressure the survivors into telephoning their families, asking them to forward money to the abusers’ bank accounts. The forms of torture include shackling with chains for peri-

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172. For a discussion of the reasons for lack of prosecution under the Israeli anti-slavery law, see HACKER & COHEN, *supra* note 12, § 8.2.

173. *Supra* note 15 and accompanying text.

174. See Gilad Natan, *The State's Handling and Treatment of Infiltrators and Asylum Seekers Entering Israel from the Egyptian Border* (Knesset Research & Info. Ctr., 2009) (Isr.), available at <http://www.knesset.gov.il/mmm/data/pdf/m02765.pdf>, archived at <http://perma.cc/6U44-M8VM>.

175. See Noga Tarnopolsky, *Israel Built a New Border Wall to Prevent Migrants from 'Smuggling in Terror'*, GLOBAL POST (Dec. 5, 2013), available at <http://www.globalpost.com/dispatch/news/regions/middle-east/131204/israel-new-border-wall-egypt-terrorism-immigration-project-hourglass>, archived at <http://perma.cc/QJ9D-8LZK>.

176. See VIKI GOLTSMAN, *MIGRATORY BIRDS: SUMMARY OF ACTIVITIES OF THE SHELTERING SERVICES FOR SURVIVORS OF TRAFFICKING* 19–20, 49–50 (2011), available at <http://atlas-shelter.org.il/All-Sites/857/Assets/ziporim%20nodedot%202011.pdf>, archived at <http://perma.cc/5J6Q-3QUC>.

ods ranging from several days to months, intimidation, starvation, whipping, burns, and gang rape. The financial demands of the kidnappers and smugglers have been as high as \$10,000.<sup>177</sup>

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

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

While it is clear that Lamlam was—according to the TPVA's definition—trafficked because her captors took her by force for involuntary servitude and sex, the case of Ayoub is an example of the limited scope of the TVPA, which does not include in its definition of “severe human trafficking” instances of smuggling-related torture for ransom, or torture for no end other than incomprehensible sadism.<sup>178</sup> Moreover, all of the abusive acts carried out against the survivors in this third group occurred outside Israel's borders; hence, Israel could have argued that it has no responsibility for the rehabilitation of people who entered its territory illegally and who experienced abuse on their way into the country by people with no connec-

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177. See *id.*; HOTLINE FOR MIGRANT WORKERS, “THE DEAD OF THE WILDERNESS”: TESTIMONIES FROM SINAI DESERT, 2010 (2011) (Isr.), available at [http://ardc-israel.org/sites/default/files/testimonies\\_from\\_sinay\\_122010.pdf](http://ardc-israel.org/sites/default/files/testimonies_from_sinay_122010.pdf), archived at <http://perma.cc/JV7D-4STF>; Daphna Hacker & Karen Swartz-Amiga, *Light in the Dark: An Interview with Sigalit Zobar*, TIME TO ASSIST (2012), <http://index.justice.gov.il/Units/SiuaMishpaty/NewsLetters/NewsLetter2/law/Pages/hma.aspx>, archived at <http://perma.cc/PGH7-AW3X>.

178. TVPA, *supra* note 7, 22 U.S.C. §§ 7102(9)-(10) (2000); see also HUMAN SMUGGLING AND TRAFFICKING CENTER, HUMAN TRAFFICKING VS. HUMAN SMUGGLING (2013), available at <http://www.state.gov/documents/organization/226276.pdf>, archived at <http://perma.cc/8ZQX-UMSV>.

tion to Israel.<sup>179</sup> Still, some of the judges within the special tribunals operating at the custody facilities<sup>180</sup> recognized the tortured survivors' need for shelter and convinced the police to remove them from the jail-like facility to *Ma'agan* and *Atlas*.<sup>181</sup> Hence, at least in a few cases, Israel chooses "over compliance" in relation to this group as well.

It is important to note that this Article does not claim that the residents at the shelters do not need their services, that they do not deserve them morally, nor that one could not interpret the U.S. minimum standards to include such cases as detailed above. If anything, the personal stories of the interviewees reveal the horrific abuse they have experienced, and point to the insufficiency of a narrow interpretation of the TVPA's definition of human trafficking. These stories demonstrate how arbitrary it is to attempt to create clear lines between human trafficking and other kinds of severe abuse. Indeed, both the Palermo Protocol<sup>182</sup> and Israeli law<sup>183</sup> address a wider variety of exploitation circumstances under the definition of human trafficking than does the TVPA. The Israeli law also refers to other kinds of abuses in its anti-trafficking statute.<sup>184</sup> I argue, however, that the definition of human trafficking under the TVPA is limited and vague enough to allow

179. Indeed, in her interview, Sigalit Zohar mentioned her attempts to convince the relevant authorities that although the offenses occurred outside of Israel, the survivors' presence in Israel makes Israel responsible for their rehabilitation. See Interview with Sigalit Zohar, *supra* note 164. Moreover, in some cases, the smugglers were assisted by Eritreans staying in Israel. See File No. 1172/10 Criminal File (Jer. Mag.), State of Israel v. Habati (June 12, 2012) (Isr.).

180. In 2001, Israel established special tribunals to perform judicial reviews over the decisions of the Ministry of Interior to hold in custody or to deport people who entered Israel illegally. These tribunals are located within the custody facilities. See *Custody Courts*, MINISTRY OF JUSTICE, <http://index.justice.gov.il/Units/mishmoret/Pages/Mishmoret.aspx>, archived at <http://perma.cc/D746-QAZ8>.

181. See, e.g., Custody Court Decision in the case of prisoner no. 106176 (Sep. 6, 2010) (Isr.) (on file with author); Custody Court Decision in the case of prisoner no. 1367228 (Sep. 16, 2010) (Isr.) (on file with author); Interview with torture survivor, at Atlas Shelter, Isr. (Feb. 19, 2011); Informal interview with an interviewee who wished to remain anonymous on this point, in Tel Aviv, Isr. (Oct. 30, 2011).

182. The Palermo Protocol defines human trafficking as follows:

Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Palermo Protocol, *supra* note 6, art. 3(a).

183. Under Israeli law, human trafficking is defined as "selling or buying a person or carrying out another transaction in a person, whether or not for consideration," for the purpose of, or with one of the following results: (1) removing an organ from the person's body; (2) giving birth to a child and taking the child away; (3) subjecting the person to slavery; (4) subjecting the person to forced labor; (5) instigating the person to commit an act of prostitution; (6) instigating the person to take part in an obscene publication or obscene display; (7) committing a sexual offense against the person. See Penal Code (Amendment no. 56), 5760-2000, SH No. 1746 p. 226, art. 1(1) (Isr.); Penal Code, 5737-1977, SH No. 864 p. 226, art. 377A (Isr.).

184. The Israeli anti-trafficking law also criminalizes "holding in slavery conditions," "forced labor," and "making a person leave the country for prostitution or slavery." See Penalty Code (Amend-

the claim that not all of the shelter's residents are survivors of human trafficking. Nevertheless, Israel does not offer such a claim, and prefers "over compliance" with the U.S. minimum standards to showing empty beds at the shelters, or the shelters' closure altogether. This "over compliance" strategy is also manifest in the contract between the government and the NGO that operates the two shelters. The contract guarantees, for three years, a one-hundred percent cover of personnel costs and an eighty percent cover of other costs, irrespective of actual occupancy levels.<sup>185</sup> Hence, once the shelters exist, there is little additional cost for filling them to maximum capacity.

The U.S. pressure is apparently so powerful that it motivates an ethno-democracy such as Israel to allow "aliens" to stay in its territory and receive substantial assistance, instead of being immediately deported or detained, as the state's immigration law and policy permits.<sup>186</sup> However, this "over compliance" strategy is possible because of three other compliance strategies that Israel employs, which ensure that broadening the definition of survivors eligible for protection will not threaten Israel's sovereignty and ethnic immigration policy.

### C. "Split," "Hybrid," and "Isolating" Compliance

In this section, I will explore three additional compliance strategies used by Israel in the face of U.S. pressure to protect survivors of trafficking: "split" compliance, in which one ministry advances the protection norm while another ministry advances the state's interest in deporting aliens; "hybrid" compliance, in which the same state's body performs protective and harmful measures toward survivors of human trafficking; and "isolating" compliance, which assists the survivors while making sure that they do not integrate into the Israeli social fabric. These three strategies allow Israel to successfully negotiate the tension between the U.S. expectation to protect alien trafficking survivors and its own interest in securing its borders against uninvited aliens.

According to the research findings, seven authorities shape and manage the policies and regulations related to the treatment of survivors of human trafficking in Israel: the Knesset, the government as a whole, and the Min-

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ment no. 56) 5760-2000, SH No. 1746 p. 226, art. 1(8)-(11)(Isr.); Penal Code, 5737-1977, SH No. 864 p. 226, art. 375A, 376, 376A (Isr.).

185. See Contract between the Israeli Gov't, represented by the Ministry of Welfare and Social Services, and Keshet (non-profit organization), Tender no. 217/2008 (Mar. 18, 2009) (on file with author) [hereinafter Tender no. 217/2008].

186. According to the law, the Minister of Defense is authorized to deport people who entered Israel without permission. See Prevention of Infiltration Act, 5704-1954, SH No. 160 p. 161, art. 30 (Isr.). However, as Israel does not have diplomatic relations with the countries from which most of the asylum seekers originate, it cannot return them to their countries of origin. The Knesset has tried to cope with this political reality by isolating the asylum seekers in detention centers. See Natan, *supra* note 174, at 3-4. A recent Supreme Court decision concluded that these attempts violate the detainees' human dignity. See *infra* note 260.

istries of Justice, the Interior, Internal Security, Welfare and Social Services, and Health.<sup>187</sup> These policies and regulations are organized along two competing axes: the “rehabilitation” axis that centers on the survivors’ needs and rights, and the “borders” axis that centers on the state’s interest in preventing non-Jewish immigration. Table 1 below summarizes the activities of each of the aforementioned authorities that affect the survivors of human trafficking, in relation to each of the two axes:

TABLE 1

<i>Body</i>	<i>Rehabilitation Axis</i>	<i>Borders Axis</i>
The Knesset (Parliament)	Anti-trafficking laws (criminalizing trafficking, slavery, and forced labor; encouraging ruling of compensation for survivors; providing free legal aid for survivors) <sup>188</sup>	No formal right of rehabilitation to survivors of trafficking, slavery, and forced labor <sup>189</sup>
Government	Two designated shelters <sup>190</sup>	Strict ethnic immigration policy <sup>191</sup>
Ministry of Justice	National Anti-Trafficking Coordinator (coordinating all governmental anti-trafficking efforts; <sup>192</sup> legal aid; <sup>193</sup> prosecution of traffickers) <sup>194</sup>	

187. Israel is a parliamentary democracy, in which the cabinet of ministers is subject to the confidence of the Knesset. See *The State: Political Structure*, ISRAEL MINISTRY OF FOREIGN AFFAIRS, <http://www.mfa.gov.il/mfa/aboutisrael/state/pages/the%20state-%20political%20structure.aspx>, archived at <http://perma.cc/TQ5A-8GKC>.

188. For a discussion of all anti-trafficking Israeli laws, see HACKER & COHEN, *supra* note 12, at 34–35.

189. See *id.*

190. See Government Decision no. 2806, *supra* note 108; Government Decision no. 2670, *supra* note 132.

191. See *infra* note 260 and accompanying text.

192. See *About Us*, OFFICE OF THE NAT’L ANTI-TRAFFICKING COORDINATOR, <http://index.justice.gov.il/En/Units/Trafficking/Pages/About.aspx>, archived at <http://perma.cc/GV47-P7XL>.

193. See Interview with Sigalit Zohar, *supra* note 164.

194. For a description of enforcement activities by the National Anti-Trafficking Coordinator, see *Enforcement*, OFFICE OF THE NAT’L ANTI-TRAFFICKING COORDINATOR, <http://index.justice.gov.il/Units/Trafficking/IsraelFight/Enforcement/Pages/enforcement.aspx>, archived at <http://perma.cc/H9R7-YDE3>.

Ministry of Interior (Population and Migration Authority)		Strict visa and working permits policy; imprisonment; deportation <sup>195</sup>
Ministry of Internal Security (Police; Prison Service)	Rescue; referral to shelters; arrests of traffickers <sup>196</sup>	Imprisonment; refusal to refer to shelters <sup>197</sup>
Ministry of Welfare and Social Services	Responsibility over shelters <sup>198</sup>	Insufficient community services <sup>199</sup>
Ministry of Health	Free medical treatment within the shelters <sup>200</sup>	Insufficient community services; insufficient funding in cases of severe disease <sup>201</sup>

The most important policymaking body in Israel, as in all democratic countries, is the parliament. The Knesset has played a central role in the struggle against human trafficking and in protecting and assisting its survivors. Particularly thanks to the Sub-Committee for Combatting Trafficking in Women and the Special Committee on the Problem of Foreign Workers, dozens of discussions were conducted and information collected regarding trafficking survivors and their needs.<sup>202</sup> Moreover, as mentioned above, comprehensive legislation relating to the subject has been enacted, granting the survivors of human trafficking free legal aid and compensation from traffickers.<sup>203</sup> However, the Knesset has not enshrined in law the right of trafficking survivors to other kinds of assistance and rehabilitation services. Hence, the survivors of human trafficking do not have a legal claim for welfare rights, and are dependent upon ad hoc government decisions in this regard. Moreover, although the Israeli government decided to establish the

195. According to the Population and Migration Authority, one of its missions is to “minimize the number of illegal residents in Israel.” See *About the Authority*, THE POPULATION & MIGRATION AUTHORITY, <http://www.piba.gov.il/ABOUT/Pages/AboutTheAuthority.aspx>, archived at <http://perma.cc/H9R7-YDE3>; see also *infra* notes 211–15 and accompanying text.

196. See Interview with Raanan Caspi, *supra* note 84.

197. See, e.g., *infra* note 223.

198. See Tender no. 217/2008, *supra* note 185.

199. See HACKER & COHEN, *supra* note 12, at 188–89.

200. See *id.* § 4.3.

201. See *id.*

202. See generally *Sub-Committee for Combatting Trafficking in Women Protocols*, KNESSET, [http://www.knesset.gov.il/protocols/heb/protocol\\_search.aspx?ComId=185](http://www.knesset.gov.il/protocols/heb/protocol_search.aspx?ComId=185), archived at <http://perma.cc/WBZ2-AP4V>. For the protocols of the Special Committee on the Problem of Foreign Workers, see *Special Committee on the Problem of Foreign Workers Protocols*, KNESSET, [http://knesset.gov.il/protocols/heb/protocol\\_search.aspx?comID=15](http://knesset.gov.il/protocols/heb/protocol_search.aspx?comID=15), archived at <http://perma.cc/K2NR-H4CY>. The Knesset Research and Information Center prepared several research summaries on human trafficking. See, e.g., Rabinowitz, *supra* note 81.

203. See Prohibition of Trafficking in Persons Law, *supra* note 127, arts. 1(12), 3 (Isr.) (Penal Code, 5737-1977, SH No. 864 p. 226, art. 377E (Isr.)); Legal Aid Law, 5732-1972, SH No. 654 p. 95, app. (Isr.).

shelters, the majority of both the Knesset and the Government share an ongoing commitment to maintaining a strict policy of preventing unlawful entry into Israel and deporting persons unlawfully present in the country.<sup>204</sup>

The obvious tension between the mission to prevent non-Jewish immigration to Israel and assisting survivors of human trafficking is manifest in the actions of the relevant ministries. As can be seen in Table 1, the Ministry of Justice represents deep commitment to the rehabilitation axis, whereas the Ministry of Interior aligns most closely with the borders axis. The study found that this is due to each office's distinct *habitus*—that is, the institutionalized principles that shape the practices and consciousness of its officials.<sup>205</sup> The Ministry of Justice is shaped by its responsibility to the law, including humanitarian and international law,<sup>206</sup> and the Ministry of Interior is shaped by its mission to guard the borders. The tension is also due to the individuals who occupy the relevant positions within each ministry.<sup>207</sup>

Indeed, during the research period, the Ministry of Justice employed two senior officials who devoted their full attention to survivors of human trafficking. One was Rachel Gershoni, the National Anti-Trafficking Coordinator; the other is Sigalit Zohar, the Coordinator for Survivors of Trafficking in Humans, from the Legal Aid division of the ministry. Both individuals, who gave interviews in the course of this study, demonstrated a deep commitment and personal devotion to the protection and rehabilitation of survivors of trafficking.<sup>208</sup> The other interviewees mentioned Gershoni as a dominant figure in the field, who struggled against others to secure protection and sheltering for trafficked survivors. Galon, a member of Knesset and a dominant figure herself, provided an example of the references to Gershoni made by others:

There was a period during which there was a gap between Rachel Gershoni, the Coordinator, and the Ministries themselves or the responsible people within them. Rachel came with a lot of will-

204. See *infra* note 260 and accompanying text.

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

206. Cf. Gad, *supra* note 116, at 41 (arguing that the lawyers at the Ministry of Justice are “receptors” of the of anti-trafficking global discourse, as they are part of a ministry whose ethos is to protect universal human rights).

207. The debate between the structuralists and the phenomenologists in sociology is one of this discipline's major rifts. Nevertheless, in the past three decades, there have been numerous theoretical attempts to synthesize understandings of the centrality of institutions and institutionalization together with those that grant individuals some independent agency. For a review, see Daphna Hacker, *Invitation to the Sociology of Law and a Preliminary Mapping of the Field in Israel*, 4 DIN U'DVARIM 95 (2008) (Isr.). See also HELEN V. MINER, INTERESTS, INSTITUTIONS, AND INFORMATION (1997), for a fascinating theory and study of the interrelations between international relations and domestic policy, which challenges the unitary state assumption and demonstrates the role of different bodies and individual actors in the polity.

208. See Interview with Rachel Gershoni, *supra* note 122; Interview with Sigalit Zohar, *supra* note 164.

ingness . . . and she also made many changes, and she found herself dealing with individual stories, which she heard at the Knesset Committee or from the NGOs. This was not at all part of her role, given that she was a policy coordinator. But suddenly, we saw that this woman was about to be deported—what about the money [she was entitled to, by law, from the trafficker]? And where she will go to if she is deported? So Gershoni found herself dealing [with such cases]. What I want to say is that her involvement went beyond that of a formal coordinator.<sup>209</sup>

Interviewees also positively mentioned Sigalit Zohar as “a referent that lives and breathes the matter.”<sup>210</sup> Some survivors recalled her as the lawyer who assisted them while they were in the shelter.

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

The Ministry of Interior, getting a visa for a survivor of human trafficking is . . . to say that it is like splitting the Red Sea into two, does not even start to describe it. The attitude is very stingy, very literal. The Ministry of Interior sees itself as the doorkeeper, yes? That there will not be labor migrants in fields that they cannot control, or that there will be a flood of people . . . I do not know exactly what it is. Sometimes it feels like zealotry for the sake of zealotry, pointless zealotry. It is very, very hard to secure cooperation from the Ministry of Interior. It is really . . . words cannot describe.<sup>211</sup>

Rita Chaikin, an activist from the feminist NGO *Isha L’isha* (Woman to Woman), was also extremely critical of the Ministry of Interior:

Cristina [a woman Rita assisted], was sent to the Ministry of Interior alone to get a visa. She cannot forget the fact that she was alone, and really, the Ministry of Interior—you should not send a woman there alone, even if you hate her [laughs]. You have to understand that the Ministry of Interior is the body where these women are hated. For them [at the ministry], the women are gentiles, their place is out of the country . . . very racist.<sup>212</sup>

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209. Interview with Zehava Galon, *supra* note 97.

210. See, e.g., Interview with Nomi Levenkron, *supra* note 137.

211. Interview with Hanny Ben Israel, *supra* note 115.

212. Interview by Orna Cohen with Rita Chaikin, Coordinator of Struggle against Prostitution and Sex Trafficking Project, *Isha L’isha*, in Haifa, Isr. (Dec. 23, 2010).

The crucial role played by the Ministry of Interior in the rehabilitation of survivors of human trafficking provides necessary context to the anger and frustration of activists. All asylum seekers from Africa and survivors of trafficking for prostitution, as well as a minority of migrant workers, entered Israel without residence and work permits,<sup>213</sup> and are destined for deportation if they do not receive a rehabilitation visa from the Ministry of Interior.<sup>214</sup> Moreover, most of the labor migrants in the agricultural sector came to Israel and are present in the country on the basis of a work permit, but many of them require extensions of the permit—again from the Ministry of Interior—in order to enable them to remain in Israel and free themselves from employers who violate their rights.<sup>215</sup> Listening to the residents at the shelters, we learned that indeed the residence, work, and rehabilitation permits are of great concern to them all, and that the process of trying to secure a permit is very frustrating. It is not only that without a permit from the Ministry of Interior, they face deportation; during the waiting period for a permit, survivors of trafficking remain in the shelter without the legal capacity to work for pay. They thus have no economic independence and no way of paying back loans they took to arrive in Israel, nor any way of sending money to family members left in their country of origin.<sup>216</sup>

Nevertheless, Michal Yosef herself said that she, and the staff of the Ministry of Interior in general, underwent a process of change:

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

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213. See *supra* Part II.B (describing the three different groups).

214. See Prevention of Infiltration Act, *supra* note 186.

215. See GOLTSMAN, *supra* note 161, at 39.

216. For a detailed description of the different kinds of work permits in Israel and their relevance to the different groups of shelters' residents, see HACKER & COHEN, *supra* note 12, § 3.8. For a discussion of the harm caused to the residents as a result of their lack of employment while staying at the shelters, see HACKER & COHEN, *supra* note 12, at 112–17.

[and] you change your [perception]. In the beginning they were all suspects. [N]ow it is different. I see it differently.<sup>217</sup>

Sigalit Zohar reaffirmed Yosef's claim of change within the Ministry of Interior, observing that though at the beginning her clients were wrongly refused rehabilitation visas, after 2006—when the Ministry published coherent regulations—justified requests were approved:

I no longer see refusals based on the reasoning that the woman was trafficked three times, or that she should go back to Romania and work at her parents' dairy, or that since her boyfriend is a criminal she does not deserve a permit. Today, a survivor of trafficking—whether she testifies or not [is] irrelevant—if she is in the shelter or supported by an NGO, she will get a rehabilitation visa.<sup>218</sup>

However, because trafficking for prostitution from outside Israel has diminished, the question of rehabilitation visas for its survivors now remains relevant only to the very few who still live in Israel. Zohar described African asylum seekers as the new threat to Israeli borders and detailed her efforts to secure the Ministry of Interior's recognition of those among them who were tortured as survivors of trafficking or slavery as entitled to a rehabilitation permit.<sup>219</sup>

Thus there is some evidence that even the Ministry of Interior, which is most identified with the "borders axis," has internalized anti-trafficking norms to some degree, though Yosef's rhetoric centers on the applicants' subjective feelings rather than on their objective rights. Still, it seems that Israel suffers from a split mind: one ministry embodying the human rights ethos, with almost angelic officials who dedicate themselves day and night to the protection of human trafficking survivors, and another ministry acting as a gatekeeper of Israel, at the expense of survivors' needs and interests.

One could argue that this is but another example of Israel's general duality stemming from an aspiration to be both Jewish and democratic.<sup>220</sup> While this might be very much the case, I would argue that Israel does not display an uncoordinated "split-mind." Rather, it is a split coordinated by the Parliament and the government as a whole, along with the special coordinating bodies mentioned above, such as the National Anti-Trafficking Coordinator and multi-ministerial teams established to discuss trafficking. The split is mutually beneficial because it allows Israel to externally demonstrate its commitment to international norms while internally reassuring its citizens of its antagonistic policy toward aliens. Indeed, my suggested interpretation of this "split" compliance strategy becomes clearer

217. Interview with Michal Yosef, *supra* note 113.

218. Interview with Sigalit Zohar, *supra* note 164.

219. *See id.*

220. *See supra* note 157 and accompanying text.

when one examines the “hybrid” compliance strategy, evident from the Knesset and government actions mentioned above, in relation to specific ministries, and when connected to the fourth compliance strategy of isolation.

Returning to the Table 1 above, one can detect a hybridity within three of the five ministries. Unlike the split between the Ministry of Justice and the Ministry of Interior, with each representing a competing axis, each of the other three ministries—like the Knesset and the government as a whole—embody within themselves a hybridity of the two axes. The Ministry of Internal Security is the ministry that rescues, through the Police, survivors of trafficking, as was the case in the stories of Santhat and Lilia above. The Police is also the only organ with the authority to refer a person to the shelters, based on the assessment that there is *prima facie* evidence that the person was a survivor of trafficking or slavery.<sup>221</sup> The internalization of survivor-centered norms within the Police is evident in the interview with Superintendent Advocate, Yaacov Lopaz, deputy head of the Lahav Prosecution Unit, which is responsible for prosecuting offences against labor migrants, among other things:

When you think about slavery, you imagine the classic image of someone tied up in iron chains, held in a cage, and so forth. Modern slavery isn't like that. Modern slavery is no less traumatic for the victims, even though usually it cannot be discerned externally. The victims look like anyone else walking along the street, and appear to be free people, but in fact their free will and freedom of choice has been taken away from them. This is mainly done by psychological and economic means; it isn't something that can be seen from the outside.<sup>222</sup>

This notwithstanding, the Ministry of Internal Security's exclusive authority to determine whether someone is a victim of trafficking or slavery might obstruct assistance for those who need it. During the research period, we came across two cases in which the judge at the custody facility issued a decision recognizing the arrested person as a survivor of trafficking according to the Palermo Protocol. Consequently, the judges concerned asked the Police to consider the transfer of the detainee to the *Atlas* shelter. However, in both cases the Police refused the transfer, arguing that although the detainee suffered horrible torture en route to Israel, the offenses against him took place in Egypt. The Police thus determined that the individual could not be recognized as a survivor of human trafficking, and so must be deported. In one case, the Police deported the survivor before he could receive

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221. See Government Decision no. 2670, *supra* note 143; Interview with Rinat Davidovich, *supra* note 143.

222. Interview with Yaacov Lopaz, Adv., Deputy Head of the Lahav Prosecution Unit, in Lod, Isr. (July 3, 2011).

assistance from a lawyer. In the other case, the authorities were willing to postpone the deportation and consider the case again, but only because of legal representations based on the United Nations Convention Against Torture rather than on international and national anti-human trafficking laws.<sup>223</sup> Indeed, according to the 2012 TIP Report, although the judges at the custody facilities recognized thirty asylum seekers as possible survivors of trafficking eligible for rehabilitation at the shelters, the Police agreed to transfer only fifteen of them to *Ma'agan* and *Atlas*, arguing the other fifteen were tortured, but not trafficked.<sup>224</sup>

The hybridity of the two axes is also evident in the actions of the Ministry of Welfare and Social Services and the Ministry of Health. As mentioned above, the Ministry of Welfare and Social Services provides substantial assistance to those who stay at the shelters.<sup>225</sup> However, during the research period, it did not extend substantial socioeconomic assistance and therapeutic services to survivors of trafficking that could not or did not want to stay at the shelters.<sup>226</sup> Likewise, in the one instance that we documented, the Ministry of Health provided only very limited health services to a survivor who was not living in the shelters.<sup>227</sup>

Moreover, even when housed in the shelters, residents did not receive automatic guarantees of medical care in cases of prolonged or very expensive treatment, and were dependent upon special approval by the Ministry of Health.<sup>228</sup> For example, one of the women interviewed at the shelter was HIV positive, and suffered from hepatitis and tuberculosis. NGOs filed a Supreme Court petition in 2007, demanding that the state finance all the health services she required. The petition argued that the resident acquired her medical condition while being trafficked for prostitution in Israel and that, accordingly, the state is responsible for her treatment. After medical tests clarified the woman's state of health and the necessary treatment, it emerged that treatment would be particularly expensive, amounting to thousands of dollars a year. During this period, the Inter-Ministerial Team for Medical Treatment for Survivors of Trafficking in Women rejected the argument that the state should accept responsibility for protracted treatment in such cases, and determined that medical treatment should be pro-

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223. See Saharonim Detention Ctr., Case no. 1405989, (Sep. 12, 2011) (Isr.); Saharonim Detention Ctr., Case no. 1400223, (Sep. 6, 2011) (Isr.) (on file with author); Informal interview with interviewee who asked to remain anonymous on this point.

224. See 2012 TIP REPORT, *supra* note 81, at 195.

225. See *supra* note 147.

226. See *supra* note 199.

227. See *supra* note 200. A rare example of a health service provided for free, regardless of status, is the Levinsky Clinic for sexually transmitted diseases, located in the southern part of Tel Aviv, near where many of the asylum seekers live. See *About The Levinsky Clinic*, THE LEVINSKY CLINIC, <http://tinyurl.com/q8qj4fk>, archived at <http://perma.cc/D7T3-936D>; Interview with Sara Bueno De Maskita, Social Worker, Levinsky Clinic, in Tel Aviv, Isr. (Jan. 21, 2011).

228. Interview by Orna Cohen, Ministry of Health, with Dr. Michael Dor, Chairperson of the Interministerial Team for Medical Treatment for Survivors of Trafficking, in Jerusalem, Isr. (July 27, 2011).

vided for up to one year only. The Court accepted the state's position in full, and permitted the petitioner to receive treatment for only six months, before deportation, at a cost of some seventeen thousand dollars.<sup>229</sup>

Taken together, these hybrid actions on behalf of the Ministries of Internal Security, Welfare and Social Services, and Health, are not a result of confused or conflicting authorities in which the right and left hands are uncoordinated. Rather, one can detect a coherent policy that differentiates the shelters from the rest of the Israeli social fabric. Once a person is allowed entrance to the shelter, she or he is assisted generously; however, those denied entrance are left with hardly any state-sponsored assistance and face possible deportation. This fourth kind of strategy, which I call the "isolating" compliance strategy, allows Israel to perform the protection of survivors of trafficking without "endangering" its borders and society through the presence of "aliens." The establishment of the shelters allowed for the creation of a "rehabilitation island": a physically and symbolically isolated zone within which the borders axis is suspended for the very few who are granted admission. Those left outside of this isolated zone, including trafficking survivors who are addicted to drugs or alcohol,<sup>230</sup> or who are not identified as survivors of trafficking although they suffer the consequences of immigration-related abuse, feel the power of the borders axis in their everyday lives. These survivors face the inadequacy of community services offered to aliens, the ongoing risk of incarceration in a closed facility, or deportation.<sup>231</sup>

The all-or-nothing policy of the Ministry of Justice and the Ministry of Interior pursued with respect to survivors in and outside of shelters also highlights what might be perceived at first sight as an unplanned, split pattern of compliance with the U.S. minimum standards of protection. The two very distinctive and allegedly contradictory discourses are in fact a logical response on behalf of a state that wants to please the U.S. government, but at the same time is obsessed with safeguarding its borders from non-Jewish immigration. Moreover, the shelters help these two discourses coexist with each other. According to the government's decisions, the shelter for survivors of sex trafficking should hold fifty beds, and the shelter for survivors of slavery and forced labor trafficking should hold thirty beds.<sup>232</sup> In practice, during the research period, the NGO that ran the two shelters on

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229. For a description of the parties' arguments and for the Court's decision, see HCJ 5637/07 *Anonymous v. Minister of Health* (Aug. 15, 2010), Nevo Legal Database (by subscription) (Isr.). It was only after the study ended that a coherent policy was established according to which survivors of trafficking, entitled to one year of rehabilitation, are eligible to all health treatments for free, with the exception of fertility treatments. See Rabinowitz, *supra* note 81, at 61–62.

230. For a discussion of the survivors of trafficking and of immigration-related abuse, who are left outside the shelters, because of addiction problems and for various other reasons, see HACKER & COHEN, *supra* note 12, § 3.7.

231. See *infra* note 260.

232. See Government Decision no. 2806, *supra* note 108; Government Decision no. 2670, *supra* note 132.

behalf of the Ministry of Welfare was obliged to serve no more than thirty-five people at each of them.<sup>233</sup> Hence, the Ministry of Justice can play the “good guy” without jeopardizing Israeli borders with more than seventy non-Israeli residents at the shelters at any given time, because, as mentioned above, the state has already guaranteed one-hundred percent of personnel costs and eighty percent of other costs for all residents of the shelters.<sup>234</sup> Meanwhile, the Ministry of Interior plays the “bad guy,” by making sure that only very few will be recognized as survivors of human trafficking, and thus be allowed to remain in Israel for some period of time and receive assistance. Together, they face U.S. pressure by demonstrating that there are two distinctive frameworks for the rehabilitation of human trafficking survivors, while at the same time ensuring that these survivors—and other non-Jewish immigrants—will not be fully integrated into Israeli society, nor threaten the state’s Jewish identity.

### III. “COMPLIANCE,” “SUCCESS,” AND THE ROLE OF THE SURVIVORS

The evolution of Israel’s approach to survivors of trafficking illustrates the complexity of defining “success” in combatting trafficking. For the United States, success may mean ensuring Israeli compliance with transnational laws like the TVPA. For Israel, it may mean maintaining its sovereignty and domestic imperatives—like an ethnic immigration policy—while satisfying U.S. demands. For survivors of trafficking, success may supersede “compliance,” and turn on each survivor’s ability to reintegrate into a country that offers them, and their children, a stable, non-abusive future. The competing definitions of success in combatting trafficking and the role that trafficking survivors have played in creating new outcomes demonstrate the need to revise theories about international normmaking presented in Part I. Survivors are not simply passive participants in the global anti-trafficking scheme as managed by states; they are active agents of change.

At a superficial level, the findings presented thus far highlight the TVPA’s success in influencing Israel’s approach to trafficking. Indeed, the United States managed to motivate the Israeli authorities to replace their criminalization narrative with a framework based instead on victimization, and to open and operate two shelters specially designated for survivors of human trafficking, thereby offering a comprehensive basket of services to their residents. The TIP Reports produced by the United States tell much of this success story, and highlight Israel’s excellence in compliance as opposed to the many countries ranked in lower tiers.<sup>235</sup> However, this study demonstrates the importance of Engle Merry’s claim that the common and

233. See Tender no. 217/2008, *supra* note 185, art. 5.

234. See *supra* note 185 and accompanying text.

235. See *supra* note 81.

growing use of quantitative indicators as part of global governance (of which the TIP Reports are a part), produces a “world knowable without the detailed particulars of context and history.”<sup>236</sup> In addition, she argues, the aura of objectivity of these indicators masks the political role of the indicators themselves in shaping the transnational world.<sup>237</sup> Indeed, it is only by supplementing quantitative measures with qualitative, in-depth data, like the data presented here, that one can fully understand the meaning of U.S. pressure in its particular context and the relational and political nature of the definition of “success.”

This Article shows that the success of the pressuring country does not necessarily imply failure on the part of the pressured country to preserve its sovereignty interests. By employing four different compliance strategies, Israel manages to satisfy the U.S. minimum standards while also preserving sovereignty over its borders and maintaining its ethnic immigration policy. Hence, Israel’s experience corresponds to the criticism of global anti-trafficking regulation that argues that such regulations are incorrectly aimed at strengthening borders rather than relaxing them in the name of immigrants’ needs and human rights.<sup>238</sup> Furthermore, the Israeli example points to the possibility of mediation between the allegedly conflicting theories on global normmaking presented in Part I: those emphasizing a transnational superpower’s ability to enforce external norms on nation states, and those arguing for the centrality of nation states and their resistance power. The Israeli case study demonstrates the importance of superpowers in creating and enforcing global norms, as well as the ongoing ability of relatively weak nation states to negotiate compliance in ways that preserve their internal interests. Economic sanctions and reputation shaming can be effective tools in the hands of the superpower to create real normative change in faraway places. Still, the United States, as a transnational norms entrepreneur, is careful to recognize the national sovereign as the responsible enforcement body in its own territory; thus, nation states preserve their legitimacy in running their own affairs. Furthermore, transnational demands, such as those created by the TVPA in relation to the protection of survivors of trafficking, are general and vague enough to allow the nation state wide discretion in designing the exact form of compliance. This leverage can be used in a sophisticated manner by countries such as Israel to ease the tension between external and internal pressures.

Moreover, these findings highlight the shortcomings of much of the literature on the TVPA’s success presented in Part I of the Article. By assuming that the TVPA requirements are adequate, and measuring success

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236. Sally Engle Merry, *Measuring the World Indicators, Human Rights, and Global Governance*, 52 *CURRENT ANTHROPOLOGY* S83, S84 (2009); see also Kevin E. Davis, Benedict Kingsbury & Sally Engle Merry, *Introduction*, in *GOVERNANCE BY INDICATORS*, *supra* note 8, at 3–27.

237. Merry, *supra* note 236, at S84–S85; Davis, Kingsbury & Merry, *supra* note 236.

238. See generally Shamir, *supra* note 1.

with quantitative indicators developed by the United States, the literature conflates “success” with “compliance.”

As David Nelken reminds us, what constitutes success for transnational legal transplants depends on one’s point of view<sup>239</sup>, and the survivors’ perspective offers insights distinct from those presented by both Israeli and U.S. views. Listening to the survivors of immigration-related abuse uncovers different definitions of “successful” protective measures that compete with those used by the United States, Israel, and the anti-trafficking literature. The definition of “successful” protective measures varies further with the particular subset of survivors. For many of the sex trafficking survivors, the interviews conducted with present and past residents of *Ma’agan* and with the therapeutic staff of the shelter reveal that they view returning to their country of origin as a disaster that they are inclined to avoid at all costs. Their avoidance strategies might include leaving the shelter and becoming an illegal alien or marrying an Israeli citizen—even if he is abusive.<sup>240</sup> For these survivors, a successful protective measure is the grant of a right to permanent stay and a work permit that will allow them and their children to remain in Israel. In contrast, for many of the agriculture and care immigrants from Asia, for whom Israel is but a temporary working destination, successful protective arrival and stay is defined by indicators such as not being extorted by middlemen upon their arrival, and earning enough money to send home while enjoying decent working conditions over a considerable period of time. Finally, for the asylum seekers from Africa who have been tortured en route to Israel, returning to their countries of origin could mean extreme poverty, war, and in some cases, the very real risk of death. Successful rehabilitation, for them, can only occur in Israel or in another developed country, and reintegration within the country of origin is not a safe option.

Introducing the perspectives of the survivors of trafficking and of severe immigration-related abuse reminds us that the protection of survivors is supposed to include a third “R”—a long term “R”—reintegration.<sup>241</sup> In many cases, reintegration cannot take place in the country of origin. Even though the staff of the shelters visits past residents at their new agricultural employers to make sure that they are decently treated, it has no meaningful connection with the vast majority of survivors of sex trafficking who leave the shelter and live either in Israel or their country of origin.<sup>242</sup> As for the

239. David Nelken, *Human Trafficking and Legal Culture*, 43 *ISR. L. REV.* 479, 489–500 (2010); David Nelken, *The Meaning of Success in Transnational Legal Transfers*, 19 *WINDSOR Y.B. ACCESS JUST.* 349, 350–54 (2001).

240. GOLTSMAN, *supra* note 164, at 18.

241. SEGRAVE, MILIVOJEVIC & PICKERING, *supra* note 1, at 174–90; 2009 TIP REPORT, *supra* note 16.

242. From a conversation with staff at the shelters, we learned that while the social workers try to maintain minimal contact with past residents, it is not, to their understanding, part of their formal mandate. See Interview with shelter’s staff, at *Ma’agan* Shelter, *Isr.* (July 25, 2011). Indeed, the contract

abused asylum seekers, until very recently, if they were not in the shelters they were either deported to a very dangerous reality, sent to a detention center situated in a remote location, or allowed to stay freely in Israel, but without work permits and very limited access to social services within the community.<sup>243</sup>

Interestingly, the TIP Reports do not criticize Israel for the lack of information concerning former residents of the shelters, or for the policies that prevent their integration into Israeli society after leaving the shelters. On the contrary, the last three TIP Reports create the false impression of a full, long-term, and supervised reintegration of survivors of trafficking into the Israeli society.<sup>244</sup> Here, it seems that the United States prefers to turn a blind eye, revealing its own weakness in regulating the long-term protection of survivors of human trafficking in a world that lacks a transnational consensus on the global allocation of the burden that this protection entails.

Subsequent to the original research reported in the previous parts of this Article, several developments occurred regarding illegal immigrant detainees in Israel that illustrate cracks in Israel's isolating compliance strategy. These developments also highlight the failure of the theories on compliance detailed in Part I to consider the abused immigrants as active agents who change reality, and not merely as passive survivors of global circumstances and regulation.<sup>245</sup>

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with the government does not impose any obligation on the NGO that runs the shelters in relation to residents who leave them. See Contract based on Tender no. 217/2008, *supra* note 185.

243. See Gilad Natan, *The Policy Towards the Infiltrators, Asylum Seeker and Refugees in Israel and in Europe* (Knesset Research & Info. Ctr., 2012) (Isr.), available at <http://tinyurl.com/pkvxcj9>, archived at <http://perma.cc/B3H7-GQHY>; for recent developments on detention of immigrants, see also *infra* note 260 and accompanying text.

244. The lack of welfare community services for survivors of trafficking outside of the shelters is mentioned only once, in the 2009 TIP Report, in relation to medical and psychological assistance. See 2009 TIP REPORT, *supra* note 16, at 166. The issue of maintaining contact with past residents is mentioned for the first time in the 2012 report, which states: "The shelter staff maintained contact with trafficking survivors after they had left the shelter to assist survivors with long-term reintegration into Israeli society and to ensure future work conditions were not exploitative." 2012 TIP REPORT, *supra* note 81, at 195. This statement is not backed up with examples or numbers. Indeed, as detailed above, this was true (at least during the research period) only in relation to migrant workers employed in agriculture, who are expected to leave Israel after their work permit ends. In fact, the 2013 and 2014 reports repeat the exact phrasing of the 2012 report, though omitting the words "long-term," with the 2013 report also adding, as an example, the assistance given to forced labor survivors within the men's shelter. See 2013 TIP REPORT, *supra* note 81, at 208; 2014 TIP REPORT, *supra* note 85, at 216. This is the same population identified in our study as the only one systematically followed-up on after leaving the shelter. As demonstrated in this paper, Israel has no policy supporting a full, long-term, and supervised reintegration of survivors of trafficking into Israeli society; rather, the opposite exists in reality.

245. Ignoring immigration-related survivors as active agents is characteristic not only of the literature on compliance with global norms, but also of the literature on trafficking. A fascinating exception to the rule is John Davies's study of Albanian women trafficked for prostitution. Based on his in-depth field study, Davies argues that divorced Albanian women use trafficking as a mobility strategy in pursuing migration goals. Their condition in Albania, as divorced women, is so bad that they are willing to take the risk of abuse by the trafficking network, in order to get to France and to, hopefully, marry a French man. See JOHN DAVIES, *MY NAME IS NOT NATASHA: HOW ALBANIAN WOMEN USE TRAFFICKING TO OVERCOME SOCIAL EXCLUSION* (1998-2001) 144-50 (2009).

During 2012, Israeli authorities identified thirty-five women who were detained in a closed custody facility for illegal immigrants as survivors of slavery because of the extreme and brutal abuse they suffered in the hands of kidnappers and smugglers during their journey from Africa. As survivors of slavery, they were eligible for rehabilitation at the shelter.<sup>246</sup> However, the *Ma'agan* shelter was fully occupied, so they were left at the detention facility.<sup>247</sup> While the different ministries discussed possible solutions—including the establishment of an additional third shelter—lawyers from the state Legal Aid Division visited the women to make sure they received medical treatment and to update them on the rehabilitation options. In January 2013, one of the women asked for legal representation for her request to be released from the detention facility to stay with relatives living in Tel Aviv until her placement within a shelter became possible. The Legal Aid lawyer interviewed the relatives and, after being convinced that they were indeed the slavery survivor's family members and that they could provide her with adequate housing and assistance, submitted the petition on her behalf. The judge at the detention facility refused the request, finding that rehabilitation can occur only within a shelter, and that until a vacancy at the existing shelter becomes available or a third one is established, the woman must remain at the detention facility.<sup>248</sup> The woman appealed against this decision to the District Court for Administrative Matters, again with the assistance of the state Legal Aid Division. The District Court accepted her petition, on the condition that an NGO will provide her with therapy and rehabilitation services, and that she will cooperate with her removal to the shelter once a vacancy becomes available.<sup>249</sup>

Many similar requests followed and were granted. However, the NGO that volunteered to assist in the first case<sup>250</sup> stated that it could not guarantee the safety and rehabilitation of so many women released to the community.<sup>251</sup> Since the *Ma'agan* shelter was still full, the Minister of Welfare

246. Government Decision no. 2670, *supra* note 132.

247. *Ma'agan* was fully occupied because of a large group of about fifty women and girls who arrived on April 2012 at the southern border of Israel, after being kidnapped from Ethiopia and severely brutalized on the way. While the women from this group were transferred to *Ma'agan*, the girls were taken to other facilities, such as boarding schools. See E-mail from Meirav Shmueli, *supra* note 142.

248. Telephone Interview with Sigalit Zohar, Coordinator for Survivors of Trafficking in Humans, Legal Aid Div. (Jan. 30, 2014).

249. AA 22981-02-13 Tosfay (Prisoner) v. The Ministry of Interior (Mar. 6, 2013), Nevo Legal Database (by subscription) (Isr.). This is another example of the leading role Israeli judges have played in safeguarding the human rights of survivors of trafficking. See HACKER & COHEN, *supra* note 12, at 41–42. This role, which, at times, creates tension between the judiciary and the legislative and executive branches, see *infra* note 260, is possible due to the relative independence of the judiciary, as Israeli judges are not democratically elected officials, see Basic Law on the Judiciary, 5744-1984, SH No. 1110 p. 78, § 4 (Isr.).

250. The organization that assisted in the first case was ASSAF. See ASSAF: AID ORGANIZATION FOR REFUGEES AND ASYLUM SEEKERS IN ISRAEL, <http://assaf.org.il/en/>, archived at <http://perma.cc/WAT8-RPYN>.

251. One of the fears is that the people they move in with will exploit these women. See Telephone Interview with Meirav Shmueli, Nat'l Anti-Trafficking Coordinator, Ministry of Just. (Jan. 19, 2014).

decided in mid-2013 to establish a third shelter and to fund a day center in Tel Aviv for a period of six months to provide food and counseling to the women waiting to be placed in the shelter. The day center was established with the assistance of *Mesila*, an immigration aid organization established by the Tel Aviv Municipality.<sup>252</sup>

Staff at the day center soon learned that there were male survivors of trafficking and slavery living in the community,<sup>253</sup> and that, moreover, some of the released female survivors prefer to be served by the day center rather than enter a shelter.<sup>254</sup> As a result, while a third shelter was recently opened to serve an additional eighteen women, the day center still operates within the community, serving both women and men at different times of the day. Moreover, the Ministry of Welfare has just decided that the day center should also provide for the needs of those survivors whose one-year rehabilitation visas at the shelter have expired but cannot return to their country of origin.<sup>255</sup> Finally, because *Mesila* serves the migrant community at large, it is very possible that the services provided at the day center will be offered to other migrants in need of services, even if the police do not identify them as survivors of trafficking or slavery.

Though it is too early to tell whether the state-funded rehabilitation day center will remain open, for how long, and for whom, these very recent developments are remarkable as they succeed in compromising Israel's isolating compliance strategy. The survivors of slavery managed to recruit the assistance of the Ministry of Justice, the Ministry of Welfare, and the Tel Aviv municipality, leading to the establishment of the first community state-funded welfare service for survivors of trafficking and slavery. This happened at the same time as the Israeli government and Parliament decided to toughen the policy against asylum seekers from Africa and to force them to live in a special facility in the south of the country for an unlimited time period,<sup>256</sup> which had attracted much criticism from human rights ac-

252. *Refugees and Migrant Workers—Mesila*, TEL AVIV YAFO MUNICIPALITY, <http://www.tel-aviv.gov.il/eng/residents/community/Pages/MigrantWorkers%E2%80%93Mesila.aspx?tm=1&sm=22&side=66>, archived at <http://perma.cc/9L6U-36BM>.

253. The state Legal Aid Division also assisted eighteen men who were identified as survivors of slavery within the detention center. Since the *Atlas* shelter is now in full capacity, about ten of them are staying with relatives in the community. See Telephone Interview with Sigalit Zohar, *supra* note 248; E-mail from Sigalit Zohar, Coordinator for Survivors of Trafficking in Humans, Legal Aid Division, to the author (Feb. 3, 2014) (on file with author).

254. Among other reasons, it is faster and easier to find employment while free in Tel Aviv than when governed by the shelter's rules in the relatively peripheral city where it is located. Currently, there are discussions among the different state organs involved as to whether the women must be removed to the new shelter. Sigalit Zohar's position is that if the authorities are convinced that the survivors of trafficking or slavery are not abused in the community, they should be allowed to stay outside the shelter if they wish. See Telephone Interview with Sigalit Zohar, *supra* note 248.

255. See Telephone Interview with Meirav Shmueli, *supra* note 251.

256. Prevention of Infiltration Act, Offences and Jurisdiction, Amendment no. 3, and Temporary Order, 5772-2012, SH No. 2332 p. 119 (Isr.); Gilad Natan, *Government Decision No. 3936—Preventing the Illegal Infiltration into Israel* (Knesset Research & Info. Ctr., 2011) (Isr.), available at <http://www.knesset.gov.il/mmm/data/pdf/m02988.pdf>, archived at <http://perma.cc/95N2-YVGZ>.

tivists,<sup>257</sup> scholars,<sup>258</sup> opposition members of Parliament,<sup>259</sup> the Supreme Court,<sup>260</sup> and the asylum seekers themselves, through unprecedented massive demonstrations that received global media coverage.<sup>261</sup> While the Israeli government insists on this strict policy of isolation, asylum seekers from Africa who were severely and extremely abused on their journey have managed to change their reality and generate a counter trend that blurs the borders between the Israeli Jewish white majority and the ultimate “Other”—that is, African Muslims and Christians, albeit on a very limited scale.

These recent developments call for a further refinement of the theories concerning global normmaking that were presented in Part I. These theories tend to ignore the survivors of human rights violations, or treat them as passive subjects. In contrast, the Israeli case study points to the importance of including the survivors in any model that attempts to explain the dy-

257. E.g., *Detained Asylum Seekers*, HOTLINE FOR REFUGEES AND MIGRANTS, <http://hotline.org.il/refugees-and-asylum-seekers/detained-asylum-seekers/>, archived at <http://perma.cc/79R5-UQDM>; Letter from Oded Feller, Attorney, The Ass'n for Civil Rights in Isr., to Dina Zilber, Vice Attorney Gen., and to Daniel Salomon, Legal Adviser, The Population & Migration Authority (Nov. 15, 2013), available at <http://www.acri.org.il/he/wp-content/uploads/2013/11/histanenut2-151113.pdf>, archived at <http://perma.cc/LHV2-DZHN>.

258. For example, about four-hundred scholars signed a petition against the detention center and in favor of the asylum seekers' right to work while in Israel. See *Academics 4 Freedom 4 Refugees*, FACEBOOK, <https://www.facebook.com/photo.php?fbid=1389033911359051&set=pcb.138903419135902&type=1&theater>, archived at <https://perma.cc/S5W2-DRK9>.

259. E.g., DK (Jan. 9, 2012) 188–239 (Isr.).

260. In September 2013, the Israeli Supreme Court ruled that the recently enacted amendment to the Prevention of Infiltration Act, which allows the detention for up to three years of a person who entered Israel illegally, is unconstitutional and thus void since it violates human dignity and is an unlawful deprivation of liberty without justification. See HCJ 7146/12 Adam et al. v. The Knesset et al. (Sep. 16, 2013), Nevo Legal Database (by subscription) (Isr.). Following this decision, the Knesset amended the amendment, limiting the possible detention period to one year. See Prevention of Infiltration Act (Offences and Jurisdiction) (Amendment No. 4, and Temporary Order), 5773–2013, SH 2419 p. 74. However, the revised law allows the transfer of people staying in Israel illegally to a special facility for an unlimited time. *Id.* Though this is an open facility, from which the detainees are allowed to exit during the day, its geographic isolation—the facility that was established, *Holot* (Sands), is in the southern part of Israel, in the Negev desert—the demand that the detainees be present in it three times a day at times set by the authorities, and the prohibition on their employment, see Ilan Lior, *150 African Migrants Told to Report to Negev Detention Center*, HA'ARETZ, Dec. 31, 2014, <http://www.haaretz.com/news/national/1.566328>, archived at <http://perma.cc/UMU3-BQDH>, make it very similar to a closed facility. Several human rights organizations petitioned against this new amendment. See HCJ 8425/13 Gavrisalasi et al., v. The Israeli Government et al. [2014] (Isr.). While the petition was still pending, the government began to execute the law and send asylum seekers to the detention facility. See Lior, *supra*. In September 2014, a majority of an extended panel of judges accepted the petition, and ruled that the detention center operates illegally because it violates the detainees' human dignity. See HCJ 8425/13 Gavrisalasi et al., v. The Israeli Government et al., at 238–39. This decision created a political firestorm, with Knesset members and ministers threatening to find ways to override this ruling by legislation. See, e.g., Marissa Newman, *In Dramatic Ruling, High Court Rejects Israel's Policies on Illegal Migrants*, TIMES OF ISRAEL, <http://www.timesofisrael.com/in-dramatic-ruling-supreme-court-rejects-israels-policies-on-illegal-migrants/>, archived at <http://perma.cc/376G-2M5G>.

261. E.g., Ian Lee, *African Migrants Protest, Push for Asylum in Israel*, CNN (Jan. 5, 2014), <http://edition.cnn.com/2014/01/05/world/meast/israel-african-migrants/>, archived at <http://perma.cc/7CGB-7AAY>.

dynamic evolution of international and transnational human rights law.<sup>262</sup> By using the external human rights discourse, as developed by bodies such as the United Nations and the United States, and its internal manifestations in either their country of origin or in their host country, survivors of human rights violations can alter the balance between the external and internal pressures to their advantage.

## CONCLUSION

In his platform for future socio-legal research on global normmaking, Terence Halliday urges us to address two questions, among many other important issues: first, “[u]nder what conditions are various forms of global leverage more effective on local compliance?”; and, second, “[w]hat are the methods utilized by weaker states in the world system to obtain degrees of freedom from global pressure to converge to global norms?”<sup>263</sup> The Israeli case study presented in this paper addresses these two questions; it demonstrates the effectiveness of a negative and positive incentive regime imposed by a powerful state with transnational normative ambitions over its relatively weak ally and it extracts four compliance strategies used by the weaker, pressured country that allow it to satisfy the superpower’s demands to protect trafficked “aliens” while preserving its ethnic immigration policy. As other countries see the United States as a powerful global normmaker and also share Israel’s anxiety over borders, the Israeli case study is relevant to many other instances of possible tension between human rights norms and immigration. Hence, the findings detailed in this Article demonstrate the need to integrate, rather than separate, the compliance theories detailed in Part I. They show the need to include not only international bodies and local NGOs, but also superpower states and relatively weaker nation states,<sup>264</sup> as significant players in any theoretical model attempting to explain international and transitional normmaking and compliance.

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262. Even Goodman and Jinks, who borrow sociological and psychological microtheories to explain the macrodynamic of states’ compliance with international human rights norms, and who realize that “even ordinary citizens” can influence the national-level legal and policy outcomes, do not grant attention to survivors of human rights violations, including noncitizens, in their theoretical discussions. See GOODMAN & JINKS, *supra* note 60, at 40.

263. Halliday, *supra* note 11, at 274.

264. Indeed, Gallagher and Chuang argue that the officials drafting the TIP Reports fail to recognize the growing capacity of many states to manipulate the compliance mechanism to their own ends. See Gallagher & Chuang, *supra* note 8, at 341. Unlike Belarus, as analyzed by Zaloznaya & Hagan, *see supra* note 49, at 350–53, Israel does not manipulate the United States, but rather shapes strategies that allow, simultaneously, a significant move from the first to the fifth stage in the framework proposed by Risse & Sikkink, *supra* note 62, at 22–35, in relation to “aliens” victimized by severe immigration-related abuse, and the preservation of its alienating aliens immigration policy. Hence, the findings reported here blur the dichotomy between “manipulating” countries, and countries genuinely impacted by global human rights normmaking.

Moreover, the Israeli case study demonstrates the power of the “aliens” themselves in changing reality and mobilizing other players to their advantage. By entering another country and by challenging its legal system, “aliens” can use the human rights discourse to encourage protective behavior by the host country. It is not only superpower pressure from the outside that changes discourse and behavior; the underprivileged survivors themselves can also manage to turn the outside into the inside, and the uninvited stranger into a human subject entitled to rights.

Nevertheless, this study does support the argument that global anti-trafficking regulation is motivated more by the wish to preserve national borders than by concerns for survivors’ human rights. Supporting evidence emerges from Israel’s ability to satisfy U.S. demands concerning the protection of survivors of human trafficking at a relatively low cost to its immigration policy. This also strengthens claims regarding the arbitrariness and injustice of the attempts to separate human trafficking from other immigration-related abuses. Moreover, the findings on the competing definitions of “success” held by the United States, Israel, and the different groups of survivors highlight the importance of distinguishing between “compliance” and “success,” which are often confused in the literature. Furthermore, the stories and voices of trafficked survivors reveal the immense challenges in taking survivor protection seriously by giving due consideration to rehabilitation and reintegration of survivors, which the anti-trafficking literature neglects the most. This challenge is particularly pertinent in a world with outrageous gaps between developing and developed countries. In many cases, it is the very conditions that trigger and support human trafficking<sup>265</sup> that also make its survivors’ long-term rehabilitation and integration in the country of origin impossible. Hence, although the TVPA can be an effective tool in promoting the protection of trafficking survivors’ human rights, as demonstrated by the Israeli case study, it is also, by definition, a limited tool. As long as it operates in a global regime of unequal power relations between nations, and as long as it ignores the need to allocate the relative burdens created by people’s wishes to move from their underprivileged places of origin to more privileged locations, the TVPA will remain vulnerable to strategic compliance by the implementing states. It will thus be only partially successful in addressing survivors’ interests.

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265. Gallagher & Chuang, *supra* note 8, at 317 (“Those who profit from exploiting the labor of others are reaping the benefits of inequalities within and between countries; the age-old human compulsion to move in search of a better life; and, in the case of cross-border trafficking, rapidly diminishing opportunities for safe, legal, and gainful migration.”).