

THE PROTECTION PROJECT

JOURNAL OF HUMAN RIGHTS AND CIVIL SOCIETY



ARTICLES

Combating Trafficking in Women and Children: A Review of International and National Legislation, Coordination Failures, and Perverse Economic Incentives

Randall K. Q. Akee et al.

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ISSUE 2

FALL 2009

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ISSUE 2

FALL 2009

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JOURNAL OF HUMAN RIGHTS AND CIVIL SOCIETY

ISSUE 2

FALL 2009

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Introduction to the Journal

The Protection Project: The Protection Project is a human rights research institute based at The Johns Hopkins University, School of Advanced International Studies (SAIS) in Washington, D.C. The Protection Project focuses on promoting human rights values and the rule of law throughout the world by engaging in academic research and conducting training, exchange, and fellowship programs focusing on issues of women's and children's rights, including trafficking in persons and child labor, human rights education, women's empowerment, state compliance with internationally recognized human rights, and capacity building for civil society in developing and transition countries.

Mission Statement: The Protection Project Journal of Human Rights and Civil Society aims to provide a forum for scholarly analysis of critical contemporary human rights issues within the prism and from the perspective of civil society and practitioners in the non-governmental sector.

As civil society and non-governmental organizations gain momentum and experience in human rights advocacy and begin to influence reform, development and democratization processes, it becomes imperative to examine the interrelationship between developments in the human rights arena and the impact of such developments on the possibilities for the growth or the hindrance of freedom of civil society and non-governmental organizations.

It is also necessary to study how emergent civil society and the non-governmental sector contribute to the movement toward greater respect for and compliance with human rights standards worldwide. As participants and practitioners in this process, civil society representatives and professionals in the non-governmental sector possess tremendous insight into the practical side of the realization of human rights ideals, including both successes and pitfalls.

It is therefore the objective of the journal to probe developments and crucial concerns such as the implementation of and state compliance with international human rights standards, to address poignant themes such as the interrelationship between human rights theory and human rights practice as that transition is realized in local contexts and the roles of civil society and non-governmental organizations as actors in the social and political development of nations.

Target Audience: The journal is aimed at an audience of human rights and civil society practitioners, representatives of governmental, intergovernmental, and non-governmental organizations, as well as students and scholars of human rights and/or civil society.

Contributions: The journal publishes multi-disciplinary submissions that provide analysis and scrutiny of contemporary human rights concerns in the international realm with a strong emphasis on the practical implications of human rights theory within the authors' local, national and regional contexts. The roles, responsibilities, and freedom of civil society and the non-governmental sector in the implementation of international human rights standards are also significant areas of interest for the scope of the journal. The journal focuses primarily on practical rather than theoretical aspects of human rights issues, as well as civil society and non-governmental development. Contributions to the journal derive from a wide range of disciplines, including public policy, political science, sociology, anthropology, international development, gender studies, law, economics and philosophy.

Content of the Journal

Scholarly Articles and Essays: The journal publishes scholarly articles and essays in each issue under this rubric. Contributions are original, unpublished materials.

Interviews: The journal publishes interviews with civil society activists addressing pressing human rights concerns of our time.

Book Reviews: An analytical book review is included in each issue of the journal. Books eligible for review are recent publications covering human rights issues within the context of the non-governmental sector and civil society. They address any topics under the scope of the journal, such as human rights standards as they apply to freedom of association and of civil society and non-governmental organizations, theories behind the impact of civil society and the non-governmental sector on development of human rights standards, monitoring of human rights compliance, advocacy, and the practical aspects of the implementation of human rights standards within local social, legal, and political contexts.

Annotated Bibliographies: Each issue of the journal includes an annotated bibliography on an important issue associated with human rights and civil society topics.

Welcome to the Journal

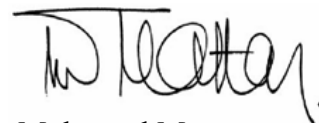
Dear Reader,

Welcome to the Second Edition of The Protection Project Journal of Human Rights and Civil Society. This edition focuses on the subject of trafficking in persons from a multidisciplinary perspective, with scholars exploring such issues as the economics of trafficking and sex markets, prosecutorial tools to combat trafficking in persons, and a case study looking into the effects of legalization of prostitution on sex trafficking. In addition, this edition of the journal addresses a number of related issues, examining migrants' agency in the process of smuggling, and discussing violence against women in an interview with the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences. As always, a book review critiques a scholarly work in the realm of international human rights, this time with a focus on trafficking in persons, and an annotated legal bibliography provides a reference tool for scholars, as well as practitioners—with this edition presenting a comprehensive bibliography of literature covering trafficking in persons during the years of 2005-2009.

In raising issues of common concern to human rights scholars as well as practitioners, and serving as a forum for scholarly and experiential exchange, The Protection Project intends that the journal be a pioneer in uniting human rights academia and human rights civil society, and envisages it as providing a service to all in the international human rights community—be they representatives of governmental or intergovernmental bodies, non-governmental institutions, or the academia.

Enjoy our journal and again, we encourage you, through interaction with us, to make it your own.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Mattar'.

Mohamed Mattar
Executive Director
The Protection Project

Combating Trafficking in Women and Children: A Review of International and National Legislation, Coordination Failures, and Perverse Economic Incentives*

Randall K. Q. Akee*, Arnab K. Basu*, Arjun S. Bedi* & Nancy H. Chau*

Abstract

In this review, we argue that the pattern of trafficking needs to be understood through the impact of legislative forces and human rights policies in place in the host countries of trafficking. Analyzing trafficking patterns solely through the lens of economic, labor market and demographic variables leaves a key question unanswered: how much of the incidence of trafficking into host countries is due to perverse incentives created for traffickers by the provision and enforcement of policies that grant human rights (such as amnesty) to trafficked victims? The reason why we focus on this particular policy is twofold. First, the role of amnesty in creating possible perverse incentives for traffickers is controversial and has not been explored in the literature. While economic and enforcement factors affecting the “market” for trafficked victims for commercial sexual exploitation through incentives for traffickers have received a fair amount of attention, the impact of legislation surrounding anti-trafficking activities in host countries on the incentives for traffickers remain an equally important but unexplored issue. Second, from a normative point of view, the role of amnesty for trafficked victims needs careful evaluation. We argue that while the policy of amnesty does protect the rights of trafficked victims in host countries, it cannot be viewed as a policy that deters traffickers, but as one that may in fact increase the incentive to select countries that offer amnesty as destination countries for victims.

* A version of this paper was presented at The Protection Project’s Third Annual Symposium entitled “The Economics of Trafficking in Persons” on November 10, 2008, in Washington DC. The authors wish to thank the conference participants for their comments.

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Introduction

The term “trafficking” refers to a set of interrelated activities that encompass migration, prostitution, and acts that violate human rights. The term is synonymous with illicit trade in human beings across international borders or within the same country. A subset of such activities is the trafficking of women and children for purposes of forced commercial sexual exploitation – an activity synonymous with slavery and designated by the International Labour Organization (ILO) as one of the “Worst Forms of Child Labor.” Trafficking of children is often discussed together with the trafficking of women, the main reasons being that: (i) available data on trafficking of women are not disaggregated by age; and, (ii) there is considerable debate regarding the age at which a child should be considered an adult. For example, the majority of women coerced into prostitution are between 16 and 24 years of age.¹ However, 16 and 17-year old girls are children according to the 1989 U.N. Convention on the Rights of the Child (CRC) and the ILO Worst Forms of Child Labor Convention (182). The issue of age is further complicated by considerable variations in national laws regarding the age until which an individual is considered a “child.” Ireland protects those under 17 as children, while Australia, Belgium, the Netherlands, New Zealand, Switzerland, and the United Kingdom accord protection to those under 16. The age for protection is 15 in France, Sweden, and Denmark, while it is 14 in Austria and Germany.² The age of consent for sexual matters is 15 in Denmark: thus, the word “child” in the Danish provision on child pornography is only applicable to individuals below the age of 15.

The above variation regarding the legal definition of a child notwithstanding, there is broad consensus regarding activities that fall under the definition of trafficking in women and children. Specifically in the context of child trafficking, according to the ILO, trafficking is said to occur if: (i) a child is misled with false reports or promises, coerced, or otherwise forcibly recruited/handed over to transporters; (ii) a child is lied to about the destination; and (iii) a child is lied to about either the nature of work (i.e., recruited as a dancer but forced into prostitution) or the wages and methods of payment. Trafficking may also take the form of physical or mental abuse, confinement, inadequate or nonexistent health care, poor accommodation, and hazardous work.³ A comprehensive definition of trafficking, the most recent and frequently cited by researchers, is the U.N.

1 JUNE KANE & PANUDDA BOONPALA, INTERNATIONAL PROGRAMME ON THE ELIMINATION OF CHILD LABOUR, UNBEARABLE TO THE HUMAN HEART: CHILD TRAFFICKING AND ACTION TO ELIMINATE IT (International Labour Organization, Geneva, 2002) [hereinafter ILO 2002].

2 Michael J. Dennis, *Newly Adopted Protocols to the Convention on the Rights of the Child*, 94 *American Journal of International Law* 789, at 794 (2000) [hereinafter Dennis 2000] [citing VITIT MUNTARBHORN, EXTRATERRITORIAL CRIMINAL LAWS AGAINST CHILD SEXUAL EXPLOITATION at 23 (UNICEF 1998)].

3 ILO 2002, *supra* note 1.

Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of 2000. The Palermo Protocol encompasses three primary features associated with trafficking: (i) activities that constitute human trafficking (recruitment, transportation, harboring, receipt of persons), (ii) means being used (force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability), and (iii) purpose, which is exploitation (prostitution of others, sexual exploitation, forced labor or services, slavery or practices similar to slavery).

The Palermo Protocol is one of the more recent attempts to define the term “trafficking” and outline the activities that surround it, although the act of trafficking has been couched within earlier definitions of “forced labor” dating back to Convention No. 29 of the ILO in 1930. ILO Convention No. 29 defines forced or compulsory labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁴ Subsequently, ILO Convention No. 105, adopted in 1957, specifies that forced labor cannot be used for the purpose of economic development or as a means of political education, discrimination, labor discipline or punishment for having participated in strikes.⁵ One of the forms of forced labor under the ILO definition is ‘forced commercial and sexual exploitation,’ which includes women, men and children who have been forced by private agents into prostitution or into other forms of commercial sexual activities.⁶

Estimates for the period of 1995-2004 put the number of cases of forced labor and the number of trafficked victims worldwide at 12.3 million.⁷ Of these, 2.5 million are forced to work by the State (forced labor camps, child soldiers), 1.4 million in commercial sexual exploitation, and 7.8 million in other forms of economic exploitation.⁸ In addition, more than 500,000 victims could not be assigned to either of the forced labor categories above. Specifically, in the context of forced commercial sexual exploitation, Belser provides a regional breakdown

4 International Labour Organization (ILO), 14th Sess., Convention (No. 29) Concerning Forced Labour, *opened for signature June 28, 1930 (entered into force May 1, 1932) at Article 2(1). Convention No. 29 allows exemptions for military service and prisoners convicted in a court of law and working under the control of a public authority, at Article 2(1) (a) and (c).*

5 ILO, 40th Sess., Convention (No. 105) Concerning the Abolition of Forced Labour, *opened for signature June 25, 1957 (entered into force Jan. 17, 1959) at Article 1. See also, Patrick Belser, Forced Labour and Human Trafficking: Estimating the Profits*, at 2 (ILO, DECLARATION/WP/42/2005, March 2005), available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1016&context=forcedlabor> [hereinafter Belser 2005].

6 See, INTERNATIONAL LABOUR ORGANIZATION, A GLOBAL ALLIANCE AGAINST FORCED LABOUR, (ILO Report, 2005). The other two forms of forced labor as defined by the ILO are: (i) forced labor imposed by the State or by armed forces/rebels which includes compulsory participation in public works and forced prison labor and (ii) forced labor for economic exploitation, other than in the sex industry, by private agents and enterprises.

7 Belser 2005, *supra* note 5 at 4. *The ILO estimates are calculated from reports by International Organizations, non-governmental organizations (NGOs), governments, police and other sources.*

8 *Id.*

of the number of victims: 200,000 in industrialized economies, 98,000 in transition economies, 902,000 in the Asia and the Pacific, 115,000 in Latin America and the Caribbean, 50,000 in Sub-Saharan Africa and 25,000 in the Middle-East and North Africa.⁹

Moreover, a large share of the victims in forced commercial sexual exploitation particularly in the industrialized economies, and in Asia and the Pacific, are also victims of international and internal trafficking. For instance, 63% of victims in forced commercial sexual exploitation in the industrialized economies are trafficking related while the corresponding percentage for Asia and the Pacific stands at 54%, transition economies at 45%, Latin America and the Caribbean at 12%, Sub-Saharan Africa at 6% and the Middle East and North Africa at 10%. Perhaps more striking are the profits from forced commercial sexual exploitation as a result of trafficking. Belser finds that global profits made from trafficking into forced commercial sexual exploitation over the period 1995-2004 amount to \$27.8 billion; \$13.3 billion of which is in the industrialized economies, \$9.5 billion in Asia, \$3.2 billion in the transition economies, \$1.0 billion in Middle East and North Africa, \$0.6 billion in Latin America and \$0.1 billion in Sub-Saharan Africa.¹⁰

The profitability from commercial sexual exploitation engendered through trafficking begs two important questions. First, what are the push (supply side) and pull (demand side) factors that allow for the persistence of the trade of human beings across national borders? Apart from the customary socio-economic and political variables that impact the market for transnational trafficked victims such as poverty, lack of educational opportunities, lure of higher wages in developed countries, a key question remains unanswered: what explains the persistence of only some of the poorer countries as primary source countries from where trafficked victims hail, and what explains the persistence of only some of the richer countries as destinations for these victims? Second, it is worth emphasizing that a distinguishing feature of international trafficking is that a middleman is involved. Such a middleman may be an individual “recruiter” with an aim to serve the receiving end at the lowest cost, a smuggler of illegal migrants specializing in evading border controls, or a criminal network operating on both the supply and the final demand sides.¹¹ Thus, in addition to the aforementioned push and pull factors, it is important to understand how these different types of traffickers operate, and more importantly, how legislation granting human rights to trafficked individuals in the host and source countries of trafficking affects the incentives of

9 Belser 2005, *supra* note 5 at 5.

10 All amounts are cited in United States Dollars (USD).

11 See generally, U.S. DEPARTMENT OF STATE, *TRAFFICKING IN PERSONS REPORT 2003*, (OFFICE OF THE UNDERSECRETARY FOR GLOBAL AFFAIRS, UNITED STATES DEPARTMENT OF STATE PUBLICATION NO. 11057) [hereinafter TIP REPORT 2003].

traffickers that leads to a persistence of trafficking in women and children across international borders.

Accordingly, Part I of this article will review evidence collected by Basu and Chau in countries distinguished as host, source and transit countries of trafficking victims, and which underscores the economic and demographic variables that explain the location of countries in these three categories.¹² Part II will take a closer look at the legislative variables surrounding trafficking activities in these three types of countries. Particular attention is paid to the role of amnesty¹³ in host countries in creating possible perverse incentives for traffickers. This is a controversial issue and while economic and enforcement factors affecting the “market” for trafficked victims for commercial sexual exploitation through incentives for traffickers have received a fair amount of attention, the role of legislation in host countries is an equally important but relatively unexplored one. From a normative point of view, the role of amnesty for trafficked victims needs careful evaluation—something that is explored in Part III. While the policy of amnesty does protect the rights of trafficked victims in host countries, it cannot be viewed as a policy that deters traffickers, and may in fact increase their incentive to select countries that offer amnesty as destination countries for victims.

I. Data and Patterns of Trafficking

Actual data on the incidence of international trafficking is sparse. The primary reason for this is that victims and survivors of trafficking for sexual exploitation, as well as traffickers and illegal migrants are part of a “hidden population” in any country.¹⁴ In addition, lax enforcement, corruption and denial or under-reporting of the extent of the problem by officials and governments world-wide, makes it impossible to establish a representative sample for analytical purposes. As a consequence, qualitative research on the topic is based primarily on piece-meal information such as “70% and 80% of trafficked women into the Netherlands and Germany are from Central and Eastern European countries”¹⁵ or the “majority of trafficked women into Thailand [are] from Myanmar and Cambodia.”¹⁶ Only two countries/official bureaus – the German Federal Office of Criminal Investigation

12 Arnab K. Basu & Nancy H. Chau, *An Exploration of the Worst Forms of Child Labor: Is Redemption a Viable Option?* in *BUYING FREEDOM: THE ETHICS AND ECONOMICS OF SLAVE REDEMPTION*, (K. Anthony Appiah & Martin Brunz ed. Princeton University Press, 2007) at 37-76 [hereinafter Basu & Chau 2007].

13 Generally speaking, amnesty is the concept whereby offense are pardoned.

14 See generally, Guri Tyldum & Anette Brunovskis, *Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking*, 43 *International Migration Journal*, 17 (2005).

15 See, John Salt, *Trafficking and Human Smuggling: A European Perspective*, 43 *International Migration Journal*, 32 (2005) [hereinafter Salt 2005] and Donna Hughes, *The ‘Natasha’ Trade: The Transnational Shadow Market of Trafficking in Women* 53 (2) *Journal of International Affairs* 625 (2005).

16 ILO 2002, *supra* note 1.

(Bundeskriminalamt, BKA) and the Dutch National Rapporteur on Trafficking in Human Beings in the Netherlands have national databases on trafficked women forced into prostitution in these countries.

Among international organizations and academic institutions, it is the International Organization for Migration (IOM) that has collected data since 1999 from persons assisted under IOM's counter-trafficking programs. The data in the Counter-Trafficking Module Database (CTM) of the IOM comes primarily from the Balkans, a region that also has the Regional Clearing Point (RCP) database maintained by the Stability Pact Task Force on Trafficking in Human Beings since 2002.¹⁷ Recently, a unique dataset was collected by the ILO's Special Action Programme to Combat Forced Labour (SAP-FL). Based on questionnaires from 160 returned migrants in four origin countries (Albania, Romania, Moldova and Ukraine), interviews with informants, focus group discussions and research in seven destination countries (France, Germany, Hungary, Japan, Russia, Turkey and United Kingdom), the SAP-FL database contains 298 entries of forced labor of which 186 are trafficked victims. Two findings from the SAP-FL database warrant mention: (i) 43% of trafficked victims found jobs through an intermediary while 11.9% found a job via agencies and (ii) 32.4% of the trafficked victims were engaged in sex work while 12.8% were engaged in entertainment/dancing/bartending.¹⁸ In addition, a recent study by Mahmoud and Trebesch analyzes IOM data from 5,513 households in Belarus, Bulgaria, Moldova, Romania and Ukraine and shows that members of migrant families in migration areas and with larger migrant networks are much more likely to become victims of trafficking.¹⁹ Further, illegal migration increases the risk of being trafficked, while information campaigns have a negative impact on the likelihood of being trafficked.

Nevertheless, by relying primarily on samples generated either through household surveys in source countries or through interviews with survivors identified by law enforcement agencies and NGOs, two potential problems arise: (i) it is impossible to ascertain the total number of trafficked victims from survivor samples, and hence the total number of trafficked victims in a year or even over a time period is unknown; and (ii) studies based on survivor interviews lead to an unbalanced emphasis on the supply-side of the problem of trafficking and limit analysis of the demand-side factors (economic and legislative) that create a market for trafficked individuals in the destination countries. As a result, the operational

17 Frank Laczko, *Data and Research on Human Trafficking*, 43 International Migration Journal 5 (2005).

18 Beate Andrees & Mariska N. J. van der Linden, *Designing Trafficking Research*, 43 International Migration Journal 55 (2005).

19 See generally, Toman Omar Mahmoud & Cristophe Trebesch, *The Economic Drivers of Human Trafficking: Micro-Evidence from Five Eastern European Countries*, (Kiel Institute for the World Economy, Working Paper No. 1480, Feb. 2009) available at <http://www.ifw-members.ifw-kiel.de/publications/the-economic-drivers-of-human-trafficking-micro-evidence-from-five-eastern-european-countries/kap1480.pdf>.

network of traffickers, the specific features of the sectors in which trafficked victims are forced to work, the economic and demographic characteristics of host and source countries of trafficking and finally, international and national legislation in host and source countries that affect the incentives of traffickers have yet to be thoroughly analyzed.²⁰

In terms of a global picture of the incidence of trafficking, there are three noteworthy sources. A global database for trafficking trends is available from the United Nations Office on Drugs and Crime (UNODC), which contains data on victims, traffickers and trafficking routes collected mostly from the industrialized countries. Second, the U.S. Department of State Trafficking in Persons (TIP) country reports provide a qualitative sample of host and source countries of trafficking based on reports published in the host countries, and only for those host countries where at least 100 cases of trafficking were discovered in the past year.²¹ Third, The Protection Project at The Johns Hopkins University School of Advanced International Studies details trafficking routes as well as laws and legislation surrounding trafficking and prostitution in every country.²²

In order to unravel the pattern of trafficking in women and children between countries, we first present data from Basu and Chau²³ which looked at the country-by-country reports in the U.S. Department of State TIP Report 2003²⁴ and The Protection Project Report 2002.²⁵ Of primary interest is the classification of countries into four mutually exclusive groups: host countries, source countries, trafficking hubs (both a host and a source country), and countries with no reported incidence of trafficking. Of the 187 countries in our dataset, 32 countries are

20 An exception to this statement, where econometric analysis of legislations in source and host countries of trafficking show that the likelihood of a host-source country match increases with the provision of amnesty in a host country and a ban on prostitution in a source country, can be found in Randall Akee, Arnab Basu, Arjun Bedi & Nancy Chau, *Determinants of Trafficking in Women and Children: Theory, Empirics and Policy Implications*, Third IZA/World Bank Conference on Employment and Development, Participant Paper, 2008, http://www.iza.org/conference_files/worldb2008/basu_a3581.pdf.

21 Copies of the annual U.S. Department of State, Trafficking in Persons Reports can be found at <http://www.state.gov/g/tip/rls/tiprpt/>.

22 See THE PROTECTION PROJECT HUMAN RIGHTS REPORT ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN: A COUNTRY-BY-COUNTRY REPORT ON A CONTEMPORARY FORM OF SLAVERY (THE PROTECTION PROJECT AT THE JOHNS HOPKINS UNIVERSITY SCHOOL OF ADVANCED INTERNATIONAL STUDIES, WASHINGTON DC, 2ND ED. 2002) [HEREINAFTER TPP TRAFFICKING REPORT 2002]. THE PROTECTION PROJECT UPDATED ITS TRAFFICKING REPORT IN 2005 AND IS DUE TO PUBLISH AGAIN IN 2009.

23 Basu & Chau 2007, *supra* note 12.

24 TIP Report 2003, *supra* note 11.

25 TPP Trafficking Report 2002, *supra* note 22. As stated in the Introduction, the problems associated with segregating data on women from that on children due to the various national interpretations of legal age entails analysis of the joint incidence of trafficking in women and children only.

identified as source,²⁶ 45 as hosts,²⁷ 66 as hubs (or transit countries that act as both source and host),²⁸ 44 countries with no reported incidence.²⁹

The pattern of trafficking and the types of work that trafficked individuals are engaged in vary across countries and continents. For instance, in Africa, the most common source countries of trafficking are Sierra Leone, Malawi, Mozambique, Nigeria, and Somalia, from which children and women are trafficked to South Africa, Gabon, Gambia, and Western European countries primarily to work in the sex industry. There is also a steady supply of trafficked children from Mali to Côte d'Ivoire who end up working in cocoa plantations.³⁰ In Asia, the most common source countries of trafficking seem to be Bangladesh, Nepal, Vietnam, Bhutan, Laos, and Cambodia, while the host countries are India, Thailand, Sri Lanka, Saudi Arabia, United Arab Emirates (UAE), and Australia. Trafficked children and women are engaged in a variety of work. The primary activity remains prostitution, but an increasing number also work as domestic helpers in host countries, while young boys are smuggled from Bangladesh and India to work as camel jockeys in Saudi Arabia and the UAE.³¹

26 Source countries are determined to include: Algeria, Angola, Armenia, Azerbaijan, Belarus, Bhutan, Bolivia, Cape Verde, Colombia, Cuba, Ecuador, Estonia, Ethiopia, Georgia, Guyana, Honduras, Iraq, Kenya, Latvia, Madagascar, Malawi, Mauritania, Moldova, Morocco, Mozambique, Nepal, Nicaragua, Sierra Leone, Slovenia, Somalia, Tajikistan and Zambia (Basu & Chau 2007, *supra* note 12).

27 Host countries are determined to include: Antigua, Australia, Austria, Belgium, Belize, Bosnia & Herzegovina, Botswana, Canada, Central African Republic, Chile, Cote d'Ivoire, Denmark, Finland, France, Gabon, Gambia, Germany, Greece, Hong Kong (SAR), Israel, Italy, Japan, Kuwait, Lebanon, Libya, Macau (SAR), Mauritius, Netherlands, Norway, Portugal, Qatar, Rwanda, Saudi Arabia, Singapore, Spain, Suriname, Swaziland, Sweden, Switzerland, Syria, United Arab Emirates, United Kingdom, United States, Yemen and Yugoslavia (Basu & Chau 2007, *supra* note 12).

28 Hub countries are determined to include: Afghanistan, Albania, Argentina, Bahrain, Bangladesh, Benin, Brazil, Brunei, Bulgaria, Burkina Faso, Cambodia, Cameroon, Chad, China, Congo Dem. Rep., Costa Rica, Cyprus, Czech Republic, Dominican Republic, El Salvador, Equatorial Guinea, Ghana, Guatemala, Haiti, Hungary, India, Indonesia, Iran, Kazakhstan, Kosovo, Kyrgyzstan, Laos, Liberia, Lithuania, Malaysia, Mali, Mexico, Mongolia, Myanmar, Niger, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Romania, Russian Federation, Senegal, Slovakia, South Africa, South Korea, Sri Lanka, Sudan, Taiwan, Tanzania, TFYR Macedonia, Thailand, Togo, Turkey, Uganda, Ukraine, Uzbekistan, Venezuela, Vietnam and Zimbabwe (Basu & Chau 2007, *supra* note 12).

29 Countries with no reported incidence of trafficking are: Andorra, Bahamas, Barbados, Burundi, Comoros, Croatia, Djibouti, Egypt, Eritrea, Fiji, Iceland, Jamaica, Lesotho, Liechtenstein, Luxembourg, Maldives, Malta, Marshall Islands, Micronesia, Monaco, Namibia, Nauru, New Zealand, Niue, Oman, Palau, Palestine, Papua New Guinea, Paraguay, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Seychelles, Solomon Islands, Tonga, Trinidad and Tobago, Tunisia, Turkmenistan, Tuvalu, Uruguay and Vanatu (Basu & Chau 2007, *supra* note 12).

30 See UNICEF, *TRAFFICKING IN HUMAN BEINGS ESPECIALLY WOMEN AND CHILDREN IN AFRICA*, (INNOCENTI RESEARCH CENTER, UNICEF, FLORENCE, 2005) AVAILABLE AT [HTTP://WWW.UNICEF-IRC.ORG/PUBLICATIONS/PDF/TRAFFICKING-GB2ED-2005.PDF](http://www.unicef-irc.org/publications/pdf/trafficking-gb2ed-2005.pdf). SEE ALSO, ADERANTI ADEPOJU, *REVIEW OF RESEARCH ON HUMAN TRAFFICKING IN SUB-SAHARAN AFRICA* 43 INTERNATIONAL MIGRATION JOURNAL 75 (2005).

31 ILO 2002, *supra* note 1.

In Latin America and the Caribbean, the root of trafficking lies in poverty, political instability and gender attitudes leading to social and income inequalities. Furthermore, there is a lack of anti-trafficking legislation and enforcement of existing laws against pimps and facilitators is non-existent.³² The source countries of trafficking are Bolivia, Colombia, Dominican Republic, Ecuador, Guatemala, Honduras and Nicaragua, while destination countries are Argentina, Mexico, Belize, Costa Rica and Panama. El Salvador is a hub – a source, transit and destination country for trafficked victims. Typically, source countries in this region are characterized by low GDP per-capita, relatively higher youth illiteracy and lower female primary school enrollment.³³ Similarly, trafficked women and children from the former republics of the Soviet Union (Estonia, Georgia, Ukraine, Uzbekistan, Kazakhstan, and Kyrgyzstan) are usually forced into prostitution in Western European countries (especially Germany, Italy, and Greece).

The determinants of trafficking can be broken up into push (supply-side) and pull (demand-side) factors. Some of the supply-side factors that give rise to trafficking and prostitution are the same that lead to the emergence and persistence of child labor, that is, poverty and lack of educational opportunities. In addition, armed conflict in some African countries such as Sierra Leone and Sudan gives rise to social fragmentation that makes it easier for children to be forcibly removed and trafficked by various factions. On the demand side, the largest demand for child trafficking and prostitution may be linked to the growth in income in both developed and developing countries. For developed countries, two factors are frequently alleged to be in play: (i) the rise of tourism from developed to developing countries and the subsequent rise in the demand for “sex tourism” as developed countries increasingly strengthen laws to protect minors and increase enforcement related to prostitution; and (ii) economic growth in developed countries, low fertility, and the subsequent increase in demand for cheap migrant labor. The latter effect is also evident in some developing countries that have witnessed relative prosperity over the last decade, and where the native population has gradually moved away from low-skilled, low-wage employment sectors. Consequently, legal and illegal migrants are now filling employment in these low-wage sectors. As an example, an increased number of children have migrated and/or have been trafficked into Thailand from Myanmar, Laos, and Cambodia to work in exploitative jobs previously done by Thai children.³⁴

32 See Laura Langberg, *A Review of Recent OAS Research on Human Trafficking in the Latin American and Caribbean Region* 43 *International Migration Journal* 129 (2005) [hereinafter Langberg 2005].

33 *Id.*

34 ILO 2002, *supra* note 1.

Indeed, evidence suggests that there are links between sending and receiving countries of trafficked victims. These links are influenced by a number of factors: (i) traffickers' use of local knowledge about key locations or weaknesses in border and migration control; (ii) presence and tolerance of an extensive sex industry in receiving countries; (iii) historical/colonial links between countries and the existence of a large immigrant population in the receiving country.³⁵ Recent empirical work by Basu and Chau³⁶ underscores the differences in labor force composition and demographic characteristics of source, hub (transit), and host countries of trafficking victims. For instance, a typical worker in a source country for international trafficking or a trafficking hub is more likely to be employed in agriculture as compared to a worker in a host country. Source countries also exhibit a higher dependency ratio (ratio of children ages 0-14 to total population of a country). There is likewise a correspondingly higher incidence of child labor in source countries and trafficking hubs, with shares of economically active children (ages 10-14) at 13.7% in source countries and 12.9% in trafficking hubs, as compared to around 3.8% in host countries. Employment of adults, in contrast, exhibits the opposite pattern, with adult unemployment rates for both female and male nearly twice as high in source countries and trafficking hubs, as compared to host countries of trafficking. Meanwhile, dependence on income through workers' remittance from employment or other income sources abroad as a percentage of gross national product is higher in source countries and trafficking hubs (2.6%) as compared to host countries of trafficking (1.6%).

The empirical patterns described above are similar to the factors highlighted by Bales, who used multiple regression analysis to examine patterns of trafficking.³⁷ Bales found that for source countries the rank order of the factors (in terms of the importance of their effect) that affect the supply side of trafficking was higher government corruption, higher infant mortality rate (indication of population pressure), higher proportion of the population below age 14, lower food production index (an indication of poverty), higher population density and higher prevalence of conflict/social unrest. For host countries the rank order was less conclusive – more permeable borders (proxied by corruption), higher population over the age of 60, higher food production, higher energy consumption and lower infant mortality (the last three are indicators of the economic well-being of a host country). In addition, Ruggiero identifies sectors within host countries that most profit from trafficking to be the service sectors (restaurants, factories and farms), legitimate

35 See generally, Liz Kelly & Linda Regan, *Stopping Traffic: Exploring the Extent of, and Responses to, Trafficking in Women for Sexual Exploitation in the UK*, (UK Home Office, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, London 2000) available at <http://www.homeoffice.gov.uk/rds/prgpdfs/fprs125.pdf>.

36 Basu & Chau 2007, *supra* note 12.

37 Kevin Bales "What Predicts Global Trafficking?" paper presented at the International Conference on New Frontiers of Crime: Trafficking in Human Beings and New Forms of Slavery, Verona, 22-23 October 1999.

domestic service industries (households that employ maids), building, construction and textile industries, and the illegal sex industry.³⁸

An interesting result pertains to how global links for source countries impact the push and pull factors of the trafficking market. Basu and Chau find that the average host country's dependence on trade (measured by the trade share of GDP) is in fact quite similar to that of the average source country's dependence on trade.³⁹ Of particular interest is the notion that trafficking of women and children is correlated with tourism. However, Basu and Chau observe no statistically significant difference between international tourism expenditure, either as a fraction of total exports or gross national product, between source and host countries of trafficking.⁴⁰ More precisely, the notion that countries such as Thailand which rely heavily on tourist revenues (and which might include revenues from alleged sex tourism) are also host countries of trafficked women and children for prostitution related activities is rejected by empirical tests. Indeed, international tourism receipts (whether as a fraction of export revenues or of gross national product) are on average smaller in countries that host trafficked victims in our sample.

II. Conventions, Legislation and Enforcement

The pattern of trafficking explored in the last section puts international trafficking squarely in the context of the economic push and pull factors enumerated above. However, focusing on economic factors alone does not allow one to distinguish the legislative forces at play in the host and source countries that govern the incentives of traffickers. We start with an overview of some of the related existing international and national legislation to combat trafficking and forced labor and then look at the distribution of host and source countries in terms of their ratification of international laws, specific legislation surrounding prostitution and related activities in these countries and finally, law enforcement variables in host and source countries of trafficking.

In addition to ILO Conventions No. 29 and No. 105 and the U.N. Palermo Protocol, a number of countries have ratified and adopted a range of international laws, particularly ILO Convention 138 concerning the Minimum Age for Admission to Employment (1973),⁴¹ and the ILO Convention 182 on the Elimination of the

38 V. Ruggiero, *Criminals and Service Providers: Cross-National Dirty Economies*, 28 Crime, Law and Social Change 27 (1997).

39 Basu & Chau 2007, *supra* note 12.

40 *Id.*

41 ILO, 58th Sess., Convention (No. 138) Concerning Minimum Age for Admission to Employment, *opened for signature June 26, 1973 (entered into force June 19, 1976)*.

Worst Forms of Child Labour (1999).⁴² In addition to these ILO conventions, the United Nations specifically targets trafficking through its International Agreement for the Suppression of White Slave Traffic (1904)⁴³ and the United Nations Supplementary Convention on the Abolition of Slavery (1956) and upholds children's rights through the U.N. Convention on the Rights of the Child (1989).⁴⁴ While laws regarding minimum age and the rights of the child do not directly fall under the purview of anti-trafficking laws, anti-child labor legislation (or the lack thereof) can be expected to have a significant impact on child trafficking since two key demographic variables—a high dependency ratio and a high incidence of child labor—are synonymous with the source countries of trafficking. However, unlike minimum age legislation, the ILO Convention on the Worst Forms of Child Labour (No. 182) calls for the immediate suppression of extreme forms of child labor including: (a) all forms of slavery or practices similar to slavery, sale, trafficking of children, forced or compulsory labor including debt bondage and serfdom; (b) the use, engagement or offering of a child for the purposes of prostitution, production of pornography or pornographic performances, production of or trafficking in drugs or other illegal activities; and (c) the use or engagement of children in any type of work, which by its nature or the circumstances in which it is carried out, is likely to jeopardize their health, safety, or morals.⁴⁵

While legislation surrounding child labor might play an important role for source countries of trafficking, national legislation, particularly laws that grant amnesty to trafficked victims in host countries of trafficking, may play an important role in tilting the incentive of traffickers to target these countries as potential destinations. In order to understand the role amnesty plays in the selection of a country as a destination, we take a look first at the prevailing anti-trafficking laws in the United States and the European Union. The most significant national legislation on anti-trafficking in the U.S., the Trafficking Victims Protection Act of 2000 (TVPA),⁴⁶ defines severe forms of trafficking in persons as:

42 ILO, 87th Sess., Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, *opened for signature June 17, 1999 (entered into force Nov. 19, 2000) [hereinafter ILO Convention No. 182]*.

43 International Agreement for the Suppression of the "White Slave Traffic," Paris, May 18, 1904, League of Nations. *See also, Dennis 2000 supra note 2 for a comprehensive treatment of U.N. and other international legislation regarding child labor.*

44 United Nations Convention on the Rights of the Child, U.N. Doc. A/Res/44/25, *opened for signature Nov. 20, 1989 (entered into force Sept. 2, 1990)*.

45 ILO Convention No. 182 *supra* note 42, at article 3. *See also, Janelle Diller & David M. Levy, Child Labor, Trade and Investment: Toward a Harmonization of International Law*, 91 American Journal of International Law 663 for an excellent survey of international conventions and laws governing child labor.

46 Trafficking Victims Protection Act, Pub. L. No. 106–386, 114 Stat. 1464 (2000) [hereinafter TVPA 2000].

(a) sex trafficking in which a commercial sex act is induced by force, fraud, and coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(b) the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.⁴⁷

Further, in the U.S., while persons smuggled into the country are usually deported, trafficked victims are accorded protection.⁴⁸ During the period 2000-2003 over 400 adult victims received certification for benefits eligibility⁴⁹ including medical care, food stamps, housing and cash assistance, and immigration relief.⁵⁰

A number of initiatives have also been undertaken by European Union countries to combat trafficking in humans. The Council of Europe's Convention on Action against Trafficking in Human Beings of 2005⁵¹ is the most recent initiative at the regional level. Article 14 of the Convention allows for a residence permit for trafficked victims and states that,

Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both: (a) the competent authority considers that their stay is necessary owing to their personal situation; (b) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

The first countries to ratify the Convention were Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Moldova, Romania and Slovakia. It has since been ratified by a further 14 countries as of May 2009.⁵² The Convention has also

47 Id. §103 (8). The TVPA has been reauthorized three times, in 2003, 2005 and 2008.

48 Langberg 2005, *supra* note 32.

49 See, Elzbieta M. Gozdziaik & Elizabeth A. Collett, Research on Human Trafficking in North America: A Review of the Literature, 43 (1-2) International Migration Journal 99 (2005) [hereinafter Gozdziaik & Collett 2005]. Child victims do not require certification to receive benefits, TVPA 2000 §107.

50 *Id.* Furthermore, the United States Department of State in 2004 reviewed efforts made by 140 governments to combat trafficking with increased funding for anti-trafficking programs. In addition, 2003 data suggests that the United States supported 190 anti-trafficking programs in 92 countries with US \$72 million, an increase from 118 programs in 55 countries in 2001.

51 Council of Europe Convention on Action against Trafficking in Human Beings, CoE Treaty Series - No. 197, (2005).

52 Countries that ratified in 2008 and 2009 include: Armenia, Belgium, Bosnia and Herzegovina, France, Latvia, Luxembourg, Malta, Montenegro, Norway, Poland, Portugal, Serbia, Spain and the United Kingdom [As of May 15, 2009].

been signed, but not yet ratified by 17 other member States⁵³ and six member States have not yet signed the Convention.⁵⁴

The Convention on Action against Trafficking in Human Beings of 2005 aside, individual countries within the EU have their own anti-trafficking and smuggling laws. One particular law entails the granting of amnesty to trafficking victims such as in Germany, Italy and the Netherlands. Variations in the coding of the law aside, the salient features of amnesty involve: (i) trafficked persons are given access to necessary medical assistance; (ii) a minimum recovery and reflection period of at least three months is offered to all trafficked persons, and the person's presence in the country is regularized and recognized during this time; (iii) minimum six months-renewable and permanent residence permits are issued to trafficked persons on the basis of the needs and risks of their personal situation and/or to ensure their presence during proceedings (against the traffickers and/or for compensation), and family reunification is available; and (iv) trafficked persons are not detained, charged, or prosecuted for illegal entry or residence and activities which are a direct consequence of their situation as trafficked persons.⁵⁵

Turning to the adoption of legislation related to trafficking, Basu and Chau⁵⁶ looked at the distribution of anti-trafficking conventions and legislation across source, host and hub countries of trafficking. Amongst international conventions, Table 1 reports the pattern of ratification of the ILO conventions on the Abolition of Forced Labour 105 and the Worst Forms of Child Labour 182, along with three other United Nations Protocols: (i) the Optional Protocol to the Convention on the Rights of the Child (OPSC) which calls for an end to the sale of children for the purposes of prostitution and pornography, (ii) the Protocol to Prevent, Suppress and Punish Trafficking in Persons (PPSPT), and (iii) the Migrant Workers' Convention (MWC) that calls for the protection of the rights of migrant workers and members of their families. The patterns of the ratification of these conventions differ widely (Table 1).⁵⁷ These patterns range from almost universal commitment to abolish forced labor, to the relative popularity amongst host countries of trafficking to the

53 Countries that have signed but not ratified include: Andorra, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Netherlands, San Marino, Slovenia, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey and the Ukraine [*As of May 15, 2009*].

54 Member states that have not yet signed include: Azerbaijan, Czech Republic, Estonia, Liechtenstein, Monaco, and the Russian Federation [*As of May 15, 2009*].

55 As a concrete example, Italy's Law 228/2003 – "Measures against Trafficking in Persons" drafted by the Ministry of Equal Opportunities grants residency status for the victims of trafficking by granting a special visa to victims of exploitation for reasons of prostitution and other crimes related to prostitution. See Marina Elefante, *Slave Women: The Italian Legal Response to the International Trafficking in Women*, 1 The Protection Project Journal of Human Rights and Civil Society 1 (2007) at 1.

56 Basu & Chau 2007, *supra* note 12.

57 These legislative and law enforcement variables are taken from TPP Trafficking Report 2002, *supra* note 22; the latest available years of the United Nations Interregional Crime and Justice Research Institute, *International Crime Victim Survey*, (2004) available at <http://www.unicri.it/icvs/>; and the United Nations *The Seventh United Nations Survey of Crime Trends and Operations of Criminal Justice Systems* (Crime Prevention and Criminal Justice Division, United Nations Office 2004).

commitment to eliminate the worst forms of child labor (which includes the sale of children and international trafficking). By contrast, ratification of the Migrant Workers' Convention is more prevalent among source countries of international trafficking.

In terms of national statutes with specific reference to trafficking and prostitution, a high percentage of host countries have enacted laws to protect the rights of trafficking victims. Around 22% of host countries grant legal status to trafficking victims, whereas no source countries do so. With respect to legal restrictions on prostitution and other related activities, laws banning prostitution are most common amongst trafficking hubs, followed by host and source countries. Meanwhile, laws banning activities surrounding and promoting prostitution, such as pimping, pandering, and brothels, are more common in host countries. With the exception of the Migrant Workers' Convention, which covers voluntary migrants as well, these observations would seem to indicate that a larger average share of host countries enact legislation answering to the international call to end trafficking and to protect trafficking victims.⁵⁸

Table 1: International and National Legislation

Ratification of International Conventions	Host	Hub	Source	All
ILO Convention 105	88.1%	82.5%	89.7%	84.3%
ILO Convention 182	61.9%	54.0%	37.9%	53.0%
PPSPT	47.6%	50.8%	37.9%	47.0%
OPSC	50.0%	33.3%	34.5%	39.8%
MWC	4.8%	14.3%	20.7%	13.3%
National Legislations	Host	Hub	Source	All
Grant Legal Status to Trafficked Victims	22.2%	6.2%	0.0%	7.6%
Prohibit Prostitution	35.6%	41.5%	34.4%	38.3%
Prohibit Pimping	86.7%	75.4%	75.0%	79.2%
Prohibit Brothels	55.6%	41.5%	50.0%	47.0%

Source: Basu & Chau (2007)⁵⁹

⁵⁸ It is important to note that why and when countries adopt international conventions is an area of inquiry that is still in its infancy. Chau & Kanbur, show, with specific reference to the four core labor standards of the ILO, that the ratification pattern is highly convention-specific. What is important in our context is that whereas countries with higher income per capita (the host countries) appear to be more likely to participate in international conventions and domestic legislation protective of victims' rights, the same is not true for many other core labor standard conventions. In fact, the stage of development of an economy is not always a good predictor of ratification. See, Nancy H. Chau & Ravi Kanbur, *The Adoption of International Labor Standards: Who, When and Why*, Brookings Trade Forum 2001, (Brookings Institution, Washington, DC, 2002) available at http://muse.jhu.edu/journals/brookings_trade_forum/v2001/2001.1chau.pdf.

⁵⁹ *Supra* note 12.

In addition to the enactment of national laws and the ratification of international conventions, one might argue that of even more importance is the extent to which these laws are enforced. To this end, Table 2 summarizes data taken from the U.N. Survey of Crime Trends (Seventh Survey) for the year 2000.⁶⁰ The capacity of police enforcement is expressed in two ways. The variable *police* denote the number of police personnel per 100 thousand persons. The variable *convicted persons per crime* provide the number of convicted persons per reported crime in a country. The police variable captures the physical capacity of the police force, while the convicted persons per crime variable is concerned with the efficiency of the police force. These two variables give two very different pictures of the capability of policy enforcement. In particular, host countries have, on average, a higher police force per capita than do source countries and trafficking hubs. Nevertheless, the number of convicted persons per recorded crime is also the lowest in host countries.

These conflicting observations may have to do with the under-reporting of crimes by victims in source countries. There are at least three reasons why under-reporting in source countries is of interest in the context of trafficking. First, for traffickers operating in potential source countries, under-reporting is of course advantageous, since the likelihood of getting caught is accordingly lower. Second, under-reporting may also be a signal of the public's distrust of the police force, due for instance to corruption among public officials. Third, the lower conviction rate in host countries could be due to the fact that in host (developed) countries, the burden of proof required to convict someone may be much higher than in source (poorer) countries. All of these factors concern the degree of access to effective law enforcement, and separate the (economic) push and pull factors of international migration, as distinct from the criminal activities associated with international trafficking. As a partial remedy to this issue of access, the "rule of law" governance indicator from Kaufmann, Kraay, and Zoido-Lobaton is also used.⁶¹ The "rule of law" indicator is a composite index of (i) voice (e.g., freedom of press and the freedom to associate) and accountability; (ii) political stability/lack of violence; (iii) government effectiveness; (iv) regulatory framework; (v) rule of law; and (vi) control of corruption. The index ranges from -3 (worst) to +3 (best). As Table 2 shows, source and hub countries of trafficking on average have a lower rule of law indicator as compared to host countries.

⁶⁰ *Supra* note 57.

⁶¹ See, Daniel Kaufmann, Aart Kraay & Pablo Zoido-Lobaton, *Aggregating Governance Indicators* (World Bank Policy Research Department Working Paper no. 2195, 1999); and, Daniel Kaufmann, Aart Kraay & Pablo Zoido-Lobaton *Governance Matters* (World Bank Policy Research Department Working Paper no. 2196, 1999).

Table 2: Crime and Law Enforcement

	Host	Hub	Source	All
Police Personnel (per 100K)	289.65	288.78	272.04	286.38
Total Recorded Crimes (per 100K)	4918.92	1825.94	1387.27	2991.97
Total Convicted Persons (per 100K)	809.62	735.15	337.01	692.38
Convicted Persons per Recorded Crime	0.17	0.30	0.41	0.27
Rule of Law	0.73	-0.30	-0.52	0.01

Source: Basu & Chau (2007)⁶²

III. Intervention in Illegal Markets and Perverse Incentives

Trafficking is a complex operation that involves a number of players in source, transit and host countries. Sometimes, an organized network with each unit within the network specializing in a particular activity includes investors, recruiters, transporters, corrupt public officials or protectors, informers, guides and crew members, enforcers, debt-collectors, money launderers, supporting personnel and specialists.⁶³ An indirect measure of how potential victims in search of higher paying jobs are lured into foreign countries lies in the fact that traffickers and victims are often from the same country of origin. For instance, Salt reports that statistics from the Netherlands between 1994-1996 show that 23.1% of those apprehended for trafficking came from Eastern European countries with one-third from Poland and one-half from the former Soviet Union.⁶⁴

These percentages also coincide with the percentages of trafficked migrants from these countries. Overall, 30-40% of traffickers originated from the Netherlands itself. In Germany, the equivalent proportion was 40% while in Poland, in 1995, 72% of traffickers were Polish by birth, a number that increased to 79% in 1997. In Hungary, before 1995 only 12% of traffickers were Hungarian but by 1997-98 this number had increased to over 66%.⁶⁵ Amongst other factors, such a high correlation suggests that recruitment of victims and identification of potential host countries are best carried out by recruiters that have knowledge about the victims and the legislation in the host countries that

⁶² Supra note 12.

⁶³ See generally, A. Schloenhardt, *Organized Crime and the Business of Migrant Trafficking: An Economic Analysis*, 32 *Crime, Law and Social Change* 203 (1999).

⁶⁴ Salt 2005, supra note 15.

⁶⁵ See, Gerben J. N. Briunsma, & Guus Meershoek, *Organized Crime and Trafficking in Women from Eastern Europe in the Netherlands*, in *ILLEGAL IMMIGRATION AND COMMERCIAL SEX: THE NEW SLAVE TRADE* 105, (Phil Williams ed. 1999); and Nathalie Siron & Piet van Baeveghem, *Trafficking in Migrants through Poland: Multidisciplinary Research into the Phenomenon of Transit Migration in the Candidate Member States of the EU, with a View to the Combat of Traffic in Persons*, (University of Ghent & European Commission STOP, 1999). An interesting observation gleaned from the various studies relates to the average age for traffickers. The average age of apprehended traffickers in the Netherlands was 34 while in Poland the sex trade was mostly undertaken by men in the 20-25 age group.

enables these traffickers to persuade victims to illegally migrate in search of either jobs or permanent residency in foreign countries.

Against this backdrop, the lack of effective legislation to punish traffickers and lack of cooperation internally and internationally (coordination and harmonization of national policies and laws, bilateral and multilateral agreements on protection of victims and punishment for traffickers) are two important reasons why trafficking for the purpose of commercial sexual exploitation continues to persist.⁶⁶ Indeed, can amnesty to trafficked victims – viewed also as a protection of human rights for victims in the host countries of trafficking potentially exacerbate rather than ameliorate the problem? Case studies and casual evidence suggest increased trafficking into countries that grant amnesty. For instance, in the mid- to late 1990s, an estimated 175,000 women were trafficked out of Russia and the Eastern European countries – 70% of them into Western Europe, especially Germany, Italy, France, Switzerland, the Netherlands, Greece, Austria and England, while 3% or 5,000 women were trafficked into the United States and Canada.⁶⁷ Similarly, estimates by the U.S. Department of State after the introduction of the TVPA in 2000, which grants asylum to trafficking victims, show the number of trafficking victims entering the United States in 2004 at 14,000–17,500.⁶⁸

In a study of asylum policies, trafficking and vulnerability, Koser's case study of Iranian asylum seekers in the Netherlands over the period 1994-1996 identifies three issues that point to the nexus between countries with legislation that grant asylum and the subsequent rise of illegal immigration.⁶⁹ First, empirical evidence supported the view that increasing proportions of asylum seekers were being forced to turn to traffickers in order to negotiate restrictive asylum policies. Second, trafficking tends to expose asylum seekers to new forms of vulnerability such as harassment by law enforcement officials. Koser notes that although a variety of generally restrictive policies in the early 1990s led to a decline in asylum seekers in the Netherlands, the numbers had rebounded by 1999. While 30% of asylum seekers had hired smugglers in 1996, the number had risen to 60-70% by 2000.⁷⁰

Third, trafficking has taken the form of a transnational business, which actively recruits clients and transports them illegally via transit countries, with false documentation, and with asylum seekers frequently exploited by traffickers

66 Alexis B. Aronowitz, *Smuggling and Trafficking in Human Beings: The Phenomenon, The Markets that Drive it and the Organizations that Promote it*, 9 *European Journal on Criminal Policy and Research*, 163 (2001) [hereinafter Aronowitz 2001].

67 FRANCIS T. MIKO & GRACE PARK (JEA-HYUN), *TRAFFICKING IN WOMEN AND CHILDREN: THE U.S. AND INTERNATIONAL RESPONSE*, (Report for Congress, Congressional Research Service, The Library of Congress 2002)

68 Gozdziaik & Collett 2005, *supra* note 49.

69 Khalid Koser, *Asylum Policies, Trafficking and Vulnerability*, *International Migration Journal*, Special Issue 1, 91 (2000).

70 Aronowitz 2001, *supra* note 66.

to find themselves in conditions of debt bondage or working involuntarily in the sex industry.

Other than the case studies alluded to above, the exact impact of legislation granting amnesty on the incidence of trafficking (empirically or theoretically) is still an open question. However, a closer look at the related literature on illicit migration offers some clues as to how legislation to control different types of migration may have had unintended consequences. First, consider the case of smuggling in humans across international borders. According to Aronowitz, there are four elements that differentiate smuggling from trafficking: (i) smuggled persons always travel voluntarily while trafficked persons can either begin their trip voluntarily or may have been coerced or kidnapped; (ii) trafficked persons are used and exploited over a long period of time; (iii) an interdependency occurs between the trafficked person and the organized crime groups; and, (iv) trafficked persons are subsequently recruited for criminal purposes.⁷¹ A further point noted by Kendall, specifically for trafficking victims in the sex industry, is that trafficking victims have more interaction with clients.⁷² This high level of interaction increases the likelihood of seeking help, escape or attracting the attention of authorities. To prevent this, women are often rotated between criminal groups, cities, states and countries. There are, however, some common elements that affect smuggled and trafficked persons alike. For instance, both these groups might pay a percentage of the cost of transportation to the traffickers upfront and incur a debt for the remainder of the trip. Such financial arrangements often determine the extent to which these groups become vulnerable to exploitation.

Financial constraints lead migrants to turn to the traffickers to finance the migration costs, and force migrants to enter into temporary servitude contracts to repay the debt. Given that these debt contracts are easier to enforce in the illegal than in the legal sector of the host country, stricter deportation laws that make it costly for migrants to move from the illegal to the legal sector actually lower the risks for traffickers, who in turn, are more willing to finance illegal migration. Thus, countries with stricter deportation policies may thus paradoxically see an increase in illegal/smuggled individuals rather than a decrease.⁷³

71 *Id.*

72 R. Kendall, "Recent Trends in International Investigations of Trafficking in Human Beings," paper presented at the International Conference on New Frontiers of Crime: Trafficking in Human Beings and New Forms of Slavery, Verona, 22-23 October 1999.

73 See generally, for an analysis of the impact of deportation policies on the incidence of human smuggling, Guido Friebel & Sergei Guriev, *Smuggling Humans: A Theory of Debt-financed Migration*, 4 *Journal of the European Economic Association*, 1085 (2006).

Second, policies to control illegal immigration may also entail paradoxical policy outcomes especially with regards to the provision of amnesty.⁷⁴ A key counter-intuitive question is why do countries that impose employer sanctions to deter the illegal entry of foreign workers nevertheless grant amnesty to illegal immigrants? Chau shows that amnesty provision is best understood in the context of two widely used immigration policies—border enforcement and employer sanction measures.⁷⁵ Border enforcement is more aptly characterized as an income transfer from employers to native labor interests while employer sanctions generate deadweight losses that are borne entirely by the employers of illegal immigrants. Chau shows that while amnesty may appear to run contrary to the original intent of the immigration reform, as the policy induces higher waves of illegal immigration as potential illegal migrants incorporate the possibility of amnesty in their decision to migrate, it may nevertheless facilitate rent capture by the politician by “wiping the slate clean” and reducing the deadweight loss of employer sanction measures.⁷⁶

Third, consider policies to eliminate one of the “Worst Forms of Child Labor” – child labor in debt bondage. A phenomenon widely observed in South Asian countries⁷⁷ in the agricultural sector, debt bondage is an outcome of seasonality in agriculture (a lean season where workers have minimal sources of income and need to borrow in order to finance their subsistence consumption) and the lack of a formal credit market in rural areas. Therefore, the only source of borrowing is from rural moneylenders who are also large landlords. In this setting, poor agricultural workers borrow in the lean season against the promise to repay with their labor services in the peak or harvest season when labor demand is high. Such credit-for-labor contracts are frequently skewed against poor workers who realize that they need to send their children to work in order to repay the full amount of debt. Two policies that have received attention and been implemented to eliminate child labor in debt bondage deserve mention. The first is legislation banning debt bondage. As Basu and Chau show, such a policy simply leads to more child labor *per se* (at the expense of bonded child labor) as poor families still have no alternative sources of income to finance subsistence consumption.⁷⁸ The second, implemented in Nepal, is the outright payment of outstanding loans by NGOs and governments

74 For example, Chau analyzes the time-inconsistency of immigration reform policies. See Nancy H. Chau, Strategic Amnesty and Credible Immigration Reform, 19 *Journal of Labor Economics* 604 (2001); and Nancy H. Chau, Concessional Amnesty and the Politics of Immigration Reforms, 15 *Economics and Politics* 193 (2003).

75 *Id.*

76 *Id.*

77 Namely Pakistan, India and Nepal.

78 See both studies, Arnab K. Basu & Nancy H. Chau, Targeting Child Labor in Debt Bondage: Evidence Theory and Policy Prescriptions, 17 *The World Bank Economic Review* 255 (2003); and, Arnab K. Basu & Nancy H. Chau, Exploitation of Child Labor and the Dynamics of Debt Bondage, 9 *Journal of Economic Growth* 209 (2004).

to the moneylenders, thereby granting freedom to those enslaved in debt bondage. Absent any other complementary income generating policy, debt forgiveness leads the poor families to fall back into the debt bondage trap the next lean season.

Each of these examples highlights how policies aimed at providing relief to illegal immigrants or exploitative labor can lead to unintended consequences. Thus, arguments for strengthening protection and assistance to victims – like Italy’s residency permit, need to be complemented by policies that impose harsher punishments on traffickers in the host countries and deportation policies between source, transit and host countries of trafficking. Second, policies affecting activities surrounding forced commercial exploitation of women and children, such as a ban/legalization of prostitution, ban on pimping/pandering, need to be coordinated between host and source countries. In effect, anti-trafficking legislation in host and source countries needs to account for: (i) time-consistency of the policy: much like a policy of amnesty to illegal migrants needs to be accompanied by stricter border enforcement, amnesty for trafficking victims must go hand-in-hand with increased enforcement to prevent traffickers from selecting these countries as potential destinations; (ii) identification of the target group: similar to the intervention to ameliorate bonded child labor in the absence of policies to combat child labor per se, a policy of amnesty to trafficked victims for purposes of commercial sexual exploitation needs to be evaluated in terms of its impact on other forms of trafficking and human smuggling; (iii) the root causes behind the persistence of trafficking (poverty, lack of educational opportunities and information campaigns) in the source countries of trafficking need to be addressed alongside legislation that ban prostitution and child labor; and, (iv) careful consideration needs to be paid to the interplay between immigration and trafficking policies since little is known of the extent to which migration and trafficking routes/networks overlap and as a consequence, policies that inhibit legal or illegal immigration may well lead to an increase in trafficking as an alternative.

Conclusion

This article has endeavored to show that while the policy of amnesty does protect the rights of trafficked victims in host countries, it cannot be viewed as a policy that deters traffickers. To this end, countries that introduce amnesty as part of a comprehensive and victim-protective law might reconsider such a policy as one in need of some fine tuning.

Extraterritorial Jurisdiction: A Prosecutorial Tool to Combat Trafficking in Children from Albania

*Ina Farka**

Abstract

This article focuses on the extraterritorial prosecution of trafficking in children from the perspective of a country of origin. The selected case study is Albania, which is primarily a country of origin for trafficking in children for purposes of sexual exploitation and forced labor. Bearing in mind that trafficking offenses are most commonly committed in more than one country, making it difficult for the authorities of a single country to prosecute the offenses, and making it easier for traffickers to escape prosecution, there is an urgent need for harmonization of legislation and intensification of international cooperation between countries of origin, transit and destination. Due to the lack of harmonization of legislation among these different countries, especially in the areas of substantive and procedural criminal law, including anti-trafficking legislation, there are certain implications that must be taken into consideration. First, strategies to combat trafficking in persons are based on domestic policies derived from national legislation and from adopted international treaties and policy documents, which are part of the law of the land. Hence, in the context of this legislative framework underlying the justice system, the role of the country of origin in investigating and prosecuting trafficking in persons is crucial. Second, based on domestic law and international law principles, the jurisdiction of the country of origin may be asserted on a territorial and/or extraterritorial basis. In this regard, more than one country may assert jurisdiction to prosecute the offender. Therefore, to ensure a successful prosecution of the offender, harmonization of legislation among these countries is crucial. This article seeks to promote the enhancement of the prosecution of trafficking in children by laying down the foundation of a model anti-trafficking extraterritorial legislation that satisfies and complies with relevant international law requirements and human rights standards. These elements, which originate from international law and international criminal law (e.g. jurisdiction principles, dual criminality and double jeopardy principles, extradition, etc.) will be the subject of research and will be identified and analyzed in light of relevant international instruments, as well as with respect to their inclusion into Albanian legislation.

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Introduction

Between the years 1999 and 2002, Greek police arrested 661 mostly Albanian children who were trafficked to Greece to work as street beggars and placed them in a state care institution in Athens.¹ In January 2003, a report from the Swiss-based foundation *Terre des Hommes* documented that hundreds of those children had simply gone missing.² The matter gained international attention and, as a result, the U.N. Committee Against Torture (CAT), at its thirty-third session, expressed its concerns on this case emphasizing "... the lack of a prompt investigation into the cases by a judicial authority,"³ and recommended that Greece "... ensure that a judicial investigation is carried out and provide the Committee with information on its outcome ... within one year."⁴

In December 2004, the U.N. Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, jointly with the U.N. Special Rapporteur on Trafficking in Persons, especially Women and Children, sent an urgent appeal to the Greek government on this case.⁵ As there was no answer from the authorities, in March 2005, the Special Rapporteurs expressed to the U.N. Commission on Human Rights their "concern for the children who are still missing and exposed to a high risk of being exploited, trafficked or re-trafficked" and "reiterated their interest in receiving the reply of the Government to these allegations."⁶ The U.N. Human Rights Committee in its concluding observations on Greece included this reference: "(t)he State party should conduct a judicial investigation concerning the approximately 500 children who went missing from the Aghia Varvara institution between 1998 and 2002 and provide the Committee with information on the outcome."⁷ In November 2005, the U.N. Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography visited both Albania and

1 Contribution on the point in the agenda: "Humanitarian issues and other commitments: Children victims of trafficking" at the OSCE Human Dimension Implementation Meeting Warsaw (Sept. 27, 2005).

2 TERRE DES HOMMES, THE TRAFFICKING OF ALBANIAN CHILDREN IN GREECE, (January 2003) at 12 [hereinafter *Terre des Hommes* 2003] available at, [http://www.tdh.ch/website/doc_dnlld.nsf/bf25ab0f47ba5dd785256499006b15a4/aa38138679a23d33c12571760041dd5d/\\$FILE/albania_childtrafficking_03_eng.pdf](http://www.tdh.ch/website/doc_dnlld.nsf/bf25ab0f47ba5dd785256499006b15a4/aa38138679a23d33c12571760041dd5d/$FILE/albania_childtrafficking_03_eng.pdf). See also, archive of posting by World Organization against Torture, Geneva, Human Rights in the Balkans, *Greece: the disappearance of 502 Albanian 'street children'* (Jan. 24, 2005) <http://www.terrelibere.it/terrediconfine/index.php?x=completa&riga=0584>.

3 United Nations Committee against Torture (CAT), Conclusions and Recommendations: Greece, U.N. Doc. CAT/C/CR/33/2 (Dec. 10, 2004).

4 *Id.*

5 The U.N. Special Rapporteur on the sale of children, child prostitution and child pornography, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Juan Miguel Petit, Addendum, Communications sent to Governments and replies received*, 23 ¶¶ 86-92, U.N. Doc. E/CN.4/2005/78Add.3 (Mar. 8, 2005).

6 *Id.* at ¶ 92.

7 Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant (ICCPR), Concluding Observations of the Human Rights Committee* ¶ 10(b), U.N. Doc. CCPR/CO/83/GRC (Apr. 25, 2005).

Greece and suggested the establishment of a bilateral commission “... to try to locate children who went missing after having entered [the institution].”⁸

The facts above show that there has been a lack of proper concern for the potential loss or endangerment of hundreds of young innocent lives at the national level. To provide better protection for children, in February 2006, the Governments of Albania and Greece signed an assistance and protection agreement for the repatriation of Albanian children victims of trafficking. This agreement provides for the establishment of a national referral mechanism for the registration of the trafficking victims, so that they can be voluntarily returned, repatriated and referred to appropriate rehabilitation services and other providers.

The government of Albania has not initiated any unilateral action to try to locate the missing trafficked children. The Albanian government has a responsibility to protect its citizens, especially if they are children. This article argues that Albania must also protect its children outside its territorial jurisdiction. It should do this through the enactment of extraterritorial legislation amending its anti-trafficking laws, in order to assert jurisdiction over trafficked Albanian children in countries of transit or destination. Furthermore, this article presents a model extraterritorial legislation pointing to a number of key components: (1) criminalization of trafficking offenses against children committed domestically or internationally; (2) extension of extraterritorial jurisdiction to anti-trafficking legislation to ensure that Albania’s nationals and habitual residents are held accountable for acts committed outside its territorial jurisdiction; (3) recognition of trafficking in children as an extraditable offense; (4) removal of dual criminality and double jeopardy requirements; (5) adoption of a uniform age of consent; (6) removal of the filing of a complaint requirement by a victim or government authority.

Part I provides an overview of the nature, extent and causes of the trafficking in children phenomenon in Albania. Part II explores the exploitation of children through trafficking in the context of transnational organized crime, referring to the United Nations Convention on Transnational Organized Crime⁹ and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children¹⁰ as a legal instrument establishing the international law foundation for

8 The U.N. Special Rapporteur on the sale of children, child prostitution and child pornography *Report of the U.N. Special Rapporteur on the sale of children, child prostitution and child pornography*. Juan Miguel Petit, *Addendum MISSION TO GREECE (8-15 November 2005)* ¶ 59, U.N. Doc. E/CN.4/2006/67/Add.3 (Mar. 27, 2006).

9 United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, annex I, U.N. GAOR, 55th Sess., U.N. Doc. A/Res/55/25, *opened for signature* Dec. 12, 2000 (*entered into force* Sept. 29, 2003) [hereinafter U.N. Transnational Organized Crime Convention].

10 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, annex II, U.N. GAOR, 55th Sess., U.N. Doc. A/Res/55/25, *opened for signature* Dec. 12, 2000 (*entered into force* Dec. 25, 2003) [hereinafter U.N. Trafficking Protocol].

extraterritorial jurisdiction. Part III identifies the shortcomings of the Albanian legislation on extraterritorial jurisdiction *vis-a-vis* the internationally accepted bases for such jurisdiction: (1) nationality principle; (2) protective principle; and (3) universality principle. Part IV concludes with an analysis of the components of an extraterritorial legislation, based on a comparative study of various legal systems.

I. Overview of Trafficking in Children in Albania

Human trafficking is a prime example of twenty-first century (or modern-day) slavery. Trafficking in Albania was unknown until the early 1990s, because the harsh communist dictatorship imposed complete isolation, which made any international exchange of persons impossible.¹¹ Since then, Albania has been experiencing a slow transition to a multiparty democracy and a free market economy, while going through a number of other social transformations and reforms as well. The transition from communism to democracy imposed the violent shock of opening up to the outside world and brought about challenges never experienced before - massive migration flows contributing to the destruction of family unity, as well as changes in social norms and community-based life.¹² During this transition from a forty-four year-old communist system to an emerging democracy, the poorest, weakest, most vulnerable, and least protected segments of the population have been young women and unaccompanied children, some of whom have become victims of trafficking. The structural adjustment demanded in this transitional period led to poverty, high unemployment, lack of opportunities, dysfunctional families, domestic violence, child neglect and abuse, which made national and international organized criminal groups flourish and get involved in trafficking. The transition proved difficult, as corrupt governments tried to deal with high unemployment, a collapse in infrastructure, widespread crime and disruptive political opponents.¹³ Until 2001, trafficking offenses *per se* were not criminalized in the Albanian Penal Code, which made trafficking in persons a business with high profits, low investment, and little or no risks.

11 INTERNATIONAL LABOR ORGANIZATION/INTERNATIONAL PROGRAM ON THE ELIMINATION OF CHILD LABOR (ILO/IPEC), RAPID ASSESSMENT OF TRAFFICKING IN CHILDREN FOR LABOR AND SEXUAL EXPLOITATION IN ALBANIA 2003 at 10 (International Labor Organization, Geneva, Switzerland, 2004), [hereinafter ILO/IPEC Report 2004].

12 *See generally*, INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM), REGIONAL CLEARING PROGRAM: FIRST ANNUAL REPORT ON VICTIMS OF TRAFFICKING IN SOUTH EASTERN EUROPE (Counter-Trafficking Regional Clearing Point, 2003) [hereinafter Regional Clearing Point Report] <http://www.iom.hu/PDFs/First%20Annual%20Report%20on%20VoT%20in%20SEE.pdf>.

13 BARBARA LIMANOWSKA, TRAFFICKING IN HUMAN BEINGS IN SOUTH EASTERN EUROPE: UPDATE ON SITUATION AND RESPONSES TO TRAFFICKING IN HUMAN BEINGS IN ALBANIA, BOSNIA AND HERZEGOVINA, BULGARIA, CROATIA, THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, MOLDOVA, SERBIA AND MONTENEGRO, INCLUDING THE U.N. ADMINISTERED PROVINCE OF KOSOVO AND ROMANIA, at 33 (UNICEF 2003) [hereinafter Limanowska 2003].

Therefore, Albania became a primary country of origin for international trafficking in women and children. According to a recent United Nations (U.N.) report, Albania is one of the top ten countries of origin for sex trafficking in the world.¹⁴ The main countries of destination are Italy and Greece, along with other Western European states. Approximately half of all Albanian trafficking victims are under the age of 18.¹⁵ Albania is considered to be the main origin country for children trafficked to Greece.¹⁶ Most recently, three Albanian girls have been rescued by a raid operation of American law enforcement agencies from brothels in San Diego, where they had been trafficked through the Mexican border.¹⁷ Begging is one of the most prevalent forms of child labor that trafficked children from Albania are forced into. A considerable number of Albanian children have been trafficked, mainly to Greece, to work as street beggars. Many of these children have gone missing. Despite this fact, no child has been reported missing in Albania; a consequence of the general distrust of the Albanian state felt by victims of trafficking, the people's lack of awareness of their rights, and the involvement of parents in the trafficking.¹⁸

1. Root Causes of Trafficking in Persons

Trafficking in persons is one of the most dramatic symptoms and consequences of the free movement of people, of economic globalization, and of advancements in technology and communication around the world, including Albania. Trafficking in persons is caused by the so-called push and pull factors (supply and demand) and by restrictive migration policies in countries of origin and destination. Determination of the factors that fuel trafficking will help countries implement strategies tailored in accordance to their own specific circumstances.

a) Push Factors

Trafficked women and children often come from dysfunctional families or minority groups with various economic and social problems. Poverty, high rates of unemployment, lack of adequate housing, lack of education, poor access to schools, inadequate health care, lack of opportunities, and gender and ethnic discrimination resulting in birth registration problems are some of the hardships endured by these

14 "U.N. Maps Human Trafficking," ASSOCIATED PRESS, May 14, 2003.

15 U.S. DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT (2008), (U.S. Department of State Publication 11407), available at <http://www.state.gov/g/tip/rls/tiprpt/2008/> [hereinafter 2008 TIP Report].

16 INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM) STOP Programme, TRAFFICKING IN UNACCOMPANIED MINORS IN THE EUROPEAN UNION at 46, (Dec. 2002), available at http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/Trafficking_unaccompanied_minors_European_Union_en.pdf

17 Interview conducted by author with Marisa Ugarte, Executive Dir., Bilateral Safety Corridor Coal. (BSSC), in Washington, D.C. (Apr. 3, 2006).

18 Terre des Hommes 2003, *supra* note 2 at 12.

families.¹⁹ Early marriages, an increased rate of divorce, domestic violence, child neglect and abuse are also of great concern and are additional factors that influence trafficking in persons.

Life under these conditions creates a desire for better opportunities abroad. In that context, migration is seen as a solution to economic and social difficulties.²⁰ Thousands of people are lured abroad under false pretenses, such as fake job offers or marriage promises.²¹ In other instances, children who are seen as an asset to help the family alleviate economic hardship are sold, given away, or exchanged for consumer goods by their families through relatives or acquaintances. While such families may initially consent to the transaction, they are often misled as to the form, extent, or the level of exploitation their children will be subjected to. For example, children who are trafficked to work as child beggars are known to beg during the day and to be exploited as prostitutes at night, as well as to be involved in other illegal activities such as theft, drug dealing, etc. These child victims of trafficking have been used, abused, exploited, trafficked and re-trafficked for high profits by national and international criminal enterprises. As a result, their most fundamental rights to personal safety and security, proper access to health care, education, adequate nutrition, freedom and human dignity, as proclaimed in the U.N. Convention on the Rights of the Child,²² (CRC), are grossly violated.

b) Pull Factors

Hope for a better life attracts vulnerable groups and individuals in despair who seek new opportunities abroad. Pull factors from the destination countries include the attractive living conditions and the ever growing demand for undeclared, cheap labor and services, particularly unskilled labor in unregulated sectors of the labor market. Another pull factor is the great demand for sexually exploitable women needed to satisfy the urges of a growing sex market.²³

c) Restrictive Migration Policies

The growing demand for sexual services, the dependency on cheap migrant labor in the countries of destination, as well as the restrictive migration regulations of those states leave migrants more vulnerable to trafficking and labor exploitation,

19 See Regional Clearing Point Report, *supra* note 12.

20 See Limanowska 2003, *supra* note 13 at 33.

21 See Regional Clearing Point Report, *supra* note 12, at 38.

22 United Nations Convention on the Rights of the Child, U.N. Doc. A/Res/44/25, *opened for signature* Nov. 20, 1989 (*entered into force* Sept. 2, 1990), [hereinafter CRC].

23 INTERNATIONAL CENTER FOR MIGRATION POLICY DEVELOPMENT, "ANTI-TRAFFICKING TRAINING MATERIAL FOR JUDGES AND PROSECUTORS: HANDBOOK" (International Center for Migration Policy Development, Vienna, 2006) [hereinafter Anti-trafficking Training Material] at 18.

providing greater opportunities for traffickers.²⁴ However, although restrictive legal migration policies and labor opportunities in both countries of origin and destination are some of the factors that fuel trafficking in persons, the latter must not be regarded as a mere migration issue, but rather as a serious crime against the individual.

2. The Trafficking Process

The trafficking process consists of the three interrelated components of recruitment, transportation and exploitation. Differentiating between these three phases of the phenomenon can increase the effectiveness of the anti-trafficking approach as it will allow the state to target each component separately.

a) Recruitment

Recruitment is the first phase of the trafficking process. This phase is largely defined by the purpose of exploitation, the sex and age of the victim as well as his/her social status and the country of transit and/or the final country of destination. Victims of trafficking are normally recruited through an agreement between the recruiter and the victim, or the recruiter and the family of the victim, depending on the circumstances.

In the case of trafficking in children, organized criminal groups are not necessarily the ones involved in the recruitment. Very often parents themselves hand over their children to exploiters. In some instances, former victims act as recruiters and, at times, turn into traffickers themselves. Generally, the recruiter is a family member, a friend or an acquaintance of the victim. Recruitment methods include deception through promises of legitimate work or study abroad and promises of false marriage. Other fraudulent and coercive methods include abduction, kidnapping and the sale of children.

b) Transportation

It is important to emphasize that the transportation or the transit phase is not limited to the physical transportation of victims of trafficking but also involves a range of activities that include the harboring and reception of victims. During this phase, the victims completely rely on their traffickers to provide for their basic needs. The entry into the country of transit or destination can occur through smuggling or using fraudulent or bona fide documents. For instance, it is common for trafficking victims to be transferred through the Southern Balkan route, which Albania is a part of; these victims often originate from Asia, and South East Europe,

²⁴ *Id.*

transfer through Moldova, Romania, Bulgaria, and Albania, from where they enter the European Union through Italy and Greece.

c) Exploitation

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) stipulates that the purposes of trafficking can be numerous and distinguishes between trafficking and exploitation.²⁵ The definition of trafficking in persons in the U.N. Protocol lists exploitation as the only purpose of trafficking. Exploitation includes, “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”²⁶ Other specific forms of exploitation include new forms of sexual exploitation such as sex tourism, child pornography, the recruitment of domestic labor from developing countries to work in developed countries and arranged marriages between women from developing countries and foreign nationals.²⁷ Illegal adoption can also rise to the level of trafficking in children, if it occurs for exploitative purposes.²⁸

3. The Scale of Trafficking in Persons

Due to the clandestine and illegal nature of trafficking in persons, reliable statistics have been difficult for the Albanian Government and NGOs to collect. Evidence shows that, after 1990, girls were trafficked from Albania to European countries for exploitation; between 1992 and 2002, an estimated 4,000 children were trafficked, mostly from the Roma community.²⁹ Statistics on domestic trafficking in children are non-existent. The more visible forms of domestic

25 General recommendations made by the U.N. Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 11th sess. (1992) (violence against women) states at ¶ 13, States parties are required ...to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. *available* at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.

26 U.N. Trafficking Protocol, *supra* note 10 at art. 3.

27 General recommendations made by the U.N. Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 11th sess. (1992) (violence against women) states at ¶ 14, Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.

28 See generally, Ad Hoc Committee on the Elaboration of a Transnational Organized Crime Convention, *Report of Ad Hoc Committee on the Elaboration of Transnational Organized Crime Convention on the Work of its 1st to 11th Sessions; Addendum: Interpretative Notes for the Official Records (Travaux Préparatoires) of the Negotiation of the U.N. Transnational Organized Crime Convention and Protocols Thereto*, U.N. Doc. A/55/383/Add.1 (Nov. 3, 2000) [hereinafter Convention and Protocol Travaux 2000].

29 See ILO/IPEC Report 2004, *supra* note 11, at 10.

trafficking are sexual exploitation (prostitution and sex tourism) and forced labor (begging and illegal activities).

In February 2006, the Governments of Albania and Greece signed an assistance and protection agreement for the repatriation of Albanian children who are victims of trafficking.³⁰ This agreement provides for the establishment of a national referral mechanism for the registration of trafficking victims who are voluntarily returned, repatriated and referred to the appropriate rehabilitation services and other providers. Such a practice would fill the gaps in data and produce a methodology to estimate the magnitude of human trafficking. Nevertheless, developing accurate estimates of the victims that may be trafficked from Albania has proven to be difficult due to the hidden nature of the crime and the lack of research into the extent of the trafficking problem.

4. Government Responses Before Year 2001

Until the end of the 1990s, the Albanian government showed indifference to the problem of trafficking in persons.³¹ This can be explained, in part, by the political, economic and social upheaval that Albania faced during that period, as well as by a fundamental lack of understanding and public awareness of the problem of trafficking, exacerbated by a deficient legal framework. The social stigma and the contempt shown toward children who were believed to come from the Roma ethnic community was another contributing factor. Unscrupulous criminals saw an opportunity to capitalize on human misery. Innocent children became a commodity with low investment, high profits and little risk. These child-victims were recruited, transported, rented out, bought, sold and resold into trafficking for the purpose of exploitation. Such forms of exploitation include sexual exploitation, forced labor, slavery or practices similar to slavery, servitude, or organ transplant,³² and constitute some of the worst forms of child labor, as defined by the International Labor Organization Forced Labour Convention No. 29.³³ During this period there was also no juridical recognition of trafficking in persons. The exploitation of women and children for sexual purposes, was recognized as a prostitution-related activity and women and children subjected to exploitation were treated as perpetrators rather than victims entitled to basic human rights requiring assistance and protection. The perpetrators of such crimes were subjected to fines and light sentences, instead of to serious penalties reflecting the severity of the crime.

30 See Hellenic Republic, Embassy of Greece, Press Office, Washington DC, "*Greece, Albania sign protection/assistance accord for victims of child-trafficking*," (Feb. 28, 2006) available at, <http://www.greekembassy.org/embassy/content/en/Article.aspx?office=3&folder=361&article=16933>.

31 See Terre des Hommes 2003, *supra* note 2 at 5.

32 See U.N. Trafficking Protocol, *supra* note 10 at art. 3(a).

33 International Labour Organization (ILO), 14th Sess., Convention (No. 29) Concerning Forced Labour, opened for signature June 28, 1930 (entered into force May 1, 1932).

Under pressure from the international community and from local and international NGOs, the Government of Albania has taken legislative steps to prevent smuggling and trafficking in persons, protect the victims and prosecute the perpetrators. Criminal offenses, such as enslavement, torture, kidnapping, sexual violence and prostitution have been criminalized in the Criminal Code for some time. However, post-Cold War globalization, increased migration, as well as advancement in technology and communications, brought about an explosion in organized crime and, consequently increased exploitation. These dynamics demanded a variety of statutory changes to the legislation to thwart trafficking in persons. Statutory changes were introduced with the passage of anti-trafficking legislation as part of the Criminal Code³⁴, which accomplished the following: criminalized trafficking and expanded the basis of criminal liability by criminalizing trafficking-related conduct such as facilitation of trafficking; provided for the liability of the legal person without prejudice to the liability of the natural person; provided enhanced penalties in cases which trafficking was committed by public officials or against minors, regardless of consent; and extended extraterritorial jurisdiction for trafficking offenses committed outside Albanian territory against its nationals.

The new anti-trafficking legislation that was adopted in 2001,³⁵ although an important step in the right direction, did not provide a comprehensive framework of prosecutorial remedies and other tools for the efficient investigation, prosecution and trial of trafficking cases and for the protection of the human rights of the victims. However, efforts to quantify the extent of victimization in trafficking did not start until the establishment of the Court for Serious Crimes in 2004, which had special jurisdiction to prosecute these crimes. Nevertheless, since this Court has jurisdiction over other serious offenses besides trafficking, the data presented since 2004 reflects the statutes involved in a court case rather than a detailed scope of the charges brought, convictions and sentences received. As a result, data from the Court for Serious Crimes is available for all serious crimes under its jurisdiction making it difficult to categorize these cases. Court documents indicate that in 2007, trafficking cases consist of 16.2% of all the serious crime cases adjudicated and the average time of investigation of these cases is 10.4 months in comparison to 9.2 months for other serious crimes.³⁶

34 Albanian Criminal Code, Law No. 7895, dated 27 January 1995, as amended by the following laws: Law 8279, dated 15.01.1998; Law No. 8733, 24.01.2001; Law No 9188, dated 12.01.2004; Law No 9686, dated 26.02.2007.

35 See Law No. 8733, January 24, 2001.

36 Remarks of Att'y Gen. Ina Rama in annual report before Alb. Parl. (June 2008) (organized crime and human trafficking). Remarks were made available by the Prosecutor's Office for Serious Crimes, Tirana. Alb. (Sept. 10, 2008).

II. Trafficking in Children in the Context of Organized Crime

International trafficking in children takes place in more than one country, making it difficult for the authorities of a single country to prosecute the offense and making it easier for traffickers to escape prosecution by exploiting the loopholes that exist among the legal systems of these countries. The cross-border nature of this crime, its complex root causes and the insufficient awareness of the problem, combined with a lack of legal harmonization in the criminal laws of the respective states, make it a very difficult criminal activity to combat.³⁷ On several occasions, the lack of legislative harmonization has been identified as a major obstacle toward effective prosecution and protection efforts, impeding any efforts of trans-border cooperation between the respective national authorities in the states of origin, transit and destination.³⁸ For the purposes of this article, the harmonization of Albanian criminal law legislation is viewed in the light of its compliance with legally binding obligations, derived from international and regional legal instruments as well as international human rights standards. The legal foundation to assert jurisdiction over trafficking offenses is grounded in the following international law treaties: (1) the U.N. Trafficking Protocol; (2) the U.N. Transnational Organized Crime Convention; and (3) in Albanian extraterritorial legislation.

1. U.N. Trafficking Protocol

Effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent trafficking, to punish the traffickers, and to protect the victims of trafficking by protecting their internationally recognized human rights.³⁹ The U.N. Trafficking Protocol sets out

37 See ANGELIKA KARTUSCH, REFERENCE GUIDE FOR ANTI-TRAFFICKING LEGISLATIVE REVIEW: WITH PARTICULAR EMPHASIS ON SOUTH EASTERN EUROPE 48 (OSCE/ Office for Democratic Institutions and Human Rights 2001) at 7 [hereinafter Kartusch 2001] available at: http://www.osce.org/odihr/item_11_13596.html.

38 *Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings*, MC(8).DEC/1 of Nov. 28, 2000 at art. 1. ("more comprehensive and coordinated response" from participating States and IC and "more coherent and co-operative approach among countries of origin, transit and destination"); *Explanatory Memorandum to the Committee of Ministers Action Against Trafficking in Human Beings for Purpose of Sexual Exploitation* COM R (2000)11 (May 19, 2000) at 8, (recommended coordinated strategy on the basis of a harmonization of relevant legislation of member states in civil, social and penal domains). See also Kartusch 2001 *id.*, at 8.

39 See U.N. Trafficking Protocol, *supra* note 10, Preamble.

to criminalize all aspects of trafficking in persons. Its fundamental importance lies in its definition of trafficking in persons as stated in article 3(a).⁴⁰

The U.N. Trafficking Protocol is not a stand-alone instrument. It must be read and applied together with the U.N. Convention on Transnational Organized Crime. This inter-connection indicates that trafficking offenses established in the Protocol are offenses within the meaning of the Convention. This is reinforced in article 1 (3) of the Trafficking Protocol, which states that those offenses shall be regarded as offenses established in accordance with the Convention.⁴¹

2. U.N. Transnational Organized Crime Convention

The U.N. Transnational Organized Crime Convention aims to create a broad-based set of measures to combat transnational organized crime. The Trafficking Protocol annexed to the U.N. Transnational Organized Crime Convention focuses on the trafficking aspect of the transnational organized crime. The offense of trafficking is criminalized in the Trafficking Protocol, but only if two further elements are present, as detailed in the U.N. Convention. The first is that the offense is transnational in nature. In order for that to be the case, the offense must be *inter alia* committed in more than one state or in one state under certain criteria.⁴² Trafficking in children from Albania to Greece is transnational in nature as it is committed in more than one state, given that the recruitment is effected in Albania and the exploitation occurs in Greece. The second element that needs to be present for the Trafficking Protocol to come into effect is the involvement of an “organized criminal group,” defined as “a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes . . .”⁴³ In the case of child trafficking from Albania, trafficked children are generally victims of well-organized networks. These organizations are not

40 U.N. Trafficking Protocol, *supra* note 10, art. 3(a) states. Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring 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 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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

41 The U.N. Trafficking Protocol in Article 5(2) establishes as criminal offenses: (1) the conduct of trafficking in persons; (2) attempting to commit trafficking in persons; (3) participating as an accomplice in trafficking in persons; and (4) organizing and directing other persons to commit trafficking in persons.

42 Article 3 (2) of the Convention establishes when an offense is transnational in nature: (1) it is committed in more than one State; (2) it is committed in one state but a substantial part of its preparation, planning, direction or control takes place in another State; (3) it is committed in one State but involves an organized criminal group that engages that engages in criminal activities in more than one State; or (4) it is committed in one State but has substantial effects in another State.

43 U.N. Transnational Organized Crime Convention, *supra* note 9 at art. 2.

pyramidal, but are adaptable, specialized, and flexible.⁴⁴ International trafficking in children for purposes of exploitation constitutes a form of transnational organized crime and warrants transnational measures and policies. Therefore, key provisions of the Convention⁴⁵ should apply to the offenses established in the Trafficking Protocol, within their scope of application,⁴⁶ thereby allowing the Trafficking Protocol to be used in conjunction with the Convention to investigate and prosecute the traffickers.

3. Albanian Extraterritorial Legislation

Albania has ratified the U.N. Transnational Organized Crime Convention and its Trafficking Protocol.⁴⁷ According to article 122 of the Albanian Constitution, any international instrument becomes part of Albanian internal legislation upon ratification and its publication in the official gazette.⁴⁸ In addition, Albania has adopted domestic anti-trafficking legislation according to which even the attempted participation and organization of trafficking in children for the purposes of exploitation is a serious criminal offense, carrying a minimum sentence of seven years imprisonment.⁴⁹ Albania's territorial and extraterritorial jurisdiction component is embedded in its Penal Code.⁵⁰

The application of extraterritorial legislation is another tool that is used to ensure that nationals and habitual residents are held accountable for criminal acts committed outside the territorial jurisdiction of their country of nationality or residence. When offenses are committed transnationally, the state where the offender is found may be required to extradite him/her to the country where the

44 See, Terre des Hommes 2003, *supra* note 2.

45 Some of those provisions are: (1) Jurisdiction; (2) Extradition; (3) Witness protection; (4) participation in an organized criminal group; (5) money laundering; (6) corruption; (7) obstruction of justice (Arts. 15, 16, 24, 5, 6-7, 8-9 and 23 respectively of the Convention).

46 Article 4 of the U.N. Trafficking Protocol indicates that the scope of application of the Protocol pertains to the: (1) prevention of the conduct of trafficking in persons; (2) investigation and prosecution of the trafficking related offenses; and (3) protection of victims of the trafficking in person offense.

47 Albania signed both the Convention and the Protocol on Dec. 12, 2000 and became a state party to both the Convention and the Protocol on Aug. 21, 2002.

48 See the Constitution of the Republic of Albania, Article 122, *available* (in English) at <http://www.ipls.org/services/kusht/cp7.html#p7c2>.

49 Albanian Penal Code, Article 110 (a) Trafficking in Persons as amended by Law No. 8733, January 24, 2001 under Trafficking in Human Beings, as amended by Law No. 9188, February 12, 2004.

50 The U.S. has enacted extraterritorial legislation pertaining solely to child sex tourism and containing extraterritoriality as a component. See the US PROTECT Act, Pub. L. 108-21, §105, 117 Stat. 650, 653-54 (2003). (b) Travel With Intent To Engage In Illicit Sexual Conduct--A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both. (c) Engaging In Illicit Sexual Conduct In Foreign Places--Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

offense was committed to stand trial. Some countries object to extraditing their nationals, and prefer to assert extraterritorial jurisdiction by prosecuting their nationals at home for an offense committed abroad.

Therefore, extraterritorial jurisdiction, i.e., the possibility of a state to prosecute and try alleged offenses that did not take place within its territory, is crucial in enabling authorities to prosecute traffickers, as well as to prohibit perpetrators from escaping criminal prosecution in one country by moving their activities to another country.⁵¹ Thus, the use of extraterritorial jurisdiction increases two-fold efforts to prosecute traffickers and opportunities to protect the victims of trafficking. Albania asserts extraterritorial jurisdiction over crimes committed by its nationals, non-nationals, dual citizens, and stateless persons in the following circumstances:⁵² (1) a crime committed by its nationals outside its territory, provided that the crime is considered as such in the state it was committed and the courts of that state have not reached a decision;⁵³ or (2) a crime committed by non-nationals and stateless persons outside its territory that threatens or violates Albania's national security interests or human security⁵⁴ such as crimes against humanity, which include crimes against independence and constitutional order, terrorist acts, organization of prostitution, illegal trafficking of women and children, production and illegal trafficking of pornographic materials, laundering of the proceeds of criminal acts and other instances.⁵⁵

Jurisdiction over crimes committed within the territory of Albania by non-nationals with diplomatic immunity is dealt with through diplomatic channels.⁵⁶ Therefore, while Albania acknowledges extraterritoriality as a general principle in its Penal Code and has enacted specific provisions to facilitate the investigation and prosecution of trafficking offenses, several shortcomings exist that must be addressed. Albania must remove the double criminality requirement as a basis for asserting extraterritorial jurisdiction. In instances in which there is no double criminality, it is immaterial whether a given type of conduct is criminal in the state where it occurred, as long as it is criminal in the state seeking to prosecute. Applying this to Albania will discourage offenders from traveling to countries with legislation that inadequately protects children and does not criminalize trafficking at all or countries that do not consider trafficking a serious crime and, thus, impose only fines or light sentences for perpetrators.

51 Kartusch 2001, *supra* note 38, at 52.

52 See Alb. Criminal Code arts. 6-8, approved with Law No. 7895, (Jan. 1, 1995), amended with Law No. 8204, (Oct. 4, 1997), amended with Law No. 8733, (Jan. 24, 2001) (Alb.).

53 *Id.* art. 6.

54 *Id.* art. 7.

55 *Id.* arts. 7 (a), (b), (c), (d), (h), (e), (f), (g), (d), respectively.

56 *Id.* art. 9.

Also, the legal age for sexual consent in Albania is not decided in the legislation. It is determined on a case-by-case basis by a medical examiner. Albania should adopt a uniform age of consent, preferably the age of 18, to be able to consistently enforce laws against child exploitation.

Therefore, while the law indicates that Albanian courts have jurisdiction to prosecute Albanian nationals or non-nationals who commit trafficking offenses against persons in any country where trafficking in persons is a crime, Albanian courts have no jurisdiction in the following cases: (1) the prosecution of Albanian nationals or non-nationals for trafficking offenses in a country where trafficking in persons is not a crime, a result of dual criminality; (2) the prosecution of Albanian nationals or non-nationals who have committed trafficking offenses in another country where trafficking is not a serious crime⁵⁷ and is not carrying serious penalties; (3) the prosecution of perpetrators who have already been adjudicated, convicted, and given a fine or a light sentence - a consequence of double jeopardy, and (4) the prosecution of Albanian nationals or non-nationals for trafficking offenses in a country where the age of sexual consent is below 18.

III. Why and When to Assert Extraterritorial Jurisdiction

As a consequence of its transnational nature, trafficking in children warrants transnational measures and policies. To complement the Transnational Organized Crime Convention, the Committee of Ministers of the Council of Europe recommended that states establish extraterritorial jurisdiction irrespective of the country where the offense of trafficking was committed, including cases where the offense took place in more than one country.⁵⁸ Moreover, a working paper published by the European Parliament states: “Rules must be introduced to permit extraterritorial judicial action, to enable the prosecution, extradition and sentencing of nationals who have committed crimes relating to trafficking in women, irrespective of the country in which the crime was committed, and to allow crimes committed in different countries to be punished jointly.”⁵⁹

57 U.N. Transnational Organized Crime Convention, *supra* note 9 at art. 2(b) (“Serious crimes” are criminal offenses punishable by a maximum penalty of at least four years imprisonment).

58 CoE., Directorate General of Human Rights, Equality Division, “Action Against Trafficking in Human Beings for the Purpose of Sexual Exploitation” Recommendation No. R. (2000) 11 (*adopted by* Committee of Ministers May 19, 2000), § 48 states, Establish rules governing extraterritorial jurisdiction to permit and facilitate the prosecution and conviction of persons who have committed offenses relating to trafficking in human beings for the purpose of sexual exploitation, irrespective of the country where the offenses were committed, and including cases where the offenses took place in more than one country.

59 See generally Joint Action of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children, 1997 O.J. (L 063) 0002-0006. This legislation adopted by the Council, addresses issues of jurisdiction, criminal procedure, assistance to victims, and police and judicial cooperation. It authorizes Member States to assert jurisdiction in cases where “the offense is committed, wholly or partly, on its territory” or “the person committing the offense is a national or a habitual resident of that Member State.” It permits a Member State to require double criminality in cases where the offense was committed abroad by its national.

Albanian legislators have acknowledged such recommendations but have not reacted in any notable manner. The Albanian anti-trafficking legislation needs to be amended to include explicit extraterritorial jurisdiction clauses which would facilitate the investigation and prosecution of trafficking offenses committed outside Albania. In addition, the Transnational Organized Crime Convention is now part of Albania's national legislation,⁶⁰ and its extraterritorial provisions need to be utilized to assert extraterritorial jurisdiction over trafficking offenses committed by both Albanian nationals and non-nationals outside of the country.

1. Bases of Jurisdiction

Under Article 15 of the Transnational Organized Crime Convention, a State Party may assert jurisdiction over: (1) crimes committed within its territory (territorial jurisdiction) and (2) crimes committed outside its territory (extraterritorial jurisdiction).

a) Territorial Jurisdiction

Territorial sovereignty is the principle that states hold their citizens responsible for acts committed within the territorial limits of the state, and over its ships and aircrafts. Offenses committed within a state's territory are tried in the courts of the state. Territorial jurisdiction can be asserted if "the offense is committed in the territory of that State Party" or "the offense is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offense is committed."⁶¹ Albania has jurisdiction over its territory, the ships flying the flag of Albania, aircraft registered under the laws of Albania and its embassies around the world.⁶²

b) Extraterritorial Jurisdiction

Extraterritorial jurisdiction is crucial, in order to enable authorities to prosecute traffickers, as well as to prohibit perpetrators from escaping criminal prosecution in one country by moving their activities to another country.⁶³ Article 15 of the Transnational Organized Crime Convention obliges each State Party to establish jurisdiction over offenses listed in this Convention itself, as well as trafficking offenses established by States Parties in accordance with article 5 of the U.N.

60 *Supra* note 48.

61 U.N. Transnational Organized Crime Convention, *supra* note 9, Article 15 (1).

62 See Albanian Penal Code, Article 5, *supra* note 50.

63 Kartusch 2001, *supra* note 38, p. 52.

Trafficking Protocol.⁶⁴ As it was indicated earlier, Albania has upheld this obligation by amending its extraterritorial legislation to include such offenses.

2. Bases of Extraterritorial Jurisdiction

The use of extraterritorial jurisdiction increases efforts to prosecute traffickers and broadens a state's opportunity to protect the victims of trafficking. Extraterritorial jurisdiction can be exercised under three bases: (1) the personality principle (passive and active), (2) the protective principle, and (3) the universality principle.⁶⁵ Albania uses all three principles when asserting extraterritorial jurisdiction wherever these offenses are committed, provided that offenses against Albania's nationals or national interests or are committed by Albanian nationals, habitual residents or non-nationals.

a) Personality Principle

The personality principle assumes that a state may assert jurisdiction on the basis of the victim's nationality, if the offense is committed outside the territory of that state. Trafficking in children with the involvement of organized criminal groups commonly involves offenses being committed in a number of jurisdictions. There are two types of personality principle. The passive personality principle occurs when the victim of an offense criminalized by a state is a national or habitual resident of the same state but the offense occurred in another state; the state in which the victim is a national may assert jurisdiction to cross the international border into the state where the offense occurred. This approach ensures that nationals of a state are protected, regardless of their present location. The second type of personality principle is the active personality principle. This occurs when a state assumes extraterritorial jurisdiction on the basis of the perpetrator's nationality if "the offense is committed outside the territory of that State Party by its national or a stateless person who has his or her habitual residence in its territory."⁶⁶ In such a

64 U.N. Trafficking Protocol *supra* note 10, states in Article 5,

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offenses:

(a) Subject to the basic concepts of its legal system, attempting to commit an offense established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offense established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offense established in accordance with paragraph 1 of this article.

65 See ECPAT, EXTRATERRITORIAL LEGISLATION AS A TOOL TO COMBAT SEXUAL EXPLOITATION OF CHILDREN, (End Child Prostitution in Tourism, Report, (ECPAT) Europe Law Enforcement Group, Apr. 1999) [hereinafter ECPAT 1999].

66 U.N. Transnational Organized Crime Convention, *supra* note 9 Article 15 (2) (a) and 15 (2) (b).

case, if members of an organized criminal group are nationals of a state or reside in its territory and they engage in trafficking and related activities across international borders, the state's jurisdiction should then reach across those borders. This approach ensures that nationals of a state are held responsible for their criminal actions wherever they are committed.

b) Protective Principle

The protective principle extends jurisdiction to a state for offenses committed outside its territory by non-nationals, if the conduct is considered a threat to state security. Traditionally, this principle has been applied to assert prosecutorial jurisdiction over crimes such as treason or counterfeiting currency.⁶⁷ Today, the smuggling of children from their countries of origin for their subsequent exploitation in the countries of transit and destination poses a high threat to a state's border security since "traffickers in women and children, much like terrorists and narcotics traffickers, operate broadly across sovereign borders."⁶⁸

Some experts argue that trafficking goes beyond border security concerns and should be treated as a "human security issue."⁶⁹ If countries of origin criminalize smuggling and the participation of an organized criminal group in facilitating such smuggling,⁷⁰ the state's jurisdiction should then reach across illegally crossed borders. In this context, a state may assume extraterritorial jurisdiction to enhance prosecutorial efforts against the smugglers who threatened the state's border security and increase the opportunity to protect the victims' human security.

c) Universality Principle

Under the universality principle, a state agrees to prosecute certain crimes, irrespective of where or by whom they are committed, because these crimes are denounced by the international community. The state accepts jurisdiction under the assumption that it is obligated to protect humankind from such criminal atrocities. This principle was a natural evolution of the international concern for human rights that was manifested in the Universal Declaration of Human Rights⁷¹ and has been applied in instances of piracy, genocide, war crimes, ethnic cleansing and crimes

67 REBECCA M. WALLACE, *INTERNATIONAL LAW*, (Sweet & Maxwell 1986) [hereinafter Wallace 1986] at 103-104.

68 AMY O'NEILL RICHARD, *INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME*, (Center for the Study of Intelligence, *date of information* Nov. 1999), at 1, *available at*, <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/trafficking.pdf>

69 Mohamed Y. Mattar, *Incorporating the Concept of Human Security in National Legal Responses to Trafficking in Persons* (2004), <http://www.protectionproject.org/commentary/re1.htm>.

70 For example, through forgery of travel documents and identity papers.

71 Universal Declaration of Human Rights, U.N. Doc. A/810 (Dec. 10, 1948) at art. 4.

against humanity⁷² which are defined under article 7 of the International Criminal Court (ICC) statute to include: “enslavement, sexual slavery, enforced prostitution, and any other form of sexual violence of comparable gravity.”⁷³ At the United Nations Millennium Plus 5 Summit,⁷⁴ heads of state agreed that when governments fail to protect their most vulnerable populations, the state sovereignty could not be used to bar collective international action to protect them. This principle clearly applies to trafficking in children, when this crime is viewed as a contemporary form of slavery.⁷⁵

IV. Anti-Trafficking Extraterritorial Legislation

While there is no model anti-trafficking extraterritorial legislation, there are elements of extraterritoriality that any anti-trafficking extraterritorial legislation must reflect and incorporate. These elements are presented based on a comparative study of enacted extraterritorial legislation from different legal systems. The strengths of these elements are explained.

1. Key Components of Anti-Trafficking Extraterritorial Legislation

a) Criminalization of International Trafficking in Children

Every country should criminalize trafficking offenses against children whether they are committed domestically or internationally. Criminalization should include a number of different elements. First, “trafficking in children” should be defined to include all forms of exploitation for the purpose of trafficking. Second, trafficking-related offenses should be criminalized as well as the “intent” to commit the

72 See, Wallace 1986, *supra* note 68 at 104-106.

73 Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9*, (July 17, 1998), art. 7(1)(g) (*entered into force* July 1, 2002). The ICC defines enslavement to mean “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons in particular women and children.” Article 7 (2)(c).

74 See, United Nations Department of Public Information, “2005 World Summit: An Overview,” 14-16 September 2005, The 2005 World Summit, to be held from 14 to 16 September at United Nations Headquarters in New York, is expected to bring together more than 170 Heads of State and Government: the largest gathering of world leaders in history. It is a once-in-a-generation opportunity to take bold decisions in the areas of development, security, human rights and reform of the United Nations. The agenda is based on an achievable set of proposals outlined in March by Secretary-General Kofi Annan in his report *In Larger Freedom* (www.un.org/largerfreedom). These have since been reviewed by Governments in a series of informal consultations conducted by General Assembly President Jean Ping, who released on 5 August a third draft outcome document for the Summit. *available at*, <http://www.un.org/ga/documents/overview2005summit.pdf>.

75 See generally, Bravo, Karen E., “Exploring the Analogy Between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade.” 25 Boston University International Law Journal, 207 (Fall 2007); Bales, Kevin and Cornell, Becky, “The Next Step in the Fight Against Human Trafficking: Outlawing the Trade in Slave-Made Goods” 1 Intercultural Human Rights Law Review, 211 (2006).

proscribed act.⁷⁶ Third, penalties for repeat offenders should be enhanced and other aggravating factors considered for increased sentencing, such as rape, torture, bondage, kidnapping, death. Penalties should also include subjecting convicted defendants to forfeiture provisions that allow for the confiscation of property, proceeds or assets that resulted from child exploitation activities.⁷⁷ Fourth, a child sensitive approach should be adopted by decriminalizing the child victim and enacting legal provisions that would allow for his/her protection as a witness in any judicial proceedings that may occur, including permitting closed-circuit testimony in certain circumstances and establishing guidelines for the presence of victim advocates in the courtroom.⁷⁸

b) Extension of Extraterritorial Jurisdiction to Nationals and Residents⁷⁹

As previously discussed, any anti-trafficking legislation should include territorial and extraterritorial jurisdiction to ensure that the state's nationals and habitual residents are held accountable for acts committed outside their territory.⁸⁰ Moreover, extraterritorial legislation should apply to nationals and habitual

76 See, Vicki Trapalis, "Extraterritorial Jurisdiction: A Step Towards Eradicating The Trafficking Of Women Into Greece For Forced Prostitution," 32 Golden Gate U. L. Rev. 207. See also, Margaret A. Healy, "Prosecuting Child Sex Tourists At Home: Do Laws In Sweden, Australia, And The United States Safeguard The Rights Of Children As Mandated By International Law?," 18 Fordham Int'l L.J., 1852, (1995). This article provides a discussion on criminalizing the intent of U.S. citizens or permanent residents who engage in the sexual exploitation of children abroad as called for by the Violent Crime Control and Law Enforcement Act of 1994, also referred to as the Crime Bill. The Crime Bill amends the Mann Act of 1986 which prohibits the transportation of individuals under age 18 in interstate or foreign commerce with the intent that the child engage in prostitution or any sexual activity. This issue is raised in instances where the criminal conduct commences in the country of origin but continues to the country of transit and/or destination. The perpetrator, traveling from the country of origin to the country of transit and/or destination, must be shown to possess the requisite intent to partake in the acts comprising the criminal offense. There is no requirement that the crime be completed.

77 INTERNATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN, CHILD PORNOGRAPHY: MODEL LEGISLATION & GLOBAL REVIEW, (2006) [hereinafter ICMEC 2006] at 6, available at http://www.cybertipline.com/en_US/documents/CP_Legislation_Report.pdf.

78 *Id.* at 5.

79 This is the case of Canada. See Bill C-27, an Act to amend the criminal code (child prostitution, child sex tourism, criminal harassment and female genital mutilation) came into force May 26, 1997, allowing the criminal prosecution in Canada of Canadian citizens and permanent residents who travel abroad to victimize children sexually, either for money or any other form of consideration. See also the Child Sex Tourism Act of Australia which amended the Crimes Act of 1914. The Act established jurisdiction over "an Australian citizen, a resident of Australia, a body corporate incorporated by or under a law of the Commonwealth, State or Territory, or any other body corporate that carries on its activities principally in Australia" who commits a sexual act on a child under the age of sixteen at the time of the offense.

80 Council of Europe Convention on Action Against Trafficking in Human Beings, May 16, 2005, C.E.T.S. No. 197 [hereinafter European Convention], art. 31 states, 1. Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offense established in accordance with this Convention, when the offense is committed: a) in its territory; or b) on board a ship flying the flag of that Party; or c) on board an aircraft registered under the laws of that Party; or d) by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offense is punishable under criminal law where it was committed or if the offense is committed outside the territorial jurisdiction of any State; e) against one of its nationals.

residents.⁸¹ The *travaux préparatoires* of the U.N. Transnational Organized Crime Convention stresses the importance of extending possible protection to stateless persons when asserting jurisdiction.⁸² A stateless person is an individual that no country recognizes as its national under its pertinent domestic laws.⁸³

c) Recognition of Trafficking in Children as an Extraditable Offense

Some countries will extradite on the basis of a treaty with the requesting country, and some have legislation that allows extradition to be granted on the request of a foreign government. The CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography⁸⁴ requires State Parties to include sexual offenses against children in existing extradition treaties, and extraditable offenses in future treaties.⁸⁵ The CRC Protocol itself will provide a legal basis for extradition where one state requests an extradition from another, with which it has no treaty.⁸⁶ Moreover, according to article 16(4) of the U.N. Transnational Organized Crime Convention, if “a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party, with which it has no extradition treaty, it may consider the Convention the legal basis for extradition in respect of any offense to which this article applies.”⁸⁷

81 See Mohamed Mattar, “*Incorporating The Five Basic Elements of a Model Anti-Trafficking In Persons Legislation In Domestic Laws: From the United Nations Protocol to The European Convention*,” 14 Tul. J. Int’l & Comp. L. 357 (Spring 2006).

82 See Convention and Protocol Travaux 2000, *supra* note 29 at 5.

83 See Convention Related to the Status of Stateless Persons, Sept. 20, 1954, art. 1 (1), 360 U.N.T.S. 117.

84 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, May 25, 2000, U.N. GAOR, 54th Sess., U.N. Doc. A/54/49 2000.

85 *Id.* art. 5 states,

1. The offenses referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offenses in any extradition treaty existing between States Parties and shall be included as extraditable offenses in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offenses. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offenses as extraditable offenses between themselves subject to the conditions provided by the law of the requested State.

4. Such offenses shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offense described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

86 *Id.*

87 U.N. Transnational Organized Crime Convention, *supra* note 9, Article 16(1) states, This article shall apply to the offenses covered by this Convention or in cases where an offense referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offense for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

d) Removal of Dual Criminality Requirement

Dual criminality requires that an offense be designated as criminal in both the state where it occurred and in the state seeking to assert jurisdiction.⁸⁸ A person's actions have to be acknowledged as criminal offenses both in the country in which one committed the act and in the country where the person is a citizen, in order for him/her to be convicted.⁸⁹

e) Removal of Double Jeopardy Requirement

Double jeopardy states that a person cannot be tried twice for the same offense.⁹⁰ Therefore, if an offender has already been prosecuted once where the offense was committed, he or she usually cannot be tried again in his or her home country for that same offense.⁹¹ The principle of double jeopardy should apply only where crimes against children are recognized as serious offense carrying serious penalties and the offender is acquitted, or has fully served the sentence of the court.⁹² Harmonization of penalties for crimes committed against children would ensure that offenders receive harsh penalties for those crimes anywhere in the world and cannot escape prosecution or serious jail sentences by moving to a different country.

88 See ECPAT 1999, *supra* note 66. This study provides a discussion of the double criminality requisite in a country's application of extraterritorial jurisdiction. It provides as an example the successful prosecution in Sweden of a Swedish resident for the sexual abuse of a thirteen-year-old Thai boy, the acts of which occurred in Thailand. The Swedish Criminal Code requires double criminality to prosecute such offenders.

89 For instance, unlike laws in the United States, Germany, Australia, and Belgium, the laws of Sweden, The Netherlands, and Switzerland will not prosecute a citizen for the crime of sex tourism committed in another country, unless his action constitutes an offense that violates the law in both countries, the country of origin and the country of destination where the crime has been committed. See Mohamed Y. Mattar, Co-Director of The Protection Project, Child Sexual Tourism: The Appropriate Legal Response, Remarks at the III Bilateral Conference, "Parallel Worlds" on Child Sexual Tourism and Other Forms of Trafficking, (Aug. 26-27, 2003), available at <http://www.protectionproject.org/commentary/tul.htm>.

90 *Brottsbalken* (Swed. Penal Code, 1962) (Swedish law does not allow a Swedish judge to prosecute a sex tourist who has been prosecuted in the country of destination or to convict such tourist with a sentence that is higher than the sentence imposed for the crime in the country of destination. Conviction for a short sentence or acquittal for sex tourism in a country of destination bars the prosecution of the sex tourist in his country of origin under this interpretation of the doctrine of extraterritoriality) available at <http://www.regeringen.se/sb/d/574/a/27777>.

91 According to the Austrian Criminal Code, trafficking acts committed abroad can be prosecuted in Austria, if the act has violated Austrian interests, irrespective of the criminal law of the foreign state where the criminal act was committed, *Strafgesetzbuch* (StGB) (Austrian Criminal Code), art. 64.

92 The United States has chosen not to impose an obligation of double criminality, which would require that child-sex tourism be illegal in both the United States and the location of the conduct. Instead, the PROTECT Act extends U.S. criminal laws "against nationals whose acts were committed in places lacking an effective criminal justice system." [See, Ilias Bantekas & Susan Nash, *International Criminal Law* (2d ed. 2003) at 152 & n.69 (noting that Hellenic Criminal Code, (Poinikos Kodikas) art. 5 also extends its laws against its nationals who commit acts in other States where the criminal justice system is inadequate)]. The English have also followed suit with the U.K. Sexual Offenses (Conspiracy and Incitement) Act (SOA) 1996.

f) Adoption of a Uniform Age of Consent

The United Nations Convention on the Rights of the Child defines a child, but does not specify the age of sexual consent in its articles. The Committee on the Rights of the Child has stated that 18 years of age is the preferred age of consent for protecting children from sexual exploitation.⁹³ However, the age of consent varies greatly among states.⁹⁴ This is a challenging obstacle to the creation of a consistent and harmonized protection of children from exploitation on an international level.⁹⁵ Moreover, in circumstances that require “dual criminality” – when a crime against a child committed abroad must also be a crime against a child in an offender’s home country in order for the offender to be prosecuted there, agreement on a common age for the definition of a child is crucial.⁹⁶ Any discrepancy will prevent the offender from being prosecuted.⁹⁷

While a person under the age of 18 may be able to consent freely to sexual relations, such an individual is not legally able to consent to any form of exploitation, including trafficking in children.⁹⁸ To make it easier to prosecute a case where children are the victims, all serious sexual offenses against children must be brought into the category of crime that could be prosecuted at home, without any need for a prior complaint, and no double criminality requirement. Extraterritorial legislation should not require that victims file complaints or that other governments file a request from the destination countries. This would deter enforcement.

g) Removal of the Filing of a Complaint Requirement

In most countries, a prior complaint of the victim, or a formal request for prosecution from the foreign government,⁹⁹ is necessary before the offender’s

93 See INTERNATIONAL BUREAU FOR CHILDREN’S RIGHTS, GLOBAL REPORT INTERNATIONAL TRIBUNAL FOR CHILDREN’S RIGHTS: INTERNATIONAL DIMENSIONS OF THE SEXUAL EXPLOITATION OF CHILDREN (2000) at 18, available at http://www.ibcr.org/editor/assets/thematic_report/4/2000_global_report_sec_en.pdf.

94 Information about the age of consent of Interpol member countries can be accessed at: <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/Default.asp>

95 ICMEC 2006, *supra* note 78 at 1.

96 *Id.*

97 *Id.*

98 *Id.*

99 See Bill C-27 of Canada s. 7(4.2) Request of the Ministry of Justice. (Criminal proceeding in relation to sex tourism will be instituted in Canada only upon request by a foreign country. The request must be made to the Federal Minister of Justice. The request can occur in one of two ways. In Canada, a foreign consular officer or diplomatic agent accredited to Canada may make the request. Abroad, a foreign minister may make the request to the Minister of Justice through a diplomatic representative of Canada. This procedural requirement recognizes the competence of the foreign State to exercise control over events occurring within its own boundaries. It thereby allows that country to choose whether to prosecute the Canadian or to request that the prosecution be undertaken in Canada. See also s. 7(4.3) Consent of the Attorney General. Criminal proceeding may only be instituted with the consent of the provincial Attorney General. Such a decision will be taken following considerations of matter such as the extraterritorial element of the offense and the possible impact on relations between States.

country will prosecute him or her. Several countries have adjusted their legislation to make it easier to prosecute a case where children are the victims.¹⁰⁰ Citizens or non-residents found in Belgium who have committed the offense of trafficking outside Belgian territory, may be prosecuted in Belgium, even if the local authorities have received no complaint or official note from the foreign counterparts.¹⁰¹ Extraterritorial legislation should not require that victims file complaints or that other governments file a request from the destination countries. This would deter enforcement.

Conclusion

This paper has served to demonstrate that Albania has failed to take any unilateral action to recover the lost children documented in the *Terre des Hommes* 2003 report. Despite efforts to address the issue, as demonstrated by its bilateral agreement with Greece in February 2006, the lack of any comprehensive extraterritorial legislative framework undermines such efforts and undermines legislation Albania has introduced to protect children against trafficking in persons.

This paper has demonstrated that the lack of a comprehensive extraterritorial legislation challenges all three bases of extraterritorial jurisdiction. Thus Albania's legislation does not fully and explicitly comply with international standards. A comprehensive extraterritorial legislation as laid out in this paper would enable law enforcement and prosecutors to aggressively investigate and prosecute offenders and to better protect Albanian children anywhere in the world.

100 In France, legislation has brought all serious sexual offenses against children into the category of crimes that could be prosecuted at home, without any need for a prior complaint and without a double criminality requirement.

101 Code of Criminal Procedure (Art 10), as amended by the Law of 13 April 1995 (Art 8). Source: Council of Europe Compilation, Volume II, National texts at 13.

Such a Long Journey: Barriers to Eliminating Child Trafficking for Labor Purposes in the West African Cocoa Value Chain

Anita Sheth*

Abstract

Child trafficking for exploitative labor purposes in the West African cocoa supply chain has produced substantial concern for governments, industry, U.N. bodies, researchers, and non-governmental organizations. West African cocoa accounts for roughly 70% of the world's supply and is the main ingredient in chocolate, whose average annual sales account for billions of U.S. dollars. In 2001, partially in reaction to pressure from consumers, the chocolate industry took up a call from Senator Tom Harkin and Representative Elliot Engel to address this issue and ensure that no child is exploited in the harvesting and growing of West African cocoa. They developed the Harkin-Engel Protocol with time-specific actions to ultimately impact the removal of the worst forms of child labor, including trafficking in the Ivorian and Ghanaian supply chains. This paper examines the results of the Harkin-Engel Protocol and assesses the effect it has had to date, as well as its projected impact on prohibiting child trafficking for exploitative labor use in the cocoa sector. The implementation setbacks and pitfalls of the Protocol reveal its limitations as an effective solution. This paper analyzes these liabilities and concludes by suggesting how the Harkin-Engel Protocol could be adjusted to ensure that its ultimate goal of protecting children from the worst forms of child labor in the West African cocoa farms can be realized.

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Introduction

In 2001, news of West African children being trafficked from Mali, Burkina Faso, and Togo to work in unconscionable conditions on Ivorian cocoa farms broke across North America and Europe. Four years later, a second West African cocoa producing country, Ghana, was also recognized as a place where children were exploited in the growing and harvesting of this product. The issue of exploitative child work in cocoa production is not new. The first reports of migrant children involved in adverse working conditions in the production of this West African commodity publicly appeared in 1901.¹ While serious attempts have been made and millions of dollars have been spent in recent years to map and address this problem, success is still difficult to measure.

This paper addresses the child trafficking phenomenon in the West African cocoa value chain and the difficulties involved in defining and resolving it. It begins by identifying key characteristics of Ivorian and Ghanaian family farms on which cocoa is produced and the strong incentives for recruiting the cheapest forms of labor. Using the international debate of the 1990s and early 2000s over the worst forms of child labor (WFCL) as context, this paper presents the “Protocol for the Growing and Processing of Cocoa Beans and their Derivative Products,”² also known as the Harkin-Engel Cocoa Protocol. Proponents of the chocolate industry, governmental officials and NGO representatives alike, proclaimed the development of the Protocol an “historic event” in addressing child labor issues in the cocoa supply chains of West Africa. However, the statistical nature of the Protocol’s methodology for monitoring child trafficking and immigration patterns in the region has proven insufficient. Once recapitulated, this paper exposes the serious gaps in this methodology and the difficulties encountered in understating the socio-economic conditions underpinning the problem of trafficking in children, especially in Côte d’Ivoire and Ghana. The paper argues that, by limiting the interpretation of trafficking and by focusing only on the countries of destination of trafficking such as Côte d’Ivoire and Ghana, the Harkin-Engel Protocol has failed to address the root causes of trafficking in the region and to build a sustainable response to the elimination of trafficked child labor in the West African cocoa sector.

1 CAROL OFF, *BITTER CHOCOLATE: INVESTIGATING THE DARK SIDE OF THE WORLD’S MOST SEDUCTIVE SWEET*, (Random House Canada ed., Toronto, Canada, 2006).

2 Protocol for the Growing and Processing of Cocoa Beans and their Derivative Products in a Manner that complies with ILO Convention 182 Concerning the Prohibition and the Immediate Action for the Elimination of Worst Forms of Child Labor, agreement signed in September 2001 by the heads of 8 major chocolate companies, two U.S. Senators and a member of Congress, the Ambassador of Ivory Coast, the director of the International Programme on the Elimination of Child Labor, and officials from Free the Slaves, the Child Labor Coalition, the National Consumers League and the International Union of Food, Agricultural, Hotel, Restaurant, Catering and Tobacco Allied Workers Associations (IUF), *available at* <http://www.cocoainitiative.org/images/stories/pdf/harkin%20engel%20protocol.pdf>.

This paper concludes by suggesting a broader understanding of the problem of trafficking in children in cocoa production in the region. In the context of West African cocoa farms, trafficking involves a complex chain of intermediaries and efforts to address the problem must consider both the demand and supply side of cheap labor. The concepts of “family farm” and hazardous work must be understood in relation to the socio-economic context. The interpretation of trafficking must be consistent with the 2000 United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons,³ which considers the movement of the victim as irrelevant. Without a regionally-based approach to the trafficking dilemma, or a broader regional and definitional scope, gains in Ghana and Côte d’Ivoire, where the demand for cheap labor is, will be negated by increasing challenges from those countries which supply the labor (e.g. Mali, Burkina Faso and Togo). There must be a reinterpretation and expansion of the Harkin-Engel Protocol, with broader understanding of the practical realities of this complex value chain, which includes both cocoa and labor markets of all West Africa.

I. Family Farms in Côte D’Ivoire and Ghana: Cocoa Production, Labor and Income⁴

1. The Family-Based Structure of Cocoa Production

Cocoa beans are an internationally traded commodity produced mainly in Côte d’Ivoire, Ghana, Nigeria, Indonesia, Malaysia, Cameroon, and Brazil. Half the world’s cocoa comes from various countries in West Africa, followed by Latin America and Asia, respectively.⁵ Harvesting cocoa is a labor-intensive process in West Africa.⁶ Small family farms provide the overwhelming bulk of cocoa

3 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, annex II, U.N. GAOR, 55th Sess., U.N. Doc. A/Res/55/25, *opened for signature* Dec. 12, 2000 (*entered into force* Dec. 25, 2003) [hereinafter U.N. Trafficking Protocol]

4 See generally, Anita Sheth, *Children Still in the Chocolate Trade: The Buying, Selling and Toiling of West African Child Workers in the Multi-billion Dollar Industry*, (Save the Children Canada, Working Paper Series No. 1, 2003), [hereinafter *Children Still in Chocolate Trade*], available at http://www.savethechildren.ca/canada/what_we_do/advocate/adv_publ.html. See also, Anita Sheth, *Targeting the Intolerable’ in the Chocolate Trade: Child Farm Labor and the Harkin-Engel Protocol* (Save the Children Canada, Working Paper Series No., 2, 2004).

5 Ghana overtook Indonesia in 2003 as the second largest cocoa exporter in the world after Côte d’Ivoire.

6 Cocoa pods are cut down from trees. They are opened and the pulp-covered beans are scooped out. This pulp is then removed through a process of fermentation, which takes a number of days in the sun and is highly labour intensive. The cleaned beans are then shelled and passed through huskers to separate the shell, husk and germs from the broken pieces of kernels (nibs). These are then roasted and ground. The grinding process breaks the cell wall of the nibs, producing a liquor mass which when cooled solidifies into liquor blocks. These can then be split into cocoa cakes and cocoa butter. Pulverizing cocoa cakes produces cocoa powder. Both cocoa butter and cocoa liquor are used in the manufacturing of chocolate. The various stages of growing, grinding and manufacturing are interconnected with market and trade. Most grinding of cocoa beans occurs in the chocolate consuming countries in the North, although in West Africa cocoa grinding and the production of export quality cocoa butter, cake and powder have increased significantly. See *Children Still in Chocolate Trade*, *supra* note 2.

production in Côte d'Ivoire and Ghana. West Africa grows the lion's share of cocoa used by the world's confectioners and food firms, "with Ghana contributing 19% of cocoa to the global market. Côte d'Ivoire, the biggest global supplier, contributes [roughly] 38%."⁷ Some 40 to 50 million people worldwide depend on cocoa for their livelihood and the current global market value of the annual cocoa crop is about \$5.1 billion.⁸ It is estimated that 29% of Ghana's population (6,300,000) and 44% of the Ivorian population (7,000,000) live off cocoa.⁹

"Family farms" in Côte d'Ivoire and Ghana are not clearly defined, and as such, cover a diverse range of members and situations. Size, family definition, structure, labor use, assets, market orientation, income, diversification of activities, reliance on migrants' earnings, and vulnerability to risk are common the areas of difference.¹⁰ For instance, there is a wide range of family farm households whose members are related by blood or alternate links, varying from small nuclear groups of four or five people to more expansive groupings, comprised of several families (farmers and workers), including children and parents, which could include anywhere from 10-90 people. Furthermore, it is customary in this context for younger adults and children to refer to elders using familial labels which do not necessarily illustrate biological relation. Within these differences, however, there are certain key features which characterize family farms, relating to "the particular connection between the structure and composition of the household and its associated assets and activities."¹¹ Most family farm production is based on "family labor,"¹² which is often unpaid, but is assured a return in the form of longer term rights, such as food and shelter, support in times of illness, help with marriage costs, and the right to family property. In the harvest periods, family farms rely heavily on non-family labor, especially migrant labor. It is thus important in the context of Côte d'Ivoire and Ghana to avoid seeing "family farms" only as isolated economic units, whose members are linked by blood lines and reliant exclusively on their own resources, including their own labor. Instead, family farms should be regarded as complex and

7 Lindsey Partos, *Farm-gate cocoa prices in Ghana to rise*, Sep. 8, 2008, <http://www.confectionerynews.com/The-Big-Picture/Farm-gate-cocoa-prices-in-Ghana-to-rise>.

8 Janine Erasmus, *Sweet deal for cocoa farmers*, July 30, 2008, http://www.medioclubsouthafrica.com/index.php?option=com_content&view=article&id=584%3Amars-cocoa-genome-project.

9 PETER VAN GRINSVEN, *GLOBAL COCOA MARKET AND TYPICAL COCOA FARMS*, (2006), http://mediabase.edbasa.com/kunder/yaraimages/agripres/agripres/agripres/j2006/m09/t04/0000431_2.pdf.

10 *See generally*, CAMILLA TOULMIN & BARA GUEYE, *TRANSFORMATIONS IN WEST AFRICAN AGRICULTURE AND THE ROLE OF THE FAMILY FARMS, SAHEL AND WEST AFRICA CLUB*, OSCE/ June 2003, (stating that the family farm relationship in West Africa have important implications for how decisions are made regarding the choice of crops, the organization of family labor and its allocations to different tasks, management of farm land and other assets, and questions of inheritance), available at: <http://www.oecd.org/dataoecd/38/15/40279863.pdf>.

11 *Id.*

12 Family labor in this paper refers to both blood and non-blood relatives living in a common household and have shared close relationships for generations. Non-family labor, refers to labor where there is no close relationships shared between family members and the worker.

inter-related structures whose members are related by blood, marriage, adoption or length of farm service and who are reliant on both their own labor and the labor of non-related others.

In West Africa, there are roughly three types of cocoa farmers: those who own their own land and farm it; the sharecropper who cultivates another's land and takes a share of the crop; and the farm manager who cultivates another's land and is paid a wage to do so. Sharecroppers constitute the largest group of cocoa farmers in Côte d'Ivoire and one third of the farmers in Ghana.¹³ While internal migrants make up the majority of these countries' cocoa sharecroppers, significant proportions of immigrants from neighboring Mali, Burkina Faso, and Togo also form this group. According to a study undertaken by the Natural Resources Institute for the European Confectionary Industry on the cocoa sector in West Africa, there has been a steady increase in the growth of young cocoa farmers in Côte d'Ivoire and Ghana since the 1980s.¹⁴ There is also growing evidence that these farms are being rented out to sharecroppers, as the young become absentee farm owners who prefer more urban type jobs. As the sharecroppers themselves become farmers, the need for cheap labor is greatly increased in the region. Low cocoa prices and adverse profit sharing ratios (calculated as a percentage of the crop for sale by and for the sharecropper), together with the obligation for sharecroppers to split their profits with the farm owner, increased the need to use family labor as opposed to hired adult labor. The demand for non-household labor, especially for land preparation, cultivation, and harvesting, also increased and the payment was made through food, shelter, and transportation contributions. Sharecroppers thus relied on social networks linking relatives from near and distant locations. Generally, on a non-bearing cocoa farm, sharecropping is not possible and hence farm managers are common. Farm managers may possess their own land as well as have a management contract to manage other landowners' farms. Since sharecroppers and farm managers are most common in new cocoa producing areas, located in remote regions, hired adult farm labor is hard to find. In most cases, labor is found among migrants and the young.

13 Olivia Abenyega & James Gockowski, Labor practices and the cocoa sector of Ghana with a special focus on the role of children, International Institute for Tropical Agriculture (2002), http://treecrops.org/links/publications/Labor_Practices_Ghana.pdf.

14 Natural Resources Institute for the European Confectionary Industry, *Child Labor on West African cocoa Farm*, Unpublished paper based on research undertaken by Natural Resources Institute for the European Confectionary Industry, Desk Study, copy obtained by Save the Children Canada, 2001.

2. The Cocoa Chain of Production in West Africa

It is worth taking a detour in order to understand the historical bases of current day sharecropping and use of child labor in cocoa farming in West Africa. Land tenure, land transactions and the commodification of agriculture have a long history in West Africa. They became more common when a number of agricultural commodities were produced in West Africa for European and thereafter for North American markets. In Ghana, the export crop frontier began in the early nineteenth century in the southeast region of the country, among the Krobo and Akuapem people. The nobility within these areas had extensive plantations of oil palm, which they farmed with slave labor. However, the slaves were incorporated into the families as family dependent labor, as junior lines of the lineage who worked the family land within rural areas. In the late nineteenth century, the demand for palm oil collapsed. Cocoa emerged as the most promising option and by the end of the century a major expansion into cocoa began. The opening up of new frontier lands for cocoa often involved the purchase of considerable tracts of land. The areas transacted were often situated in largely uninhabited wilderness sectors.¹⁵

The opening of a new frontier also required major investment in labor for forest clearance and creating the infrastructure of a new settlement. Speculators would often come together to acquire land and provide small, private plots to their laborers. These small portions of land assured that both family and non-family labor were compelled to remain for their own well-being. This is a significant point to remember when understanding the modern day interactions between West African cocoa producing and labor supporting countries. Through the 1900s the expansion of new cocoa areas in Ghana gave rise to rampant internal and cross-border migration based on this system, which used land to attract labor, and then rewarded labor with future granting of land composed as a family unit. The expansion of cocoa farming led to a unique organization of the family farming enterprise. The family deployed most of its young in the new frontier districts where they were involved in the heavy work of converting forest into cocoa farms.¹⁶

The income generated from harvesting cocoa gave rise to an increase of landless migrants from neighboring “upper Volta” (Burkina Faso, Niger and Mali), who were forced to migrate to meet tax obligations. The Gold Coast cocoa industry became a magnet for these migrants, “since the remuneration for labor was often higher than in the [surrounding] French colonies....”¹⁷ The rise of migrant labor in

15 KOJO SEBASTIAN AMANOR, FAMILY VALUES, LAND SALES AND AGRICULTURAL COMMODIFICATION IN GHANA, (2006), [hereafter Amanor], http://www.mpl.ird.fr/colloque_foncier/Communications/PDF/Amanor.pdf.

16 Amanor, at 5, states, The heirs of the local cocoa farmer were usually nephews belonging to his own abusua [matrilineage], but he can and is expected to give cleared land to his sons, daughters and wife. Such gifts must be sealed with rum in the presence of witnesses, and then remain the property of the recipients and their successors or legatees.

17 *Id.*

the cocoa areas facilitated the rapid alienation of land and accumulation of cocoa farms. Migrant farmers reinvested their profits in farm expansion and the purchase of new land within the forest zone.¹⁸ This produced a vicious cycle: the more money was made from cocoa, the more land was being used to produce it, which in turn generated more landless migrants looking for work in cocoa production.

The decade of the 1970s saw the saturation of the cocoa market and the underproduction of beans as the cocoa trees planted in the earlier periods matured, bearing less fruit. This rapidly reduced security of access to land for the relatives, including the youth; competition quickly set in. The youth withdrew their labor from family farms and sought farm jobs with migrant farmers. Only a few of them found jobs, however. The Ghanaian cocoa farm economy was now overcrowded with immigrants from neighboring countries who were working as annual laborers or sharecroppers. These laborers were more than willing to accept less compensation and bear lower working standards of living and conditions of work, even willing to seek out cheaper labor from their own countries, particularly child labor.

The decline of the cocoa frontier in Ghana, the drop in world prices due to increased supply from other cocoa producing countries and the problems of rehabilitating old cocoa resulted in increasing reluctance of migrant labor to work within old frontier districts.

As a result of these trends, from the 1930s to 1940s and then again in the 1970s and 1980s, Côte d'Ivoire had a steady supply of African migrants, some of whom were refugees and others who were seasonal and/or permanent workers. Refugees came from Ghana in the late 1960s¹⁹ and from Liberia from 1989 to 1996.²⁰ Seasonal and/or permanent workers originated from relatively poor countries, including Burkina Faso, Mali, and Togo. Currently, migrants make up roughly one third of Côte d'Ivoire's population.

Côte d'Ivoire's cocoa production was further affected by the sudden implementation of the liberalization policies in the late 1990s. This was greatly due to the fact that the cocoa marketing boards that played a large role in providing services to family farm holders in the form of price management, marketing, quality control, and purchasing were virtually absent. Despite the few powerful but short-

18 *Id.*

19 In 1969, the Ghanaian government enacted the Aliens Compliance Order, decreeing that all immigrants living in Ghana without proper documentation had to leave the country within two weeks. The vast majority of those targeted were migrants working informally in the cocoa industry. The number of Ghanaians living in Côte d'Ivoire was estimated at 42,000 in 1975. See Micah Bump *Country Profiles: Ghana: Searching for Opportunities at Home and Abroad*, Institute for the Study of International Migration, Georgetown University, (2006), available at <http://www.migrationinformation.org/Profiles/display.cfm?ID=381>.

20 According to the U.S. Committee for Refugees, 100,000 Liberian refugees entered Côte d'Ivoire at the end of 2001. See, Country Report: Liberia, (2002), <http://www.unhcr.org/refworld/country,,USCRI,,CIV,,3d04c14e10,0.html>.

lived price hikes for cocoa beans during the conflict in Côte d'Ivoire, low global market prices for cocoa beans disallowed cocoa farmers to have access to capital, equipment, financing or their own means of transportation. This lack of access led to the creation of a host of middlemen or private traders whose jobs were to acquire the cocoa beans from farmers and sell them to processors and exporters.

Today the major exporters are foreign owned. Farmers rely on state radio and/or newspapers to know the price determined on the futures markets of the London Cocoa Terminal Market and the New York Cocoa Exchange in order to calculate the 50%-60% they could charge.²¹ They are not guaranteed a minimum income to cover expenses. The pricing and marketing of the Ivorian cocoa beans have been, and continue to be, a subject of great controversy, involving the interventions of both private companies and major international financial institutions.

There exist a host of intermediate steps from the growing of raw cocoa beans to the manufacturing of chocolate. In Côte d'Ivoire, because of these steps, the Ivorian cocoa sector consists of a long and complex trading chain. The chain takes cocoa from small farmers in Côte d'Ivoire to chocolate manufacturers in the consumer markets of North America and Europe.²² There are clearly identifiable players at each step, which include farmers, workers, job brokers, middlemen, traders, processors, grinders, exporters, buyers, boards, associations, and chocolate manufacturers, distributors, and retailers. In addition to these players, there are many others who are involved with the commodity exchanges, the freight companies, warehouse operations, banks, and other financial intermediaries.²³ Key U.S. actors in cocoa production include Archer Daniels Midland (ADM), Cargill, Guittard Chocolate Company, Blommer Chocolate Company, Mars Inc., Hershey Foods, and the World's Finest Chocolate Inc. ADM and Cargill own processing plants in Côte d'Ivoire where they can buy their cocoa beans directly from cocoa farmers.²⁴ The longer the supply chain, the more the profits made in selling final cocoa products which are shared amongst the players, at least in principle. Ivorian cocoa farmers have long argued that they do not receive a fair price for the cocoa they produce or a fair share of the billions of dollars in profits to be made from selling manufactured cocoa products in global markets at international prices.

21 Cocoa is traded at major commodity exchanges in London and New York as a primary commodity.

22 Throughout this paper the term "Northern consuming markets/countries" refers to markets/countries in North America and Europe that consume most of agricultural products, including cocoa in the form of chocolate. "Southern producing markets/countries" refers to the markets/countries in the continent of Africa, Asia and Latin and South America that produce agricultural products like cocoa.

23 Al Bedford, Mick Blowfield, Duncan Burnett & Peter Greehalgh, *Value Chains: Lessons from Kenya tea and Indonesia cocoa sectors*, In Focus, Report 3, National Resource Institute, Resource Center for the Social Dimension of Business Practice (2002), available at <http://www.nri.org/docs/doc-200431-163322-0.pdf>.

24 Trade and Forfeiting Review, *Commodity traders: Looking beyond Commodities*, Vol. No. 2 issue 4, January 1, 1999, available at <http://www.tfreview.com/xq/asp/sid.0/volume.2/issue.4/qx/displayissue.htm>.

They typically earn a fraction of the export price for their cocoa, since they work through local middlemen, who take a substantial percentage.²⁵

The liberalization policies that were introduced in Ghana in the 1990s had a different impact on the country's cocoa production. Unlike in Côte d'Ivoire, the policies were only partially implemented, with quality and export functions retained under the control of the state. This system not only limited the number of middlemen, traders and exporters in the supply chain and therefore the profit sharing between them, it also opened up new and organized spaces for initiatives, such as the Kuapa Kokoo Cooperative, which continues to have a license to trade privately to a special independent commission established by the state.²⁶ Through this partial liberalization of markets, the Ghanaian government maintains control of exports to this day, and offers a guaranteed "minimum" internal price, called the "producer price" in the local currency. The trade of cocoa beans is managed by the Ghana Cocoa Board, which agrees to prices with producers at the beginning of the season. Despite higher prices currently being paid to cocoa farmers through this price setting mechanism in recent years, Laurent Pipitone of the International Cocoa Organization notes that in the last 30 years, the price trend for Ghanaian cocoa is more downward when compared to prices of the 1970s, which, in constant terms, were five times higher than they are today.²⁷

Amidst these vastly different price setting systems lies the issue of price differentials offsetting the smuggling of cocoa across the borders of these countries. The practices of moving illegal cocoa from Ghana to Côte d'Ivoire and back are dependent on which country offers the higher price for the bean. The route for the movement from Côte d'Ivoire to Ghana is often through Mali and Burkina Faso, then from Togo into Ghana, or by sale in Togo. Internal NGO reports have

25 Cocoa prices are highly volatile; they fluctuate according to a number of factors, including the macroeconomic conditions in OECD countries, disease and weather, trading in cocoa on futures markets, local access to technical assistance, inputs, credit, transportation, and marketing information, taxation at local and national levels, and regulations that prevent competition between intermediaries along the supply chain or discourage the creation of strong producers' associations. Market liberalization reforms in Côte d'Ivoire have left many small cocoa producers without much access to credit, inputs or markets. Yields and quality of crop have often decreased following these reforms, reducing even further the inadequate income of small producers.

26 The cocoa marketing structure in Ghana has been defended strongly by the government. Even its vision of full liberalization is different from that of other countries..., based on lessons learned from neighbouring countries. The current structure (partially liberalized) has sustained international demand for Ghanaian cocoa which, with its high quality and sound export reputation, receives a price premium in the international market over cocoa from other sources. One important dimension of this structure is the role of a single exporter. All cocoa must pass through the Cocoa Marketing Company [CMC]. This gives the CMC a strong negotiating position with the handful of major multinational corporations which buy cocoa on the open market. See Pauline Tiffen, Jacqui MacDonald, Haruna Maamah & Frema Osei-Opere, *From Tree-minders to Global Players: Cocoa Farmers in Ghana*, (2004), at 22, <http://www.wiego.org/publications/Chains%20of%20Fortune%20Chapters/Tiffen%20MacDonald%20Maamah%20Osei-Opere%20Cocoa%20Farmers%20in%20Ghana.pdf>.

27 See *supra*, note 4.

indicated that cocoa farmers from Burkina Faso and Mali who have historically farmed cocoa in both these countries, as well as Ivorian and Ghanaian farmers, are heavily involved with these transactions. Recent public news reports indicate that due to the relatively lower prices offered by the Ghanaian system, Ghanaian cocoa often finds its way to Côte d'Ivoire.

Family farm production of cocoa in Côte d'Ivoire and Ghana sketches a continuously shared story of the interdependence of land, labor, and migration with prices paid to cocoa farmers playing a deciding factor in the quality of labor hired and the directions of migratory flows, especially during the harvest period. In both Ghana and Côte d'Ivoire, land was cultivated rapidly and transacted disproportionately among family and non-family members. Domestic labor was exhausted quickly due to the expansion caused by the over reliance on this export, necessitating the use of landless migratory labor from neighboring countries. Both countries incorporated non-family labor into the family units as a way of retaining and relying on committed labor that was becoming scarce with cultivation and production. This incorporation redesigned the meaning of family. Cocoa prices were essential in determining household farming incomes, which in turn determined the types and the means of attracting labor for growing and harvesting this crop. In times of continual downturns in cocoa production, the shared borders between Ghana and Côte d'Ivoire facilitated not only the illegal transport and sale of cocoa as a way to compensate for low cocoa prices, but also the search for cheap and illicit forms of labor including the labor of children.

II. Constructing the Ivorian Cocoa and Child Labor/Trafficking Case: The Mid 1990s-2001

1. First Detections of Trafficking of Children for Forced Labor in Côte d'Ivoire

After the ratification of the U.N. Convention on the Rights of the Child (CRC)²⁸ and prior to the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the International Labor Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO 182),²⁹ banning the worst forms of child labor (WFCL), including slavery and human trafficking, West

28 United Nations Convention on the Rights of the Child, U.N. Doc. A/Res/44/25, *opened for signature* Nov. 20, 1989 (*entered into force* Sept. 2, 1990), [hereinafter CRC]. Article 35 of the CRC calls on ratifying governments to, among other things, take action to prevent sale of, or trafficking in children for any purpose.

29 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182), *opened for signature* June 17, 1999 (*entered into force* November 19, 2000) [hereinafter ILO Convention No. 182].

African countries of Ghana, Côte d'Ivoire, Mali, Burkina Faso, Togo, and Benin all engaged in some efforts to detect, intercept, and repatriate children who had been identified as "trafficked" for labor purposes across borders, and to detain individuals suspected of trafficking in the region.³⁰ These events were reported in the local press, with the earliest reports appearing in Mali in 1995 and in Côte d'Ivoire in 1998, inspiring UNICEF (in Abidjan) to investigate and report that 10,000 to 15,000 Malian children were found working in unacceptable conditions in Côte d'Ivoire.³¹ A few international non-governmental organizations (INGOs) operating in West Africa were quoted heavily in these early local reports identifying children who had been moved across borders through deception and forced to work in exploitative conditions. West African government officials, mostly from embassies in the region, were also quoted along with these INGOs.³²

2. The International Reaction to Child Labor in West Africa

Elsewhere in the world, the U.S. Department of State 1994 and 1995 reports, *By the Sweat and Toil of Children: the Use of Child Labor in American Imports*, identified children working in Ivorian diamond and gold mining, as well as in coffee agriculture. Following these reports, in 1998 the U.S. clarified its 1930 Tariff (Customs) Act to ban entry to the U.S. of products made by forced or indentured child labor. On June 19, 1999, President Clinton took an even bolder stance against child labor by signing the International Labor Organization Convention on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (ILO 182) and its Recommendation 190. He encouraged other states to follow suit and ratify the Convention. Key representatives of the U.S. business community³³ agreed with former President Clinton's views and fully endorsed the

30 Sarah Castle & Aisse Diarra, *Perceptions of Mali Youth Migration: Review of Documentary References*, London School of Hygiene and Tropical Medicine (in association with USAID and Save the Children), (2002).

31 *Id.*

32 For example, working with UNICEF, Anti-Slavery International and Save the Children Canada in 1995, the Government of Mali issued a public statement against Malian children being used for child labor purposes in the Côte d'Ivoire and officially informed the Government of Côte d'Ivoire of the problem. In 1996, a workshop on child trafficking was held in Sikasso, Mali, and a regional response to address the problem was designed. In 1998, Mali established a Consultative National Commission on Child Trafficking. It also created the Ministry for the Promotion of Women, Children and the Family, who was tasked, among other things, to handle the repatriation of children returning from agricultural farms in Côte d'Ivoire.

33 Talking on behalf of over 300 global corporations, professional firms, and business associations, on September 21, 1999 the American Apparel Manufacturers Association, the Business Roundtable, National Association of Manufacturers, National Foreign Trade Council, National Retail Federation, Sporting Goods Manufacturing Association, U.S. Chamber of Commerce and U.S. Council for International Business signed the U.S. Business Community's Letter To The Senate Foreign Relations Committee: ILO Convention On The Worst Forms Of Child Labor, United States Council for International Business, (Sep. 21, 1999), <http://www.uscib.org/index.asp?DocumentID=2124>.

U.S. ratification of ILO 182.³⁴ However, ILO 182, it was argued by U.S. business representatives, would not apply to family farms in the U.S. They reassured the Foreign Relations Committee that “after a thorough legal review,” undertaken by the Tripartite Advisory Panel on International Labor Standards (TAPILS),³⁵ the unanimous finding was that: “... the ratification of the Convention banning the worst forms of child labor will not require any changes to the U.S. law or practice...”³⁶ With respect to health and safety, governments are given discretion to determine the types of work that constitute extreme hazardous work and the U.S. Fair Labor Standards Act (FLSA) voiced this position when it declared:

[With regard to the] Minimum Age for Particularly Hazardous Work, FLSA distinguishes between particularly hazardous work for children and other work that is not considered particularly hazardous. The minimum age for particularly hazardous work in agriculture is age 16.... There are [however]...exceptions to these minimum age requirements for particularly hazardous employment.... the age 16 minimum for particularly hazardous jobs in agriculture *does not apply on family farms*.³⁷

World leaders agreed with the U.S. that the ratification of this Convention was a sign of the growing global tide against the worst forms of child labor, and the willingness of countries to play a role in the development of policy and practice in support of children’s rights. They proclaimed ILO 182 as a “historic Convention” uniting the world community with a common goal and under a common purpose to improve the situation of working children.³⁸

Against this backdrop of international efforts to combat child labor, the exploitation of child workers on West African cocoa farms (specifically child trafficking and the worst forms of child labor) received wide research and reporting by U.N. bodies (UNICEF, ILO, and IOM), INGOs and international media operating

34 According to these business representatives, the reasons for ratifying ILO 182 were several; morally, the egregious forms of child labor addressed by the Convention are repugnant to all Americans – children must not be subjected to slavery. When ratified, the Convention establishes binding, multilateral, international obligations. The business representatives further stated that their support for the Convention derived from the belief that the document is well crafted and is strong enough to be effective, yet not so detailed that it presents technical barriers to universal ratification.

35 A sub-group of President Clinton’s Committee on the ILO made up of legal advisors from the U.S. Departments of Labor, State, and Commerce, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the United States Council for International Business.

36 *Convention (No. 182) for Elimination of the Worst Forms of Child Labor*” in Child Labor Collation, “*Protecting Child Workers in the United States: Is the Government’s Indifference to the Safety and Health of Working Children Violating an International Treaty?*” A Child Labor Coalition Report, S. TREATY DOC. No. 106-5, 106th Cong., 1st Sess., at 5 (2005).

37 *Id.*, at 6-7.

38 Celeste Corlett, *Impact of the 2000 Child Labor Treaty on United States Child Laborers*, 19-2, ARIZ. J. INT’L & COMP. L., 715 (2002).

in the region. Even though the discussions of exploitative child labor included a number of countries, Côte d'Ivoire was singled out by the international media, and identified as the country which traded heavily in children for unacceptable work on cocoa farms. In September 2000, British Television aired a documentary revealing that hundreds and thousands of children in Burkina Faso, Mali, and Togo were being purchased from their parents and sold as slaves to cocoa farmers in neighboring Côte d'Ivoire.³⁹ It further claimed that slavery existed on as many as 90% of cocoa farms in Côte d'Ivoire.⁴⁰ Save the Children Canada provided details on trafficking in the area that it obtained from local partners and government officials in Mali.⁴¹ A few months later, major international media carried a gripping story of a ship, MV Etireno, off the coast of Benin, suspected of carrying 43 child workers destined for slavery in West Africa; 13 of these children were from Benin, eight from Togo, 17 from Mali, one from Senegal, one from Guinea, and three from an unspecified country of origin. While only a few unaccompanied children were found on board of the ship, the incident nonetheless focused world attention on trafficking linked to the worst forms of child labor in Western Africa. Shortly after this incident, the ILO Global Report on child labor indicated that the worst forms of child labor in West Africa constituted a blatant violation of the ILO's core labor standards.

Soon after this story, Red Cross societies in 16 West African nations announced that they would meet in Senegal to set up teams to monitor the region's main ports and to disseminate information about child labor and trafficking. A meeting was held in Nigeria - dubbed the Pan African Conference on Human Trafficking. Dr. Rima Salah, UNICEF's Regional Director for West and Central Africa stated: "we know that the scale of the problem is enormous. Studies have revealed clearly established trafficking routes involving Benin, Côte d'Ivoire, Gabon, Ghana, Mali, Nigeria, Togo, Cameroon, Burkina Faso, Guinea, and Niger."⁴² Weeks later, the then Organization of Africa Unity (OAU), U.N. agencies, and INGOs met in Côte D'Ivoire to discuss ILO 182. Participants were shocked to learn that only 20 African governments out of 53 had ratified the 1999 convention.

In the United States, reaction to the reports of the abusive and depraved conditions in the growing and harvesting of cocoa led Senator Tom Harkin to say that, "most consumers in America and around the world don't want to buy chocolate made from cocoa beans harvested by child slaves."⁴³ Eliot Engel, the

39 Elliot J. Schrage & Anthony P. Ewing, *In The Cocoa Industry and Child Labor*, June 22, 2005, http://goliath.ecnext.com/coms2/summary_0199-4653997_ITM.

40 *Id.*

41 See Children Still in Chocolate Trade *supra* note 1.

42 Matthias Muindi, *Suffer Africa's little children*, AFRICA NEWS, May 2001, http://web.peacelink.it/afrinews/62_issue/p11.html.

43 Senator Tom Harkin, *Senator Harkin, Congressman Engel Announce Child Labor Agreement With Global Chocolate Industry*, NEWS, October 1, 2001, <http://harkin.senate.gov/pr/p.cfm?i=178880>.

House Representative, also reacted to the media reports and stated that: “when I learned of children being sold into slavery to work in the cocoa fields of Côte d’Ivoire, I was horrified.”⁴⁴ Both Harkin and Engel took action, calling upon the U.S. chocolate industry to design clear and identifiable ways for the removal of “child slaves” on cocoa farms. Representative Engel drafted a rider to a fiscal 2002 agricultural appropriations bill that would institute a system of labeling chocolate and cocoa, as “No child slave labor.”⁴⁵ The bill passed the House of Representatives by a margin of 291-115 in June 2001.⁴⁶

As these discussions were taking place, a U.S. based NGO, the International Labor Rights Fund (ILRF) released results from an independent study in southwestern region of Côte d’Ivoire.⁴⁷ The report showed that cocoa farmers relied heavily on job brokers for the recruitment of child workers, but were unaware of the nature of the relationship between the children and the job brokers. The report also indicated that children were not allowed to leave the farm until after the cocoa season.⁴⁸ Following the release of the study results, the ILRF called for strict and immediate enforcement of the existing U.S. legislation of the cocoa industry in the U.S.

The chocolate industry itself responded to the various child labor reports by announcing to the public that they would be sponsoring studies to investigate the problem. Cadbury Schweppes declared that there are around a million farms in Côte d’Ivoire and each produces an average of only one tonne of cocoa beans per year. Tony Lass, Cadbury Schweppes’ Director of Global Cocoa Supplies, noted:

Cadbury was in a state of shock about the whole of this.... because the allegation that 90% of the farmers in Côte d’Ivoire used slaves was something that we could not comprehend. In my case, I’d been visiting cocoa farms for 30-something years and I had never seen anybody walking around a field in chains. And I had never seen anybody being abused by a farmer. And I assumed...that they were all members of the extended family, which is sometimes true, but is not always true, in

44 *Id.*

45 This was to operate like the “Dolphin Safe” labels on tuna.

46 Brooke Shelby Biggs *Slavery free Chocolate*, ALTERNET, February 7, 2002, <http://www.alternet.org/story/12373/>.

47 The study was released in July 2002. The independent, French speaking researcher traveled to the Côte d’Ivoire and held extensive meetings with Government representatives at the federal level, local government representatives in the countryside, industry regulators, agricultural technicians from the Ministry of Agriculture, the commercial director of the Autonomous Port Authority of Abidjan, Managers of the Autonomous Port Authority of San Pedro, representatives of cocoa cooperatives and cocoa producing associations, individual cocoa planters, Director of the biggest shipping company in Côte d’Ivoire and human right lawyers/activists. The investigator visited dozen of farms in Sasandra-Soubre-Gagnoa region.

48 International Labor Rights Fund’s letter to Robert C. Bonner, Commissioner of Customs, U.S. Customs, Department of Treasury, (May 30, 2002), <http://lrights.igc.org/projects/childlab/cocoapetition.pdf>.

retrospect.... And the question, which everyone in the industry asked, was “Can this be true?” Can there be children in these circumstances, regardless of whether they were 90% of farms, or not? Are there children in these circumstances?⁴⁹

To learn more about the situation Cadbury Schweppes commissioned a desk study, and Lass continued:

...it became clear to us that what we had been shown on the Channel 4 was, indeed, possible. I had never heard of the concept of trafficking children. I had never heard of ILO 182... Why would we have ever thought of it? To the average Western mind, the concept that a child is sold by his parents for a trivial sum of money because they’re so poor that they simply cannot feed that child, is something that simply had not crossed their minds.⁵⁰

Susan Smith of the U.S.-based Chocolate Manufacturers Association indicated, “a lot of us grew up on farms and we know it’s normal for children to work.”⁵¹ Mars and Hershey admitted that Côte d’Ivoire did in fact supply them with a lot of their cocoa, but “insisted that the cocoa chain was outside their control.”⁵² Overall, the European and North American companies concluded that it was difficult to know the origin of their cocoa beans or to be aware of specific labor practices on individual farms from which those beans originate. “Big Chocolate tossed the [issue of exploitative child labor] in the direction of the Côte d’Ivoire government: it was the government responsibility to guarantee clean cocoa the industry insisted.”⁵³ No agent of the chocolate industry directly alluded to the exemptions of family farms in the U.S. to ILO 182, but they could have been constructing a case for this in later years.

3. The Côte d’Ivoire Government Response to Trafficking in Children

The Consular Affairs Secretary of the Permanent Mission of the Republic of Côte d’Ivoire indicated in a letter to the U.N. Secretary-General, dated June 22, 2001:

49 Sumana Chatterjee and Jaan Elias, “*Cadbury: An Ethical Company Struggles to Insure the Integrity of Its Supply Chain*,” Yale case 07-039 November 27, 2007 (revised August 24, 2008), pp. 8-9, available at http://mba.yale.edu/news_events/pdf/cadburycase.pdf.

50 *Id*

51 *See supra* note 1.

52 *Id*, at 140.

53 *Id*, at 142.

...in every rural family, children help by working the fields; this is a normal cultural activity in all African societies. Consequently, it does not constitute slavery or the exploitation of children. Ninety percent of Côte d'Ivoire's cocoa is produced by Ivorians and only 10% is produced by foreigners. While intellectual honesty demands that we recognize that no country develops in total isolation, it must be stated frankly that with all due respect for its critics, Côte d'Ivoire has essentially been built by Ivorians. Of the ten per cent of foreigners involved in agricultural activities, two or three per cent engage in trafficking in children.⁵⁴

The Government of Côte d'Ivoire further explained that cocoa production involved thousands of remote small family farms where immigrants sometime work and that these were difficult to monitor:

...these [immigrant workers] have ultimately established their own undertakings and had brought *from their countries relatives and children whom they declare as family*, which has aggravated the practice of using child labor in the country.⁵⁵

The Government had “authorized various bodies of the international media to visit every place in the country to carry out their investigations, in a free manner, and to collect reliable and objective data on the exploitation of children in cocoa.”⁵⁶ At the end of the investigation, the Government of Côte d'Ivoire revealed that no evidence was submitted to it by any group indicating that children had been in a situation of “slavery” or had been sold to work in cocoa farms.⁵⁷ Even though no government officials noted the exemption of ILO 182 on U.S. based family farms, it noted that all the evoked measures would be insufficient if there was not at the same time an effective fight against poverty, not only in Côte d'Ivoire but also in other countries in the sub-region. The fight against poverty needed the support of the international community and the task was to be undertaken by the Government of Côte d'Ivoire.⁵⁸

54 LETTER DATED 22 JUNE 2001 FROM THE CHARGÉ D'AFFAIRES A.I. OF THE PERMANENT MISSION OF CÔTE D'IVOIRE TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL, LETTER FROM BY NOËL EMMANUEL AHIPEAUD GUÉBO CHARGÉ D'AFFAIRES PAR INTERIM OF THE PERMANENT MISSION OF CÔTE D'IVOIRE TO THE UNITED NATIONS, U.N. Doc A/55/994 (2001), *available at* <http://www.un.org/documents/ga/docs/55/a55994.pdf>.

55 International Labor Organization, *ILCCR: General Observation concerning Côte d'Ivoire*. Published: 2002, Ilolox 122002CIV, 2002, *available at* <http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

56 *Id.*

57 *See supra* note 48.

58 *Id.*

III. The Harkin-Engel Cocoa Protocol

1. The First Phase of the Protocol: Research Evidence Produced Between 2001 and 2005

On September 19, 2001, the Harkin-Engel Cocoa Protocol was signed as a voluntary Protocol aimed at promoting the growing and processing of cocoa beans and their derivative products in a manner that complies with ILO Convention 182 and its Recommendation 190. Worst forms of child labor was defined according to the Convention, namely:

...all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.⁵⁹

Since the Convention did not include a definition of trafficking and the U.N. Protocol on Trafficking had not yet entered into force, trafficking was interpreted according to the 1999 International Organization for Migration definition:

...trafficking occurs when a migrant is illegally engaged (recruited, kidnapped or sold) and moved either within national boundaries or across international borders; or when intermediaries (traffickers) obtain economic gains or profit by means of deception, coercion and other forms of exploitation under conditions that violate the fundamental rights of the migrant.⁶⁰

Among the goals of the Protocol is the commitment of significant resources to fighting child labor in West Africa, the establishment of an action plan to eliminate the worst forms of child labor and establish a means to monitor and report on compliance with those standards. The Protocol further called for the development and implementation of standards of public certification, ensuring that cocoa had been grown free from the worst forms of child labor. The Protocol laid out “a series of date-specific actions, including the development of credible, mutually acceptable,

⁵⁹ ILO Convention No. 182.

⁶⁰ IOM definition of trafficking quoted in Andrea Marie Bertone, *Sexual Trafficking in Women: International Political Economy and the Politics of Sex*, Gender Issues, (January 2000), available at http://www.accessmylibrary.com/coms2/summary_0286-627323_ITM.

voluntary, industry-wide standards of public certification by July 1, 2005—to give a public accounting of labor practices in cocoa farming.”⁶¹ The Protocol identified four interdependent and evolving components of the cocoa certification system, in particular: data collection, reporting, independent verification and remediation/response. The goal of certification, in the definition of the coalition of confectionaries and the World Cocoa Foundation, was to build a “transparent, credible and progressive process that reports on the incidence of the worst forms of child labor (WFCL) and forced adult labor (FAL) in a producing country’s cocoa sector and on the progress in reducing this incidence, with the goal of eliminating WFCL and FAL from the sector.”⁶² Accordingly, the certification system’s main components were: a) statistically representative family farm and community-based data collection on the incidence of WFCL and FAL in a country’s cocoa-growing area, b) publicly available annual reporting on the findings of this data collection, c) publicly available reporting on the nature and impact of remediation efforts focused on the elimination of the WFCL and FAL (including rescue, rehabilitation and repatriation, as needed), d) and independent verification of the data collection and reporting. The Cocoa Protocol was witnessed by the heads of eight major chocolate companies (including companies from the United States and Europe), two U.S. Senators, a member of Congress, the Ambassador of Côte d’Ivoire to the U.S., the director of the ILO International Program on the Elimination of Child Labor, and officials from various NGOs and trade unions.⁶³

From 2001 to 2005, most efforts were devoted to conducting data collection, the first component of the “certification system” to address the worst forms of child labor. This system covered trafficked labor in West African cocoa farms, with an operational emphasis on Côte d’Ivoire. This first phase consisted of obtaining credible data on the issues of children involved in cocoa production. All interim reports from the industry leading up to the June 2005 deadline indicated that progress was being made, despite the fact that the conflict that had broken out in Côte d’Ivoire at the end of 2002 and the difficulty of monitoring its hundreds of thousands of smallholder family farms, both slowed the anticipated progress towards the deadline. In August 2002, the International Institute of Tropical Agriculture (IITA) which undertook the study in Côte d’Ivoire, Ghana, Nigeria, and Cameroon to identify offending cocoa farms and the prevalence of exploitative and

61 Joint Statement from U.S. Senator Tom Harkin, Representative Eliot Engel and the Chocolate/Cocoa Industry on Efforts to Address the Worst Forms of Child Labor in Cocoa Growing, (July 1, 2005).

62 *Id.*

63 The NGOs and trade unions that witnessed the signing of the Protocol were Free the Slaves, the Child Labor Coalition, the National Consumers League, and the International Union of Food, Agricultural, Hotel, Restaurant, Catering and Tobacco Allied Workers Associations (IUF).

abusive child labor, released its first results to the public.⁶⁴ Approximately 284,000 children were found to be working under hazardous and dangerous conditions, the vast majority in Côte d'Ivoire (200,000). Hazards identified were the use of machetes and spraying of pesticides.

The study opened with a key finding:

The trafficking of children to Côte d'Ivoire from neighboring countries by labor intermediaries to work in the cocoa sector was represented by the farmers and traditional leaders surveyed and interviewed in the community survey *as less prevalent today than in the past*.⁶⁵

Migratory child labor, mainly from Burkina Faso, was discovered and exposed. Fifty nine percent of an estimated 5,120 children who were employed as full-time workers on cocoa farms came from Burkina Faso, while those remaining came from Côte d'Ivoire.⁶⁶ Not all children working on cocoa farms were allowed to leave their place of employment, still others required the permission of adults and a few lacked the money to leave.⁶⁷ Intermediaries were involved in the recruitment of children. However, IITA noted that most of them were either known to the

64 This study was supported by the U.S. Agency for International Development (USAID), the U.S. Department of Labor (DOL), the World Cocoa Foundation, the International Labor Organization (ILO), and the governments of targeted West African countries.

65 According to the IITA: The quantitative surveys revealed that the recruitment and employment of both children and adults from outside the family as permanent salaried workers was relatively uncommon. In RCI, an estimated 0.94% of farmers indicated that they employed children as permanent full-time workers.... In Ghana and Cameroon, none of the farmers questioned reported employing children as salaried workers. See, IITA, *Child Labor in the Cocoa Sector of West Africa: A synthesis of findings in Cameroon, Côte d'Ivoire, Ghana, and Nigeria*, August 2002, [Hereafter IITA Child labor], <http://www.globalexchange.org/campaigns/fairtrade/cocoa/IITACocoaResearch.pdf>. Even though the IITA study noted that child trafficking was less prevalent, in 2002 the U.S. Government released its second Trafficking in Person's Report that identified Côte d'Ivoire, Ghana, Nigeria and Cameroon on Tier level 2, for children who are trafficked for forced labor and indicated that these countries do not yet fully comply with minimum standards in eliminating the trafficking. See U.S. DEPARTMENT OF STATE, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, *TRAFFICKING IN PERSONS REPORT*, (2005), <http://www.state.gov/g/tip/rls/tiprpt/2002/10680.htm>.

66 According to the IITA: An estimated 5120 children were employed as full-time permanent workers in the RCI (versus 61 600 adults).... In the RCI, an estimated 4630 farmers were employing salaried child workers. In follow-up surveys and interviews conducted with these children in RCI and with the local farmers, it was revealed that the workers originated entirely outside the cocoa-producing zone. The majority of children (59%, or 3021) came from Burkina Faso, while the remainder were mainly Baoulé children (24%, or 1229) originating from the RCI's Yamassoukro-Bouaké area or children from northern RCI.... The origins of the RCI farmers employing these workers have been the subject of much discussion. The survey revealed that 59% (2732) of the farmers using salaried child labor were Ivoirian, of whom 27% (738) were of local origin and 32% (874) were migrant settlers in the cocoa belt from other regions of RCI. The remainder - 41% (1898) - were immigrant farmers from neighboring countries (mainly Burkina Faso). Overall, Burkinabe farmers accounted for an estimated 16% (78 560) of the farmer population, while those from other countries (mainly Mali) accounted for an additional 3.5% (17 185). This indicated a higher propensity to employ salaried child workers among the immigrant cocoa-producing community.

67 IITA further stated: Twenty-nine% (1485) of the child workers surveyed in RCI reported that they were not free to leave their place of employment should they so wish. Eighteen% (922) indicated that they would require either the permission of either their parents or the intermediary representing their parents, while 11% (563) indicated that a lack of money for personal transportation kept them from leaving.

children or parents, and only less than 10% of children reported were not satisfied with their jobs on cocoa farms.⁶⁸ Finally, the IITA uncovered children who were living in farming households who had no biological ties to the members of the household.⁶⁹ The report did not address the supply countries to the labor on cocoa farms nor did they explore whether the child laborers had the necessary protections or were subject to any sort of exploitation. Upon receiving these results, the industry concluded that children help out as members of the family, as is common in rural areas of the developing world. No “child slaves” were found.⁷⁰

The methodology used to obtain these results gave rise to a number of concerns. Firstly, of the 1,620 people surveyed for the IITA study, only 44 were children; the majority of the respondents were adult farmers and community workers. The central tenet of child-centered design and development of surveys and interviews is the primacy of the child-researcher conversation, wherein the voice of the child is heard by the researcher without the mediating influence of adults. However, the IITA relied heavily on farmers’ and community workers’ responses to learn about children working on cocoa farms. As noted in the study, “the trafficking of children to Côte d’Ivoire from neighboring countries by labor intermediaries to work in the cocoa sector was represented by the farmers and traditional leaders surveyed and interviewed in the community survey.”⁷¹ This research methodology poses a problem as farmers themselves were being accused of recruiting, employing and putting children to work in exploitative conditions. While it is reasonable to assume that not all farmers engage in this practice, the study did not have a way

68 IITA also stated: An intermediary was involved in the recruitment process for an estimated 41% (2100) of the 5120 child workers found in the RCI.... In RCI, an estimated 29% (1485) of the child workers surveyed indicated that they personally knew the cocoa farmer for whom they were working and had sought employment on their own initiative.... None of the children reported that their parents had been paid and none reported being forced against their will to leave their home abode. One hundred% (2100) indicated that they had been informed in advance that they were going to work on cocoa farms. When asked to indicate whether they were “*not satisfied*,” “*somewhat satisfied*,” or “*satisfied*” with their current situation on the cocoa farm where they were working, 43% (777) of those recruited by an intermediary indicated that they were satisfied, while 43% (777) were somewhat satisfied, and 14% (546) did not respond. Among all child workers, only 6% (307) indicated that they were “*not satisfied*” with the employment situation (these cited the heavy workload).

69 IITA finally added that: In Côte d’Ivoire, some households included children who had no family tie to the household head. Most of these children were assisting with the production of cocoa. The survey estimates that overall there were 12 000 children assisting on at least one production task on approximately 9000 Ivoirian farms.... From the analysis it was deduced that among those children who had migrated, at least 58% (5290) were living with households ethnically different from their own. The majority of the farmers (89%) employing these children were Ivoirians, either of local origin or migrants from other regions within RCI. Seventy-six% of these children had migrated to their current residence, either from elsewhere in RCI (57%, or 6840) or from another country (19%, or 2280).

70 MANUFACTURERS ASSOCIATION (CMA), CONFECTIONERY MANUFACTURERS ASSOCIATION OF CANADA (CMAC), EUROPEAN COCOA ASSOCIATION (ECA), NATIONAL CONFECTIONERS ASSOCIATION (NCA), WORLD COCOA FOUNDATION (WCF), CERTIFICATION FOR COCOA FARMING: SUBMISSION TO TULANE UNIVERSITY, (SEPTEMBER 2007), http://www.worldcocoaoundation.org/commitments/documents/Certification_Report.pdf [hereafter Manufacturers Association].

71 *Id.*

of distinguishing the various groups of farmers. The primary use of cocoa farmers created a conflict of interest that compromised the reliability of the data.

Secondly, and perhaps the greatest drawback, was the assumption that when interviewed, the children would speak freely about their experiences. If some of these children had been victims of trafficking at the time they were interviewed, they were residing illegally in the country, had limited or no knowledge of their rights, had no individual rights, and were susceptible to violence if they were to speak up. Research on trafficking victims has shown that “the factors affecting the security and wellbeing of a... [child] who has been trafficked are the same factors that affect disclosure.”⁷²

Thirdly, the chocolate industry’s own definition of child labor depleted the relevance of the collection of data. The IITA study identified the key areas of data collection relevant for certification as: hazardous work (tasks, duration, physical/environmental stress), school availability and attendance, indicators of potential trafficking (living away from home and parents), and indicators of forced adult labor (Are labor agreements in place and understood? Do workers have freedom to leave workplace?).⁷³ IITA thus used a definition of child trafficking *limited to children without family ties*, living in a farmer’s household as the sole definition of children who had been engaged by intermediaries and moved across borders for work on cocoa farms. Clearly the indicators of potential trafficking as “living away from home [and] parents” are inaccurate as these could also indicate a migrant child worker who arranges with “intermediaries” to work for a time on cocoa farms away from their immediate families.

Given that data collection is the first of the four components of the cocoa certification system, and the component that is meant to influence the other components (i.e. reporting, independent verification, and remediation/response), the use of a correct methodology is paramount to the successful development of the entire project. On July 1, 2005, a joint statement from Senator Harkin, Representative Engel, and the chocolate/cocoa industry noted that the goals of the Protocol had not been met; namely, the certification system that was assured by the deadline had not been completed.⁷⁴ Senator Harkin declared that “to ensure accountability, positive momentum and transparency, we have agreed to establish an independent oversight entity to monitor the further implementation of the

72 Cathy Zimmerman & Charlotte Watts, *WHO ethical and safety recommendations for interviewing trafficked women*, World Health Organization (WHO), 2003, available at <http://www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf>.

73 *Id.*

74 Joint statement from U.S. Senator Tom Harkin, Representative Eliot Engel and the chocolate/cocoa industry on efforts to address the worst forms of child labor in cocoa growing protocol work continues, Washington D.C., (July 1, 2005).

Harkin-Engel protocol”⁷⁵ and suggested an extended deadline for the completion of the goals of the Protocol. The chocolate industry further assured the public that it “remained committed to the Protocol and to a supply chain free of the worst forms of child labor and forced labor.”⁷⁶ The new version of the Protocol would run three additional years, until July 1, 2008, and the certification system – including monitoring, data analysis, reporting, and activities, would cover only 50% of the cocoa producing areas of Ghana and Côte d’Ivoire as opposed to the previous 100% coverage. At this time, neither Côte d’Ivoire nor Ghana had developed their ILO 182 domestic lists. However, both countries were receiving trade privileges to export products into the U.S. under the African Growth Opportunity Act, which adhered closely to ILO 182.

2. The Second Phase of the Harkin-Engel Protocol: 2005-2008

a) Ghana Certification Results

During the extension period, Ghana conducted a pilot cocoa labor survey through the Ministry of Manpower, Youth and Employment in 2006. The study covered 24 communities in four cocoa producing regions, in which 590 households, 610 children and 350 adult workers were interviewed. In addition, focus group discussions were held.⁷⁷ The study’s most relevant findings were that cocoa farmers in Ghana are generally small holders who operate family farms.⁷⁸ “About 53% of adult workers found in the communities indicated they took the decision themselves to migrate into the communities where they work on cocoa farms. The study did not find evidence of forced labor in the cocoa farming communities studied.”⁷⁹ The survey showed that migrant children in the communities were

75 *Id.*

76 *Id.*

77 MINISTRY OF MANPOWER, YOUTH AND EMPLOYMENT, LABOUR PRACTICES IN COCOA PRODUCTION IN GHANA – PILOT SURVEY, ACCRA, GHANA, (April 2007), <http://www.childprotection.gov.gh/PDF&DOC/Pilot%20survey%20-%20Full%20report.pdf>.

78 *Id.*, at 42.

79 *Id.* at 55. 24% of the sampled children were indigenes, and 36% were born to migrant farmers in the communities. In-migration from outside the region (but within Ghana) comprised 31% of the total sample, in-migration from within the region was 9% and those that migrated from outside Ghana (either with their parents or their parents were from outside Ghana) was only 0.7%. Over eighty-four% of the children were either staying with...parents, the father or the mother in the community. Those living with relatives were 13.5% and those living with a non-relative comprised only 2.4% of the sample. For the children not living with their parents, the major reason given was that the arrangements were made for convenience, which reflects the culture of these communities.

generally living with their parents.⁸⁰ In terms of restricted freedom of movement, the study did not find any evidence of its occurrence in the communities.

Regarding the involvement of children in cocoa production, the study showed that children of all age groups were involved in the various cocoa activities. The government concluded, however, that “the pilot survey indicated that the problem of child labor in Ghana’s cocoa production was not as pronounced as was initially thought to be,” adding, “there was no evidence of child trafficking or forced labor in the cocoa producing communities. It is imperative therefore that the recent concerns raised about child labor in cocoa production in Ghana be further investigated to cover more cocoa producing communities across the country.”⁸¹ Like the IITA study before it, this 2006 pilot study reported no incidences of child trafficking and cited evidence of children living with immediate or distant family relatives, who were free to leave when they chose and who were not working to pay off family debt.

While no survey questions were provided, this study could be questioned for a variety of reasons. Firstly, no definition of family is offered in the report. Secondly, it identifies trafficked or separated children by relying solely on labor definitions and methodologies. Labor methodology cannot be applied to investigate trafficking as the fields of inquiry are far apart. Furthermore, the sites chosen for investigations were cocoa producing areas, implying that trafficking was regarded as a transparent and observable phenomenon, and those involved with trafficking would willingly provide information, without fear of retribution. The dangers involved with full disclosure seemed to be underestimated.

Despite the pitfalls of the initial surveys, a new pilot study was expanded to produce more certification data in 2007-2008, covering 15 cocoa growing districts (60% of cocoa growing land) in all of Ghana’s cocoa regions. Unfortunately, this survey was conducted without any relevant modification to the initial surveys’ methodology. Not surprisingly, this broader study produced many of the same results, with minor differences regarding child trafficking for labor purposes. As

80 *Id.* at. xvi-xvii. About 92% of the sampled children indicated that they can leave the farm or household to visit local towns or community centres without any restriction. The other 8% who felt restricted in some way were more in reference to parental discipline than issues related to bondage. There was no evidence of the incidence of children in debt bondage in the cocoa producing communities studied. Only 2.0% of the sampled children indicated that their income or labour in the communities helps pay debt to someone back home, and only one child (or 0.9% of the sampled children) indicated his income helps to pay a debt for assistance obtained in travelling to the community.

81 Press Release, Ministry of Manpower, Youth and Employment, Cocoa Labour Survey in Ghana, Accra, Ghana, June 26, 2008), available at <http://www.childprotection.gov.gh/PDF&DOC/Press%20release%20-%20Cocoa%20Labour%20Survey%202007-2008.pdf>.

reported, "...the study found no evidence of trafficked children."⁸² Again, the indicator of living with parents was a key indicator to assess the incidence of trafficking.⁸³ The study did in fact find some children not living with their parents. However, the study demonstrated that schooling or "disruptions" due to the death of a parent, explained the children's isolation. Again, integral information such as the definitions of family, parents, and relatives, the reasons to relocate, the journey taken, the circumstances of the movement, payment possibilities, and whether or not intermediaries were involved were omitted. Furthermore, the study found that most of the parents were from the place of the interviews, but 10.9% migrated from within the region and 38.1% migrated from outside the region of interview.⁸⁴ The study also concluded that:

...nearly 99% of returns which children received for working on cocoa farms were part of the payment for the general upkeep of the family or was considered part of family work for which no payment was expected. 65 children (0.9%) received cash payment and 5 (0.1%) had payment made to their parents.⁸⁵

The study was especially interested in finding out about the ease with which children moved about, including visiting parents and its relation to trafficking. The results showed that four in five children (81.4%) not living with their parents had the freedom to visit their parents and other relatives. Nearly 60% of the children were free to leave the farm or household whenever they wanted. In addition, 18% could leave without permission. However, for another one in five, it was either difficult (15.8%) or impossible (4.3%) to leave.⁸⁶

Overall, the finding was that most children lived with their parents or relatives on cocoa farms, that they contributed directly to family farm and non-farm labor (most of which is unpaid), and were free to move when they wished. For those who did not live with parents, the primary reasons given were that they wanted access to school or had no parent with whom to live; a majority of these children could move when they wished and for those who could not, the main reason was they did not have money to move. Although some children reported debt bondage and a lack of freedom to move, the study concluded that "no child trafficking" existed in the Ghanaian cocoa sector. The majority of surveys were implemented in high

82 *Id.* Focus Group Discussions revealed that [over 90% of the children interviewed were] involved in cocoa work; [they] are generally children of the cocoa farmers. [Quantitative survey results showed that] three in five (76.5%) were found to be living with both parents. Only 0.8% of the children were living with non-relatives.... 361 children...were found not living with any of their parents. Of the children not living with their parents, the main reasons given by them indicate that the highest proportion was for access to education and training (38.9%). Sixteen% of the children lived away from their parents for purposes of assisting with household chores, while 15.8% was as a result of family disruption like death of parents.

83 *Id.* See also, *supra*, note 77.

84 *Supra*, note 77.

85 *Id.*

86 *Id.*

cocoa producing areas, even though the study did administer surveys in lower cocoa producing areas as well.⁸⁷

Again, the results of the Ghana Certification give way to some important concerns. Firstly, the implication that children living with their parents is evidence of the absence of debt bondage is troubling, as children living with parents is not a sufficient indicator that children are not in debt bondage. Often, a family's debt bondage is shared by all members of the household, including those who are living in households without parents or relatives. Secondly, when reading the study results about children against the larger context of data generated from farmers and adult workers, another serious question emerges. Of the parents included in the survey (farmers or adult workers), 51% were from the cocoa producing regions of Ghana and the remaining 49% were immigrants (both internal and external) from other areas. The study also reported the existence of high labor shortages due to the high cost of labor and therefore "the involvement... of their children in helping on the farm [was] complementary and sometimes serve[d] as a substitute, and it [was] widespread."⁸⁸ Additionally, the study found that "adult workers are mostly migrants who migrate to cocoa farms to search out employment, but these migrants are related by blood or marriage to the farm owners, many of whom live with them."⁸⁹ This suggests that children who worked on cocoa farms were not paid because of the family link and that adults were also presumably unpaid. The question is therefore the following: why, if no real economic incentive seems to exist, did these immigrants and their children move to work on cocoa farms? This question was left unanswered by the study, as it failed to understand the complexity of the family relationships between the farm owners, the adult workers, and the children.

In spite of these official certification results, a major story involving child trafficking for labor purposes on cocoa farms broke out in July 2008 in the Ghanaian press. The news report indicated that the Ghanaian police had intercepted a bus carrying six suspected child traffickers and 17 children who were thought to be moving across the Ghanaian border for sale to work on cocoa farms in Côte d'Ivoire. This news story reported that police believed all the children had been

87 *Id.*

88 *Id.*

89 ...adult workers are mostly migrants (59.7%) from outside the cocoa regions in which they work and have been attracted into the communities in search of employment on the cocoa farms, either on their own or with their families. They are thus mostly related to the owner-operators with half of them being spouses of the owner-operators.... Most adult workers (66.2%) live in the communities by themselves alone or with their families. About 33%, however, live with their employers.... A large majority (88%) of those who live with the employers are relatives. While 26.6% of this number is biological children, 50.7% are spouses. Only 9.1% have no relationship with the employers. *Id.*

coached as to what to tell them and that some of the children appeared to be afraid of the men with whom they were traveling.⁹⁰

Surprisingly, the Verification of Certification Activities Report in the West Africa Cocoa Sector for Ghana, released on December 6, 2008, indicated that the Ghanaian certification study reported “no evidence of trafficked children; *however, the study did not support this conclusion with any analysis.*”⁹¹ This, despite the fact that the report noted that: “the major focus of the Ghana Cocoa Labor Survey was to provide estimates, with acceptable precision, for a variety of indicators on child trafficking, [among others.]”⁹²

b) Ivorian Certification Results

The Government of Côte d’Ivoire also implemented a pilot study (2004-2005) in Oume (Central and Western regions of the country). This study was meant to test the technical and social feasibility of an ILO supported Child Labor Monitoring System and to develop its certification mechanisms, in compliance with the Harkin-Engel Protocol. In April 2007, the Government undertook a second pilot called the *Initial Diagnostic Survey in Agnibilekrou, Tiassale and Soubr* - three of its cocoa producing districts.⁹³ One hundred-twenty heads of household, 184 children (aged 5-17) and 76 adults involved in cocoa production were interviewed.

The main results of these pilot studies showed that “97% of the surveyed children are related directly or indirectly to the head of household (71% are the children of the head of household). And 3% of the children are not related to any person within the household.”⁹⁴ Most of the children working on cocoa farms (87%) were involved in hazardous work. The relationship of the children involved in hazardous activities to the head of household showed that whatever the hazardous work, these children typically had a family tie to the head of household (85%), and were attending school (47%). Out of the 184 children interviewed, suspicion of

90 Daily Graphic, Six-Man Gang Busted at Kwesimintsim, <http://www.angelfmonline.com/news/general-news/six-man-gang-busted-at-kwesimintsim/2091> (last visited: May 15, 2009).

91 FAFO & Khulisa Management Services, *Verification of Certification Activities in West Africa Cocoa Sector: Final Verification Report*, Dec. 6, 2008, at 72, http://www.cocoaverification.net/Docs/Verification_Report_Ghana.pdf.

92 *Id.* at 33.

93 STEERING COMMITTEE FOR THE CHILD LABOUR MONITORING SYSTEM WITHIN THE FRAMEWORK OF CERTIFICATION OF THE COCOA PRODUCTION PROCESS, *DIAGNOSTIC SURVEY IN AGNIBILEKROU, TIASSALE AND SOU*, (November 2007), http://www.cocoaverification.net/Docs/CdI_pilot_survey_report.pdf.

94 *Id.*

only one case of trafficking was reported but no sufficient evidence to support the claim was gathered.⁹⁵

Between November 2007 and March 2008, the Government of Côte d'Ivoire scaled up its second pilot study to a *National Initial Diagnostic Survey* in 36 villages in 18 departments that represented what it described as “the whole cocoa production area.”⁹⁶ The cocoa producing districts selected were Agnibilékrou (East), Soubré (Southwest), and Tiassalé (South). Surveys were administered to 723 heads of households, 1,313 children, and 232 adult workers. In June 2008, the results of the 2007/2008 survey were published. All Ivoirians and foreigners from Burkina Faso, Mali, Togo, and Benin, living in the cocoa producing areas were included in the study. The Burkinabe are the non-indigenous group encountered most often (in 94% of villages surveyed), followed by Ivoirians from other regions of Côte d'Ivoire. Cocoa production is the main economic activity of non-indigenous populations. Seasonal immigration is well known in the villages. There are high migratory flows of both children and adults in cocoa producing areas. While most of them were from Burkina Faso, migrant workers were also from Togo, Benin and Mali, among others. Migrants also represented a significant proportion of heads of the households.⁹⁷

As in the Ghana report, the Ivorian study observed whether the children were living in a household or not and specifically if they shared the household with immediate and extended family. The study reported that “88% of children are children from the household who work in cocoa production. Just 1.5% of the children are not part of the household but are involved in cocoa production. Seventy four% are children of the head of household, while the others are children of the spouse (1.8%), brother or sister, nephew or niece or child of the head of household. Just 3% are no blood relation to the head of household.”⁹⁸ Although the study recognized that a large influx of foreigners had settled in the cocoa producing areas or had come as seasonal workers from neighboring countries, the

95 Checks carried out following indication of this situation were not able to conclude that this was a case of trafficking, according to the classification and pre identification criteria used during the pilot study to detect cases of trafficking. This did, however, make it possible to refine the ability of the study questionnaire to identify presumed cases of trafficking. *Id. See supra*, note 93.

96 *See generally* ANADER (Agence Nationale d'Appui au Développement Rural), whose main activity is to provide assistance to farmers and agricultural development, conducted the survey and collected the data.

97 *Id.* While ¾th of the sample (76.3%) consists of Ivoirians, Burkinabe represent 17.3%, while Malians account for just 5.4%. Other nationalities account for less than 1%. The composition of the sample confirms the trend across the population of Côte d'Ivoire, where foreigners account for more than 23%. Burkinabe are the predominant group. Among Ivoirians there was a predominance of Baoulé, even though the survey was not conducted in their area of origin. This situation is due to the fact that large numbers of people from this ethnic group have migrated to the main cocoa-producing areas.

98 *Supra* note 92.

findings “confirm yet again the predominance of family labor in cocoa- production operations in Côte d’Ivoire.”⁹⁹

As in the Ghana report, the study did not address the means and routes of the transportation of the children across borders, whether intermediaries were involved, and what the children were told about the life they could expect in working on cocoa farms. However, it indicated that: “of the 1,313 children surveyed, none said that they were bound to their employer by debt.”¹⁰⁰ No cases of trafficking were reported.

3. Analysis of the Results from Child Trafficking Reports in Ghana and Côte d’Ivoire

Certification results from both Ghana and Côte d’Ivoire concluded that child trafficking for labor purposes was not a problem in the cocoa sector, even though children working on family farms in hazardous conditions was. The chocolate industry, employing much the same data, echoed this finding in their various presentations at meetings to mark progress made on the second Harkin-Engel Protocol.¹⁰¹

Before the U.S. Department of State multi-stakeholder meeting, convened to assess progress made on the extended Cocoa Protocol, a joint statement from U.S. Senator Harkin, Representative Engel and the chocolate and cocoa industry was released to the general public on June 16, 2008. The assessment was that the Harkin-Engel Protocol had made progress for the thousands of children in the West African cocoa sector, even though the independent verification on largely West African governmentally funded certification system results was still pending on this date. Senator Harkin reported in the press statement:

I had a chance to see, first hand, the progress that is being made in Ghana and Côte d’Ivoire during a trip in January [2008]...After that trip and meeting children who have already been affected by our work, I am more dedicated than ever to seeing through the commitments made by the industry and the national governments under the Protocol.¹⁰²

No details were provided on the numbers of farms visited, their location, the duration of the visit, or the manner of the interviews conducted by the Senator.

99 *Id.*

100 *Id.*

101 Anita Sheth, *Notes from the Multi-Stakeholder Forum on Cocoa and Child Labor*, Industry Presentation, Save the Children Canada, June 2008.

102 Joint Statement from U.S. Senator Tom Harkin, Representative Eliot Engel & the Chocolate and Cocoa Industry on the Implementation of the Harkin-Engel Protocol, *Protocol Drives Number of Achievements; Industry Outlines Next Steps*, Washington D.C., (June 16, 2008).

Representative Engel offered quotes as well. He noted, "... during my recent trip to Ghana and Côte d'Ivoire, I was impressed by the work being done...."¹⁰³

Both Senator Harkin and Representative Engel referred to projects run by the "independent" foundation, largely set up by industry funds to develop grassroots projects based on the certification results. These projects were funded not through the West African governments but directly through INGO local partners and were awaiting independent verification assessment results. The joint statement also offered quotes by the industry, which stated:

...[a]s an industry, we see this effort as a long-term commitment, one that reflects a shared responsibility for the cocoa farmers and their families at the start of our supply chain.... It is not a commitment that expires with any one date but rather is an essential, ongoing part of how we conduct business.¹⁰⁴

The joint statement went on to announce another extension to the Harkin-Engel Protocol, although the extension period remains unclear. The only date indicated is 2010 when the "[i]ndustry will work with the governments of Côte d'Ivoire and Ghana to have a sector-wide, independently verified certification process fully in place across each country's cocoa-growing sector."¹⁰⁵

The final findings of the second phase of the Protocol stand in contrast with the information reported in the numerous U.N., INGOs and media articles published on the problem of child trafficking in the region. The June 2008 U.S. Department of State Trafficking in Persons Report placed Ghana on Tier 2 for the eighth consecutive year, noting that: "both boys and girls are trafficked within Ghana for forced labor in agriculture."¹⁰⁶ "Transnationally, children are trafficked to and from other West African countries, primarily Côte d'Ivoire, Togo, Nigeria, and The Gambia, for the same purposes listed above. Women and girls are trafficked... from Burkina Faso through Ghana to Côte d'Ivoire."¹⁰⁷ Similarly, the 2008 U.S. Department of State Trafficking in Persons Report also placed Côte d'Ivoire on Tier 2 for the eighth straight year, however, this time locating it on a Watch List. The Report identified Côte d'Ivoire as:

[A] source, transit, and destination country for women and children trafficked for forced labor and commercial sexual exploitation. Trafficking within the country is more prevalent than international trafficking and

103 *Id.*

104 *Id.*

105 *Id.*

106 U.S. DEPARTMENT OF STATE, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, TRAFFICKING IN PERSONS REPORT, (2008).

107 *Id.*

the majority of victims are children.... Boys are trafficked internally for agricultural and service labor. Transnationally, boys are trafficked from Ghana, Mali, Burkina Faso, and Benin to Côte d'Ivoire for forced agricultural labor.¹⁰⁸

Similar results were obtained through a study by GTZ, which has a major project with the Government of Côte d'Ivoire on combating child labor and child trafficking. This project is the result of an INTERPOL training of Ivorian police and security services in some of the same sites where the Harkin-Engel certification studies took place.¹⁰⁹ The explanation for this contrast in reported information on child trafficking in Ghana and Côte d'Ivoire lies in the conceptual and methodological problems in the Harkin-Engel process, and the way in which researchers went about investigating the problem.

IV. The Conceptual and Methodological Problems in Addressing Child Trafficking in West Africa

For over seven years, numerous INGOs have pointed to the structural problems of the Harkin-Engel Protocol. Certification results from the industry-designed Protocol, carried out by the Ivorian and Ghanaian governments, and earlier by the IITA, clearly denied the existence of a widespread problem of trafficking of children within their borders. This in spite of contrary results reported by U.S. Department of State Trafficking in Persons Reports, GTZ and U.N. agencies and INGOs. This paper asserts that the discrepancy derives from the failure to understand the socio-economic conditions that produce the proliferation of child labor in Ghana and Côte D'Ivoire. Key elements were not evaluated in the study, factors such as internal and cross-border movements of labor, the expanding conceptualization of the family as a response to increasing poverty in the region, the commoditization of land and the dependence on a single cash crop, along with liberalizing policies of the Washington Consensus and profit maximization plans of the chocolate industry. This disallowed any real discussion of the trade in cocoa as a "family" produced commodity with its links to poverty, even though the

¹⁰⁸ *Id.*

¹⁰⁹ July 2006: 06 children intercepted and 1 trafficker arrested in Abengourou, December 2006: 12 children intercepted and 1 trafficker arrested in à Soubré. March 2007: 33 children intercepted, 01 employer of young girls and 5 traffickers arrested in Aboisso June 2007: 09 children intercepted and 1 trafficker arrested in Oumé. Furthermore, results from training delivered to district level village committees on trafficking were listed as, Oumé: 9 children between 12 and 17 years, victims of trafficking, intercepted by the District committee. Soubré: 42 children between 9 and 17 years victims of trafficking intercepted by the police and repatriated by the District committee, 2 traffickers arrested. Abengourou: 6 children from Togo intercepted and repatriated, 1 trafficker arrested Aboisso: 33 trafficked children under 17 years intercepted by the police and repatriated by the District committee, 5 traffickers and 1 woman arrested and judged for child exploitation. See Frank Bremer, *Combat against Child Trafficking and the worst Forms of Child Labour in Côte d'Ivoire*, Project Situation in June 2007, GTZ, June 2007, <http://www.gtz.de/en/dokumente/en-ci-Project-LTTE-situation-July-07.pdf>.

government of Côte d'Ivoire made several statements in the international media to engage debate on this level. The Protocol's interpretation of trafficking as tied to the ILO 182 limited the results of the certification process by excluding children living and working in "family farms" and by overlooking the problem of cheap labor supply from neighboring countries, mainly Burkina Faso, Mali and Togo.

1. Trafficking in Persons and the ILO Convention 182

The Harkin-Engel Protocol is based on ILO 182 and its Recommendation 190. However, ILO 182's Recommendation 190 "leaves individual governments, in consultation with workers' and employers' groups, [to] determine which occupations, processes or work conditions are forbidden to children less than 18 years of age."¹¹⁰ In omitting definitions of work that are forbidden or hazardous to children, a gap exists for the possibility of not regarding work on family farms as constituting a worst form of child labor as it happened in the U.S. Recalling the U.S. deliberations pursuant to the ratification of ILO 182, it was determined that child work on American family farms did not constitute a case for extreme hazards and that ratification of ILO 182 would not necessitate a change in domestic child labor law and practice that would include family farms. The reasonable conclusion that could be made was that, if child labor on family farms in the U.S. is exempt by law from labor enforcement and inspection, the same exemption had to be granted to family farms in Côte d'Ivoire and Ghana. According to the U.S. Department of Agriculture's Economic Research Service, family farms are: "Farms with no hired manager, no non-family corporations or cooperatives."¹¹¹ Such farms "[...] are closely held (legally controlled) by their operator and the operator's family."¹¹² The U.S. family farmers can freely buy supplies and sell the commodities they produce. The right to make independent production and marketing decisions is crucial in defining a family farm in the United States. Thus, accepting this definition,

110 International Labour Organization, *Facts On: Child labor in agriculture*, March 2003, available at, <http://www.ilo.org/public/english/standards/ipecc/publ/download/factsheets/fsagriculture>.

111 A variety of implicit and explicit definitions of family farms have been used by the U.S. Congress, researchers and farming associations. The Department provides the following definitions:

1. All farms except large, non-family corporations.
2. Farms with no hired manager, no non-family corporations or cooperatives.
3. Farms using less than 1.5 person-years of hired labor, no hired manager.
4. Farms with less than 3.0 person-years labor; family supplying at least half of labor.
5. Farms with less than 1.5 to 2.0 family workers and the same or fewer number of hired workers; buying or selling in the market; self managed, tenancy not extremely high.
6. Farmers where agricultural production is either the primary occupation of the operator (or is an important contributor of family income); that provide at least half-time employment for an operator, family member, or a hired laborer; and that are operated by no more than three extended families. See, ECONOMIC RESEARCH SERVICE, U.S. DEPARTMENT OF AGRICULTURE, *THE ECONOMICS OF FOOD, FARMING, NATURAL RESOURCES AND RURAL AMERICA, FARM STRUCTURE: QUESTIONS AND ANSWERS*, (2002), available at <http://www.ers.usda.gov/Briefing/FarmStructure/Questions/familyfarms.htm>.

112 *Id.*

family farms include farms (not operated by a hired manager or sharecroppers) that are “organized as sole or family proprietorships, organized as partnerships or organized as family corporations.”¹¹³ As can be observed in this definition of family farms in the U.S., if physical size is irrelevant, the key feature is that family labor dominates, defined in terms of bloodlines.

However, what constitutes a family in the farming context of West African cocoa development is much harder to discern. As mentioned above, the Protocol’s certification and the Child Labor Monitoring System does not define what a family farm is in Côte d’Ivoire and Ghana, despite small family farms constituting nearly 90% of cocoa production. Nonetheless, what is clear from the data is that “family” in this context does not have to include biological relatives. This is not unique to this region, as most countries lack a clear definition of family farm.

In tracing the development and expansion of land for the cultivation of cocoa in the early days, Amanor shows how “slave labor” in Ghana was incorporated into farming families as family labor; as junior lines of the lineage who worked the family land within rural areas. He also explains how labor shortages made possible the provision of land by the farmer to non-family, migrant workers so as to make them dependent on the farming household and retain their services with the family unit through generations.¹¹⁴ It is important to note that in both the Ghanaian and Ivorian contexts, the laborer’s incorporation into the family did not mean that the laborer obtained equal rights and enjoyed equal freedoms as the owner. The arrangement was more a matter of interdependence, rather than altruism. Therefore, in the West African context, family farms can be composed of owners and bloodline or non-bloodline workers, some of whom are indigenous to the countries or migrant settlers, and still others who are non-settler migrants who could be permanent or occasional workers. Given the historic migration of labor and the difficulty of defining a family farm within the West African region, it is understandable why investigations into incidences of child trafficking for labor is discounted, as children who work on farms reported family ties to members of households. However, cocoa certification analysis failed to address the historical structure of cocoa production in the region and detect those cases of exploitation within “family units.”

113 *Id.*

114 Richards and Chauveau, in their analysis of land regulations and development in Côte d’Ivoire, also show how the local and the “stranger” bond together in farming households to produce cocoa, where bloodline younger relatives of farm owners could not access their rights of possessing land. They further argue that the trans-generational nature of the “stranger” acquiring family status within the Ivorian cocoa producing families meant that they not only had land rights, but rights to management and administration rights, as well user rights. See Paul Richards & Jean Pierre Chauveau, *Land, Agricultural Change and Conflict in West Africa: Regional issues from Sierra Leone, Liberia and Côte d’Ivoire: Historical Overview*, OECD SAH/D(2007)-568, February 2007, available at <http://www.oecd.org/dataoecd/44/53/39495967.pdf>.

By limiting the definition of potential victims of trafficking only to those children not living with their families, The Harkin-Engel Protocol also failed to detect the occurrences of debt bondage. Even though some children appeared to be in debt bondage, the study reported that no children were in debt bondage because “*further investigations revealed that these children were staying with their parents and therefore could not be in debt bondage.*”¹¹⁵ Ghana introduced its 2008 certification report by quoting from ILO text:

The ILO observes that whereas child labor, in particular the worst forms of child labor, is generally condemned by society, some types of work that children are involved in are not so clear-cut. In many cases, however, the line between ‘acceptable’ and ‘unacceptable’ work for children is difficult to draw. This occurs quite frequently, especially in rural agricultural situations, as certain kinds of work actually form part of socio-cultural traditions... [T]he underlying concept seems to be that all family members are economic providers and that work prepares children for assuming adult roles. In situations where the family acts as an economic unit, the work of children is widely accepted and may even be essential, particularly work by older children. But parents also justify child work, saying that it contributes to children’s responsibility, autonomy and strength to support difficulties and sacrifices.¹¹⁶

Yet, certification results of both Ghana and Côte d’Ivoire showed that children were heavily involved with hazardous activities on cocoa farms but disregarded this information because these children typically had a family tie to the head of the household and were attending school. Heads of the household could be parents, grandparents, uncles, aunts, brothers or sisters. The Côte d’Ivoire report finally concluded that: “This finding leads to a point-of-view that the involvement of children in hazardous activities is an effect of the social reproduction model which characterizes the learning culture of traditional societies within Côte d’Ivoire.”¹¹⁷

115 *Id.*

116 MINISTRY OF MANPOWER AND YOUTH AND EMPLOYMENT (MMYE) NATIONAL PROGRAMME FOR THE ELIMINATION OF WORST FORMS OF CHILD LABOR IN COCOA (MMYE) COCOA LABOUR SURVEY IN GHANA, ACCRA, GHANA, JUNE 2008.

117 The Ivorian certification study also uses the ILO 182 text to manage the interpretation to findings. The ILO...elaborates and clarifies that child labour is not the participation of a child in work that does not affect his/her health and personal development, or interferes with his/her schooling. Such work “includes activities such as helping their parents care for the home and the family, assisting in a family business or earning pocket money outside school hours and during school holidays.” It includes also work that “contributes to children’s development and to the welfare of their families; provides them with skills, attitudes and experience, and helps to prepare them to be useful and productive members of society during their adult life” (ILO, 2002). Clearly, a good appreciation of the concept of what child labour is and what it is not is important to understanding the type of work children can do that contributes positively to both their own development and the wellbeing of society. See STEERING COMMITTEE FOR THE CHILD LABOR MONITORING SYSTEM WITHIN THE FRAMEWORK OF CERTIFICATION OF THE COCOA PRODUCTION PROCESS, DIAGNOSTIC SURVEY IN AGNIBILEKROU, TIASSALE AND SOU, ABIDJAN, 2008.

2. The Issue of Movement Across Borders

A further limitation of the Protocol is its reading of the exploitation of children as tied to forced and deceptive movement of children across borders for unacceptable work. This interpretation produced a misreading of trafficking, namely, that for trafficking to exist there must necessarily be movement across borders or even within borders. According to this interpretation, trafficking occurs when a migrant is illegally engaged (recruited, kidnapped or sold) and moved either within national boundaries or across international borders; or when intermediaries (traffickers) obtain economic gains or profit by means of deception, coercion and other forms of exploitation under conditions that violate the fundamental rights of the migrant.¹¹⁸ The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children Supplementing the United Nations Convention Against Transnational Organized Crime (Palermo Protocol) however, clearly notes that “the recruitment, transportation, transfer, harboring or receipt of a child for the purposes of exploitation shall be considered trafficking in persons.”¹¹⁹ In this definition, movement is not required, as harboring is a sufficient precondition for trafficking to occur in the exploitative phase (at a minimum, forced or compulsory labor or services, slavery or practices similar to slavery or servitude imposed by a non-State actor). That is to say, a child working on a cocoa farm in exploitative and dangerous conditions, who is unable to leave the farm when she or he wishes is tantamount to harboring, and as such, sufficiently satisfies the complex definition of trafficking.

3. Countries of Origin of Victims of Trafficking

Finally, the Harkin-Engel Protocol’s focus on the demand countries for cheap and trafficked labor is another source of concern. The Protocol is entirely aimed at combating the worst forms of child labor strictly in countries where cocoa is produced and not countries which predominately supply the labor. As stated, ILO 182 and Recommendation 190 are country specific. Both Ghanaian and Ivorian certifications reported that migrants from neighboring countries were heavily involved in cocoa farming. In the case of head of farming households in Côte d’Ivoire:

Burkinabe represent[ed] 17.3%, while Malians account for just 5.4%... The composition of the sample confirms the trend across the population of Côte d’Ivoire, where foreigners account for more than 23%. Burkinabe are the predominant group.... This situation is due to the fact that large

¹¹⁸ See, *supra*, note 60.

¹¹⁹ Art. 3 U.N. Trafficking Protocol.

numbers of people from this ethnic group have migrated to the main cocoa-producing areas.¹²⁰

While it found a higher percentage of internal migrants who had come from other areas within Ghana, its surveys were not administered in these areas. The problem with this method is that it fails to address the dynamics of an integral part of cocoa production in Ghana and Côte D'Ivoire, which is the movement of labor from countries such as Burkina Faso, Mali and even Togo. Assessments of cocoa farming in West Africa have shown that the movement of people both within and across borders is a standard practice of development. By looking at the data, including trafficking, in Ivorian cocoa production, and at the expansion of cocoa in the region, it is clear that internal and external migrants have played a major role in sustained growth of West African cocoa through generations. The economic poverty of cocoa farmers associated with low and unstable prices of cocoa beans translated into continual searches for the cheapest forms of labor, including child labor. Also, the tightening of immigration policies at times of economic downturn and the expulsion of "foreigners" produced underground markets for the recruitment of undocumented workers. These primarily exploited the most vulnerable, those who looked for ways to escape gripping poverty in the neighboring, non-cocoa producing countries in the region. Furthermore, international markets for cocoa and the transnational companies that utilize cocoa have long played a decisive role in the wealth and well-being of West African cocoa farmers and their families, mostly through market concentration of distributors and the persistent goal of achieving cocoa oversupply from global production sources. The dependence of certain West African governments on export earnings has contributed to the economic insecurity, a market in which the exporters of cocoa and manufacturers of chocolate largely set the terms of trade. Finally, cocoa farmers in the West African context have not worked together to trademark their cocoa beans, where traces of their product could be made prior to processors and manufacturers mixing beans to form chocolate. Trademarking would not only allow for traceability of the bean but would also allow cocoa farmers to negotiate prices at which to sell their cocoa just like some coffee farmers do.

As these observations point out, trafficking in children for exploitative labor purposes on cocoa farms in Ghana and Côte d'Ivoire cannot be analyzed solely from the Harkin-Engel base of ILO 182 and its Recommendation 190. The

120 The Ivorian report also investigated the movement of young people, it showed that "young people emigrate from 69.5% of localities. The nature of their emigration varies, but most is tied to looking for work. Young people are more mobile than adults (69.5% of localities, versus 52.8%). Generally there are a number of reasons for this, such as the limited burden represented by dependents, the need to free oneself from family supervision and the weight of tradition and the need of young people to express their economic independence. 93% indicated that leave because there is no opportunities to learn a trade in their home countries.

Convention was not designed for the informal sector, particularly “family” based production. To understand the child trafficking in the region, the issue should be analyzed in light of other international legal instruments, especially the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons. Both Ghana and Côte d’Ivoire have ratified these conventions and have developed national action plans to ensure their implementation.

V. The Palermo Protocol and the Harkin-Engel Protocol

1. Trafficking According to the Palermo Protocol

According to the Palermo Protocol, for child trafficking to legally exist, two elements must be proven:¹²¹ Firstly, the existence of recruitment, transportation, transfer, harboring *or* reception of persons, *and*, secondly, the occurrence of exploitation of prostitution of others or other forms of sexual exploitation, forced services or labor, slavery or practices similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation.¹²²

The Palermo Protocol and its Interpretative Notes (*Travaux Préparatoires*) on the “abuse of vulnerability” make an opening to implicate families, relatives or

121 See, Arben Rakipi, Bashkim Caka, Mark Lasser, *Anti-trafficking in Person Resource Manual: Albania*, A Women’s legal rights initiative publication, Chemonics International Inc., (translated from Albanian to English by Ejona Kushi, Tirana, September 2006), p. 16, available at http://pdf.usaid.gov/pdf_docs/PNADH452.pdf.

122 In reference to the first element, recruitment generally occurs when victims are lured by promises of a better life abroad or employment. For example, children often respond to intermediaries’ suggestions of finding work on a cocoa farm or are encouraged or recruited by friends or family. Recruitment may also involve violence, psychological violence (threats to health of the child victim or relatives), kidnapping etc. Transport refers to carrying or moving a child from one location to another via vehicles, and walking. Often, traffickers arrange travel papers and use false or stolen documents. Identity documents, if they are available, may be taken away on arrival, and the child may be confronted with a large debt owed to traffickers, which must be repaid through forced labor. Other persons who provide or offer transportation with the purpose of trafficking in children are considered equally responsible. Transfer refers to movement of child from one location to another. Harboring refers to preventing others from seeing the child or the child from seeing others and reception refers to receiving a person in a dwelling or other premises. In reference to the second element, exploitation of prostitution of others or other forms of sexual exploitation is to be intended as forcing women and children to work as prostitutes and retaining the income. Forced services or labor may include forced lawful work for the benefit of the traffickers. An example of slavery is when a victim cannot leave his or her employer, either because he or she has been abducted or has been held captive. Another situation is when a victim’s parent or guardian has accepted a payment in advance from a trafficker or employer, putting the victim into “debt bondage” for either a specific or non-specified period of time. Cases of trafficking children with the sole intention of using them for transplants is considered “trafficking in persons for the purpose of putting to use or transplanting organs.” In other words, traffickers conduct trafficking with this intention, regardless of whether the transplant takes place or not. “Other forms of exploitation” is a formulation utilized to offer the possibility to include any other type of exploitation against a child, such as child marriages. The element requiring “threat or the use of force or other forms of coercion ...of deception, of the abuse of power ...to achieve the consent of a person having control over another person,” is not necessary when it comes to children, as the protocol explicitly assumes that no child can consent to being trafficked.

friends in the crime of trafficking.”¹²³ In fact, a study of 167 trafficked child victims in Benin, reported that:

... 25% of the children departed their village with one or both parents, while 31% of the children departed with a friend (of the family). A smaller percentage (9%) departed alone, while 21% of the children departed with a stranger. Clearly, over half of the children departed with someone known to them and whom they would have trusted.¹²⁴

While the system of “confiding,” placing children in another household, is an ordinary practice or as children learning “how to farm” as the Ivorian certification study suggested, the problem with this way of learning could be that parents may assume that their child will be well-cared for and will receive some form of schooling or wage in exchange for services rendered. The host family, however, may regard the child as someone who is there to toil hard in cocoa farms. But the Palermo Protocol indicates that movement is not a necessary condition for trafficking to take place. The emphasis is on exploitation, not movement, even though movement is often used in trafficking methods. The Protocol asks that any one of the elements of the first category need to be present, namely, recruitment, transportation, transfer, harboring *or* reception of persons, and any one of the second category, namely, exploitation of prostitution of others or other forms of sexual exploitation, forced services or labor, slavery or practices similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation. Harboring, which is preventing the child from seeing others or others in seeing the child for the purpose of exploitation is a sufficient condition for trafficking to take place.

Unlike ILO 182, the protocol also identifies the penalties that could be administered for what it calls “aggravating circumstances.” It lists those circumstances which the offense of trafficking is considered aggravated and calls for harsher penalties for the convicted. It also increases the penalties for

123 U.N. Interpretative Note 12 to the Trafficking Protocol on the “abuse of a position of vulnerability,” states, “The *travaux préparatoires* should indicate that the reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.” Ann Jordan from Global Rights notes that “The definition recognizes that many trafficked people are told what to do by someone close to them, such as a parent, a spouse or a community leader. Persons in these situations may have no culturally acceptable or legal means to refuse and so they “submit” to the situation. They are still victims of trafficking.” See Ann Jordan, *Annotated Guide to the Complete U.N. Trafficking Protocol: A tool to assist advocates in the development of a human rights framework for national anti-trafficking laws and policies*, 2002, at 7, International Human Rights Law Group, available at <http://www.walnet.org/csis/papers/U.N.-TRAFFICK.PDF>.

124 Fanou-Ako, N., *La Traite des Êtres Humains au Benin*, Rapport de Recherche, unpublished report submitted to the United Nations Office on Drugs and Crime, Vienna (2004) cited in United Nations Office on Drugs and Crime, *Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo*, UNODC (September 2006), at 52, available at http://www.unodc.org/documents/human-trafficking/ht_research_report_nigeria.pdf.

people involved in trafficking who have organized, managed or financed it.¹²⁵ Organization means offering the idea for trafficking in persons, drafting plans, creating the conditions, providing the means, identifying origin or destination places, providing the victims of trafficking, finding accomplices, dividing roles, distributing or spending income from this criminal activity. Management does not necessarily refer to the organizer, but to one or more persons who implement the plan. Managers may also perform other tasks related to organization, such as providing the means or identifying the border crossing points. Financing refers to paying money or providing services or materials that enable trafficking in persons. Financing may consist of temporarily lending resources to victims, while expecting trafficking to take place; offering traffickers items or housing; lending money to traffickers; offering premises, such as to house victims of trafficking, or purchasing means of transportation, such as cars, buses and so forth, with the purpose of lending them to traffickers.¹²⁶ The Protocol also identifies another set of aggravating circumstances that merit greater penalties. These greater penalties are triggered when the crime is committed in collaboration with others, more than once, when it is accompanied by mistreatment and making the victim submit to various actions through the use of physical or psychological force, or when the crime brings serious consequences to the victim's health.¹²⁷

If Harkin-Engel had been applied consistently with the Protocol on trafficking, the reference to aggravating circumstances would have been taken into consideration. The certification data collection system would then have been applied not just in cocoa producing areas, but also in those areas that form routes followed by potential traffickers or victims, including the border countries of Burkina Faso, Mali and Togo. Furthermore, it would have called for different sets of questions than the ones posed in the interviews of the certification studies, and more importantly, not only the definition of family would have been scrutinized, but also the conduct within a family structure. Brendan O'Neill points out:

Migration remains an inspiring expression of human agency and desire, as people take great risks and travel great distances to improve their lives. In labeling such movement as 'trafficking' and 'slavery', and demanding tougher border restrictions and police-led 'rescues' of trafficking alleged victims, the anti-trafficking lobby has grossly betrayed the very people it is claiming to help.¹²⁸

125 See *supra* note 123.

126 *Id.*

127 *Id.*

128 Brendan O'Neill, *Trafficking: return of the 'white slavery' scare?* Spiked, Jan. 31, 2008, <http://www.spiked-online.com/index.php?site/article/4389/> (last visited May 15, 2009).

O'Neill's caution is built on several pioneering works of Laura Agustín on migrants, especially women migrants. Agustín explains that:

'Trafficking' discourse relies on the assumption that it is better for... [people] to stay at home rather than leave it and get into trouble; 'trouble' is seen as something that will irreparably damage...[them]. But if one of our goals is to find a vision of globalization in which poorer people are not constructed solely as victims, we need to recognize that strategies which seem less gratifying to some people may be successfully utilized by others.¹²⁹

In calling for the Palermo Protocol to be connected to the Harkin-Engel Protocol, this paper does not intend to reduce the free movement of people, including children, who leave home in search of a better life. It is, however, the intent to have the Harkin-Engel Protocol protect the very children it was designed to protect. Seven years of data collection would seem to suggest that data needs to be collected in the right places, under the right circumstances, using inclusive, appropriate and diverse methodologies, and involve experts well-versed in child relations. Additionally, those organizations involved should do what the Harkin-Engel witnesses have asked for, namely, to produce "a transparent, credible and progressive process that reports on the incidence of the worst forms of child labor and forced adult labor in a producing country's cocoa sector and on the progress in reducing this incidence, with the goal of eliminating WFCL and FAL from the sector."¹³⁰ The trafficking of children for exploitative labor purposes is clearly a worst form of labor that is accepted by governments, the industry, and NGOs both in cocoa producing countries and in the chocolate consuming ones. To illustrate how certain exploitative conditions still persist in the West African cocoa production regions and often go undetected, stories of two children from Burkina Faso and Mali who crossed the borders into Côte d'Ivoire and Ghana to work on cocoa farms are perfect examples of the types of issues that the Harkin-Engel Protocol should be addressing.¹³¹

129 Laura Agustín, *Leaving Home for Sex*, 10 September 2008, Laura Agustín webpage, http://www.nodo50.org/Laura_Agustin/leaving-home-for-sex (last visited May 15, 2009).

130 See, Manufacturers Association *supra* note 64.

131 All children reported on here worked on cocoa farms between the years of 2004-2007 and were interviewed in 2008 after they returned "home." At the time of the interview only one interviewee was 18 years old. After a short introduction, the presentations are made according to the journey to the cocoa farm, work on cocoa farms, payment received in exchange for work and journey back home. While I have conducted several interviews throughout my seven years at Save the Children Canada in Burkina Faso and Mali, the ones provided below are excerpts from interviews conducted on a Save the Children Canada trip organized in 2008. All responsibility for the translation lies with the author. The names and other identifiers have changed to protect the identity of the interviewee.

2. The Story of Malik

Malik was 15 years old and living in a town called Po, close to the border between Burkina Faso and Ghana, when his uncle (brother of mother), who lives and works in Côte d'Ivoire, told him of the work he could do on a cocoa farm in Côte d'Ivoire for CFA25,000/month. He informed him that he should travel through Ghana "as the border was safer" and it would be easy to enter Côte d'Ivoire from Ghana. Malik did not go to school, the oldest of three brothers, living with his mother and father. Malik told his uncle that he was suffering from the poverty at home and that he needed clothes and food. He left Po in mid-2005 and returned in 2007.

I woke up one morning and just left without telling my parents or brothers. Before my uncle returned to Côte d'Ivoire after a family visit he gave me his cell phone number and asked me call him from the border of Ghana and Côte d'Ivoire. He did not want my parents to be suspicious; so he went ahead of me. I had CFA 5,000 on me. My uncle told me two other boys would be joining me at the border; they were my neighbors so I spoke to them and we planned to leave together. One of them was 18 years old, the other was 12 and I was 15. I met my friend who had a motorbike and asked him to drive me to the border, Dakola. The others also asked friends to drive them to the border. When we arrived in Dakola we walked across the border. We saw police but no one asked us for anything. Once we crossed we bought bus tickets and boarded a bus to Kumasi. It took us three days to get there. When we arrived at Kumasi we found many young people at the bus station who were asking around if anyone wanted to go to Côte d'Ivoire, we said yes. They took us to a bus where we bought tickets and boarded it. We arrived at the border and got off on the Ghanaian side and I called my uncle and asked him to come meet us as we had very little money left. My uncle asked me to walk across the border with my friends and wait for him at Bongoro, Côte d'Ivoire where he had a house. We walked across the border and no one asked us any questions and went to my uncle's house. After three days my uncle showed up in a car and drove us to the cocoa farm. Once we arrived at the farm my uncle introduced us to the farm owner. The farmer told us that there was a lot of work to do on cocoa most of the time and then yam. He said if we worked hard he would pay us CFA 25,000/month. The next day we woke up early and began work. While we were on the farm we cleared land and picked cocoa from the trees; we started at 8am and worked till 4pm, at 12 noon we had 30 minutes for lunch; we ate yam every day. After 4pm we went to the farmer's house and fetched water till 9pm, ate and then slept and woke up at 6am. On

Sunday afternoon we had the day off; we sat around speaking to each other and played a bit on the farm. We could not ever leave the farm. The farmer warned against it and we were frightened as he had a very bad temper. He insulted us all the time, called us lazy, said bad things about our mothers and even beat us. Sometimes he would take us to deposit the cocoa in the market; he would watch us all the time. With the money we got we use to buy clothes, shoes, food and drinks. The life there was hard, we worked hard. We use to get cut hundreds of times; I got sick a lot as I was not used to the work there. I cured myself with leaves and things like this; the farmer did not give us any medical help. For the first six months we received CFA 20,000 at the end of each month, the farmer kept CFA 5,000 and said this was for my uncle for bringing us here. When he first did this I told we paid our own way to come to Côte d'Ivoire. He told me to ask my uncle when he visits. My uncle came to see me at the end of the month for the first four months and then he stopped coming. I asked him how come he took money for our travel and he said that is what he paid to bring us here and to find work for us. I was so angry with him as I realized after he stopped coming to see me that he got his money for me and the other two boys and left. I never saw him again. The situation got very bad, it was horrible before, but we got paid, the farmer stopped paying us any money at all and work got harder and harder. I asked him to give us the money and he said he was saving it for our travel home and that when he thought we are ready to leave he would give us the money. After four months of not getting paid we all threatened to leave and he said if we did he would not pay us any money. He used to tell us he would break our legs and then we would never work again. We worked for nine months without receiving even one CFA. After another two month it was clear to us he was not going to pay us. We realized that we had been trafficked to work here by my uncle. There were five other boys working here, my uncle brought them too; all young and from Burkina and they had been there longer than us and they had not received any money for more than a year. We had heard about trafficking a lot from our parents and grandparents, but I never believed my own uncle would do this to me. I trusted him; I told him how poor I was and that I wanted a chance to make some money. We decided to escape. We planned our escape after thinking about all avenues. One night, in the middle of the night we got together and ran to the nearest bus station. It took us the night and nearly the whole day to arrive. We had about CFA 75,000 each so we bought a bus ticket to the border of Ghana and then back to Dakola. It cost me about CFA 40,000 for the journey back home with food. We returned the same way we came. When I arrived

home, my mother was very happy to see me; my father too, but he was angry I left without telling them. My father told me he was looking for me everywhere and that my mother was sick with worry. I told them the whole story and they were extremely angry with my uncle. I will let God decide what to do with him. My mother said if she saw him she would do something bad to him. I just hope he does not show up here to our house again. I don't think he will. I used to be so angry with him, now I know God will look after him and bring him his justice. There are many, many children from here working in Côte d'Ivoire, even Ghana. Just the other day two more left, followed just today by another two. They were going to work in Ghana cocoa farms. I asked them not to go, but they did not listen to me and told me that I did not know about Ghana as I worked in Côte d'Ivoire. It is true that before I went I use to think of Côte d'Ivoire, working on cocoa farms as ripping gold from trees. Now I know this is not true. I have seen many traffickers in this village and many around here. You can tell who the trafficker is because you see a man traveling with five or six children and then the next day you hear that five or six children have left the village. The villages of Tiebelli, Kaya. Songho. Kampalgha, Tangassougou, Konkonya, Tiakenya, Jaro, Adongo and Mano are all villages where people come to recruit for work on cocoa farms in Ghana and Côte d'Ivoire. They mostly look for young people with the Mossi, Gourounssi and Bano ethnicities.¹³²

3. The Story of Lela

Lela started work on an Ivorian cocoa farm when she was 8 years old and worked on it for ten years. She identified her uncle as her trafficker, but was confused by how exactly to define the trafficking that took place. Lela was born in Yeberi, Côte d'Ivoire where her parents were migrant farmers. Lela is the youngest of five children. Her family lived and worked "rice, corn and some small plants like Okra" on her uncle's farms. Her father died in 1997 and the funeral was held in Burkina Faso where both her parents were born. When she came to Burkina Faso for her father's funeral, an arrangement was made. She returned to Côte d'Ivoire with her uncle to work on his cocoa farm; her mother remained in Burkina Faso, living in her birth place, Sidoumoukari. She was not involved in the decision and felt she had no choice. As she puts it, "I worked and earned nothing, so I was dependent on what they decided. I also needed money for my marriage kit." Lela worked on a cocoa farm from 1997 till 2007; in December of 2007 she returned to Burkina Faso and now lives with her mother. This is Lela's story:

132 Excerpts from interviews of trafficked children in Mali and Burkina Faso (Malik). See Anita Sheth, *Interview notes with trafficked children*, Unpublished notes, Save the Children Canada, Toronto, Canada, March 2008.

A few days after my father's funeral my uncle and mother were talking for many hours about me. I heard my uncle telling my mum that I needed to work and there was nothing for me to do here and that I should work on cocoa as there was a lot of money to be made. My mother and my uncle said nothing to me. One day I woke up early and my uncle said I was going with him back to Côte d'Ivoire. It was very early in the morning, I remember, and we took the bus to my uncle's family home in Côte d'Ivoire. The next day we walked to a cocoa farm in Kadibere which he owned. He told me he would buy me clothes if I worked hard. The whole journey took a week; I remember one night we slept in Lakota; the farm is close to there. We ate a lot of rice and bread and I cannot remember where else we slept the other nights. I was really young. Yes, we crossed the border, my uncle and I got out and he told the police something. I had no papers so he could not have showed it to the policeman. It was a very large farm. I don't know the size exactly. Three adult men, four adult women and lots of children were working on it. All the women were my uncle's wives and they had lots of children and all of them were working on the farm. I worked to pick up the cocoa pods, collect them and put them in bags. The men sewed the bags and then we carried them to the warehouse. I took the bags where they were broken open; sometimes I had to split the pods open as well. I worked from morning to night; after work on cocoa farms I would go and fetch firewood and then I would have to help in cooking and cleaning the home. I had to wake early because I also helped to cook all the food for the workers. I had no breaks; I would also help wash the workers' clothes and clean the areas where everybody slept. It was back breaking work. During the dry season I had to work on rice; it was very hard work too and long hours in the sun. I had to clean the rice and put it into bags and then carry them to the storage area. I could not leave the farm at all and had no breaks; not just me but everybody who worked there. I was hit sometimes; they use to call me orphan and that used to hurt me very much as my mother was still living. When people came from Burkina Faso to the farm to visit my uncle's family, they would bring me news of my mother. I was the servant in the house and was treated not like their other children. Look at my hands and see the cuts on my leg; these will be with me for life. The machete cut me so many times. My mother knew nothing about how much I was suffering as I could not speak to her. Once I asked my aunt if I could visit my mother and she slapped me telling me never to ask for this as I was an orphan and that my mother abandoned me. She asked me to think of my mother as dead. I used to believe this sometimes and cried myself to sleep as we never spoke in all those years.

There was nobody to talk to and I felt all alone there. I hated my life. I never got paid even once; my uncle bought me something to wear when I had nothing to wear, just two or three dresses in all that time. I wasted so many years. It felt like a punishment from God. I could not run away as I did not know the area and had no money. I left when my brother who lost his child came to see me to take me to the funeral in Burkina Faso. He lived far away so I did not see him at all those ten years. Maybe once or twice; that is all. But my mother asked him to get me and bring me back to her. My uncle told me not to leave but I did. He told me there was nothing for me there. I told him that there was nothing for me here and one of his wives hit me when I said that. My brother and I travelled by car and then by bus. It took a long time and I was frightened something would happen. When I met my mother I cried and told her everything. I told her that I got no money or anything else. She was so upset that she did not let me go back. I asked her why she sent me and she said so I could get my marriage kit. I did not get anything. I did not leave my mother's side; even today I am afraid to leave my mother's side. There are many men that came to the farm who brought children to work there. I saw them in the market; they used to come and speak to my uncle, all of them were from Burkina Faso. Once they spoke, the men would come to the farm one by one bringing children to do cocoa farming; more boys than girls. I wanted to go to them and tell them to leave, but I could not do that or they would hurt me. I felt really bad as I could hear them tell each other what they would do with money they got; we used to all sit and eat together, but I said nothing. Maybe God punished me for this, I don't know.¹³³

Regardless of how one analyzes the stories told by these children, it is very clear that they saw their experience working on cocoa farms as trafficking. Family connections in both stories did not prevent them from identifying what had happened to them as trafficking. In fact, Lela's confusion by the fact that the "arrangements were made between her uncle and mother" caused her to doubt if it was trafficking at all, but she used the experiences she had of working on the farm and in the farming household and the deception involved to affirm her understanding that she had indeed been trafficked. Malik did not think his uncle would betray him at first, but when he realized that he was never going to be paid and never going to leave without the permission of the farmer he knew that he, too, had been trafficked. The various other interviews conducted with trafficked children all point to the same aspects in children's understandings of being trafficked, these were: deception,

133 Excerpts from interviews of trafficked children in Mali and Burkina Faso (Malik). See Anita Sheth, *Interview notes with trafficked children*, Unpublished notes, Save the Children Canada, Toronto, Canada, March 2008.

inability to leave the farm, not being paid or obtaining an exchange for the services rendered, and exploitative labor conditions. No child assumed not to receive compensation for work rendered, even those that worked with family relatives. Both Malik and Lela related tales of many more children caught in the same situation and that their situations were by no means unique. All of this raises doubts regarding the data found in the certification studies on trafficking of children for labor purposes in cocoa farming. Given the inadequacy of the methodology and the misleading conclusions derived by the government, it is not hard to see why they did not detect incidences of trafficking. Perhaps, children still caught up in the web of trafficking were frightened to talk. The excerpts provided above would certainly point to this. Furthermore, the areas where the studies were conducted constitute another impediment to efficacious research. Both stories indicated that migrants come from areas not researched in the study. Trafficking in children is a clandestine activity and as such, the ILO questions about labor conditions could not highlight the real nature of the crime. The Palermo Protocol and its investigational methodologies and protection of victims would prove more useful in discovering child trafficking for exploitative labor purposes. It must therefore be used alongside ILO 182 to determine the extent of the child trafficking in the cocoa supply chain.

Conclusion

If the Harkin-Engel Protocol is ultimately about protecting children, then millions of dollars will be spent to design targeted remedial projects. It is thus of paramount importance to obtain the right data, using inclusive definitions. Both Ghana and Côte d'Ivoire already support a string of anti-trafficking projects in the areas where cocoa is grown. Both countries have also ratified the Palermo Protocol. If studies included a broad regional approach, encompassing countries that both consume and produce cheap labor, then the data will reflect realities which must be confronted by policy. Historical and current analyses have already pointed out that a significant proportion of populations from the neighboring Burkina Faso, Mali, and Togo are involved in cocoa production in Ghana and Côte d'Ivoire. Given the current commitment by the industry, governments and NGOs on the goal of the Harkin-Engel Protocol and its focus on gathering credible data on the worst forms of child labor and forced adult labor, it would stand to reason in a region of intense migration and complex family structures that work be extended to these neighboring countries as well, or at least to the border towns which seem to be conduits for the movement of people for work on cocoa farms. In failing to extend the Harkin-Engel Protocol to supply countries for cheap labor to Ivorian and Ghanaian cocoa farms, one could argue that the Cocoa Protocol simply distinguishes between those who are exploited with movement and those

that are not. However, according to the Harkin-Engel Protocol, trafficking as a phenomenon is completely absent or at the very least discounted on the basis of so called “family ties” shared between victims and adult family members. But Lela reminds us when speaking about her uncle, “If you ask me if I was I trafficked I would say yes as I was mistreated, worked hard, and earned nothing. For me this is what I understand as trafficking.”

While this interpretation was not in itself surprising as ILO conventions generally apply to formal employment and not to informal sectors as family agriculture, what is more surprising is that, at the time of the ratification, discussions and the following data provided by the ILO and the U.S. indicate that the agricultural sector and more specifically, family farms, constitute a major employer of children where the risk of hazardous conditions is high both in the U.S. and elsewhere.

The Economics of Sex Trafficking since the Legalization of Prostitution in Germany in 2002

*Annegret Staiger**

The Prostitution Act (Prost. G), which became effective in 2002, made Germany one of the few countries in Europe that has, in recent times, chosen the path of legalization of prostitution to fight women's exploitation in the sex industry. The intent of the law was to de-stigmatize the profession of sex work by providing labor protection and making prostitutes eligible for social security and health insurance, while also allowing law enforcement to shine a brighter light on the red light milieu and its associated crimes. However, critics of the Prostitution Act¹ charge that the new law increases the supply of sex workers and turns Germany into a major destination country for traffickers. Today, six years later, what can we say about this law, its impact on prostitution in general and its impact on sex trafficking specifically?

This paper discusses two trends in the development of the commercial sex industry in Germany since the passage of the Prostitution Act and its implications on the economics of trafficking. First, it examines the role of the state and its social policies that impact the supply side of the prostitution industry. Second, it examines the increasing exploitation of sex workers in general. Research for this paper was conducted in Germany in the summer of 2007, consisting primarily of interviews with organizations and service providers for victims of trafficking, prostitute self-help groups, government-funded counseling centers, and law enforcement. It also includes the findings from ethnographic fieldwork with various stakeholders of the sex industry, including social workers, prostitutes, sex clients, brothel operators, sex forums, anti-prostitution activists, and law enforcement conducted in the spring of 2008. The data collected provided a broad overview of the network of actors directly and indirectly involved in this industry.

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1 See, Donna M. Hughes, *Chancellor Missing Her Chance*, Nat'l Rev. Online, (May 1, 2006), <http://article.nationalreview.com/?q=OTU1MzY4NmUxYWExYWZyNGE1MzIwNDRmZGVlOGU=#more>. See also, Donna M. Hughes, *Turn and Look: Shining a Spotlight on Germany's Shame*, Nat'l Rev. Online, (Jun. 19, 2006), <http://article.nationalreview.com/?q=ODk1YTEwNzM0OTY3YjgwZDk3NTJlYW5YTlZGIxYmM=#>; and, Coalition Against Trafficking in Women, *Buying Sex is Not a Sport*, (2006), http://www.wunrn.com/news/2006/02_26_06/022806_catw_campaign.htm.

Until 2004, the German Criminal Code (Strafgesetzbuch) defined trafficking as a crime of coercion and exploitation of those working as prostitutes.² Trafficking did not depend on nationality and did not require a crossing of national borders.³ In 2005, this law was changed to follow the standards set about trafficking by the Palermo Protocol. In adapting to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention Against Transnational Organized Crime (Palermo Protocol), the law was amended in 2005 to also include non-sexual labor exploitation as a form of trafficking.⁴ Furthermore, in response to the Prostitution Act, the laws against procurement of clients for prostitutes were amended so as to allow for more orderly and safe labor practices in brothels and other establishments. Brothel operators who in the past had been easy targets for police surveillance in their capacity as procurers now had more freedom to provide acceptable labor conditions without making themselves susceptible to criminal charges.⁵

However, the boundaries between voluntary sex work and forced prostitution are often not so clear, neither in theory nor in practice. In academic debates about prostitution, abolitionists argue that any form of prostitution is a form of violence against women.⁶ At the other end of the spectrum are those who recognize voluntary prostitution as work and who argue that only by gaining full recognition as work could the stigmatization and violence against prostitutes be overcome.⁷ While the latter has been the ideological position of the red-green coalition pushing for this law, Ursula von der Leyen, the new Minister for Family Affairs, has recently distanced

2 Strafgesetzbuch [StGB][Criminal Code], Nov. 13, 1998, Sections 180b, 181a. F. (repealed). The German law regarding trafficking, (Section 233 of the Criminal Code), was amended on Nov. 5, 2008, and is available at http://bundesrecht.juris.de/englisch_stgb/englisch_stgb.html#StGB_000P233.

3 Annette Louise Herz & Eric Minthe, *Menschenhandel: Eine Empirische Untersuchung Zur Strafverfolgungspraxis*, 31 Max-Planck-Inst. für Ausländisches und Internationales Strafrecht/Kriminologie (2005) [hereinafter Herz & Minthe 2005] [*Author's Transl.* Human Trafficking: An Empirical Study of Police Efforts to Implement Justice, 31 Maz-Planck-Institute for the Foreign and International Criminal Code, 2005].

4 Strafgesetzbuch [StGB][Criminal Code], *supra* note 2, Section 233.

5 See generally, FEDERAL MINISTRY FOR FAMILY AFFAIRS, SENIOR CITIZENS, WOMEN AND YOUTH (BMFSFJ), REPORT BY THE FEDERAL GOVERNMENT ON THE IMPACT OF THE ACT REGULATING THE LEGAL SITUATION OF PROSTITUTES (PROSTITUTION ACT), (2008), available at, <http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/bericht-der-br-zum-prostg-englisch.property%3Dpdf,bereich%3D,sprache%3Dde,rwb%3Dtrue.pdf+%22The+Act+Regulating+the+Legal+Situation%22&hl=da&ct=clink&cd=8&gl=dk>.

6 Donna M. Hughes, Panel Discussion at The Third Annual Symposium on The Economics of Trafficking in Persons at The Protection Project at The Johns Hopkins University, School of Advanced International Studies (SAIS), Washington, DC: Sex Trafficking: The Demand and Profit – Developing a Perpetrator Focused Approach (November 10, 2008); See also ANDREA DWORKIN, INTERCOURSE (First Basic Books, 20th Anniversary ed. 2007) (Free Press 1987).

7 LAURA MARIA AGUSTIN, SEX AT THE MARGINS: MIGRATION, LABOR MARKETS AND THE RESCUE INDUSTRY (Zed Books, 2007).

herself from the position that sex work was like “any other work,” and demanded more effective efforts for the fight against trafficking and more intensified attempts to help women leave sex work.⁸ A number of studies commissioned by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) to evaluate the impact of the Prostitution Act have emphasized the risk of prostitutes becoming victims of trafficking, and the slippery conditions in which their ability for self-determination is often undermined in the course of their work.⁹

Although a clear and legal basis to identify and prosecute trafficking exists, the phenomenon of trafficking can be difficult to recognize from the outside. Trafficked women and those who are working as prostitutes by choice often work in the same or similar establishments: predominantly brothels (including eros centers, bars, and sauna or nudist clubs), but also in apartments, on the street, or in escort service agencies or massage parlors. With the legalization of prostitution, operators of brothels and similar establishments now have an incentive to keep their establishments clear of legal problems. As long as the person who rents a room from a brothel operator has papers proving legal status in Germany, proving work authorization, and proving that she is over 18, and as long as there are no “boyfriends” allowed inside the establishment, a brothel operator has little reason to suspect that the person to whom he or she rents a room is a victim of trafficking.

8 Bundesfamilienministerin von der Leyen: “Prostitution ist kein Beruf wie jeder andere - Ausstieg ist das Ziel” [*Author’s Transl.* “Prostitution is not a job like any other – Leaving Prostitution is the Goal”], Bundesministerium für Familie, Senioren, Frauen, und Jugend, Press Release (BMFSFJ), (Jan. 24, 2007) (German) available at, <http://www.bmfsfj.de/bmfsfj/generator/BMFSFJ/Presse/pressemitteilungen,did=93274.html>.

9 CORNELIA HELLFERICH, ET AL., UNTERSUCHUNG AUSWIRKUNGEN DES PROSTITUTIONSGESETZES ABSCHLUSSBERICHT (Gutachten im Auftrag des Bundesministeriums für Familie, Senioren Frauen und Jugend [BMFSFJ] 2005) available at, <http://www.bmfsfj.de/doku/prostitutionsgesetz/pdf/03.pdf>; Bundesministeriums für Familie, Senioren Frauen und Jugend (BMFSFJ) “Bericht der Bundesregierung zu den Auswirkungen des Gesetzes zur Regelung der Rechtsverhältnisse der Prostituierten (Prostitutionsgesetz – ProStG)” [*Author’s Transl.* “Report of the Federal Government about the Effects of the Laws for Regulation of Legal Rights of Prostitutes”] (June 1, 2007) available at, <http://www.bmfsfj.de/bmfsfj/generator/BMFSFJ/gleichstellung,did=97964.html>; Bundesministerium für Familie, Senioren, Frauen, und Jugend (BMFSFJ), “Empirische Daten zu Prostitution in Deutschland: Wie viele Prostituierte gibt es in Deutschland? Wie hat sich die Anzahl der Prostituierten seit Inkrafttreten des Prostitutionsgesetzes verändert? Wie hoch ist der Anteil der Migrantinnen in der Prostitution? Wie hat sich dieser Anteil verändert?” [*Author’s Transl.* “Empirical Data about Prostitution in Germany”] Press Report (Jan. 24, 2007) <http://www.bmfsfj.de/bmfsfj/generator/BMFSFJ/aktuelles,did=93316.html>; JOACHIM RENZIKOWSKI, REGLEMENTIERUNG VON PROSTITUTION: ZIELE UND PROBLEME – EINE KRITISCHE BETRACHTUNG DES PROSTITUTIONSGESETZES, [*Author’s Transl.* Regulation of Prostitution: Objectives and Problems – A Critical Evaluation of the Law on Prostitution] (Gutachten im Auftrag des Bundesministeriums für Familie, Senioren Frauen und Jugend, [BMFSFJ] 2007) available at <http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/prostitutionsgesetz-gutachten-1,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf>; and, BARBARA KAVEMANN, ET AL., VERTIEFUNG SPEZIFISCHER FRAGESTELLUNGEN ZU DEN AUSWIRKUNGEN DES PROSTITUTIONSGESETZES: AUSSTIEG AUS DER PROSTITUTION, KRIMINALITÄTSBEKÄMPFUNG UND PROSTITUTIONSGESETZ [*Author’s Transl.* In-depth Analysis of the Effects of the Prostitution Law: Exit Strategies Out of Prostitution, Crime Fighting and the Prostitution Law] (Gutachten im Auftrag des Bundesministeriums für Familie, Senioren Frauen und Jugend [BMFSFJ] 2007) available at <http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/prostitutionsgesetz-gutachten-2,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf>.

Similarly, clients of sex workers might not recognize the tell-tale signs of abuse and interpret a broken spirit as a form of genuine submissiveness. Law enforcement might also not recognize that the passports and work permits are fake, or even if they do, cannot always clearly identify whether the workers that hold those are victims of trafficking. Last but not least, prostitutes themselves might not be aware that the conditions of their work constitute a violation of German law. This is particularly true for women who have experienced past abuse in their countries of origin, as is the case sometimes for women of Roma origin.¹⁰

The distinction between trafficking and voluntary prostitution is further blurred by the fact that a significant number of victims of trafficking knew at the time they got in contact with their traffickers that they would be working in prostitution. However, they usually did not anticipate the extreme and brutal conditions in which they would work, or the financial dependencies to which they would subject themselves by relying on particular individuals to negotiate the terms of passage and employment in the first place.¹¹

Given these often close proximities of prostitution and sexual trafficking, studies of prostitution help us to recognize important trends in the industry in general, allowing us to draw inferences as to the economic conditions of those individuals trafficked for the purpose of sexual exploitation.

1. Supply Side Economics – The Role of the State and Social Policy

The German Statistics Office (Deutsches Statistisches Bundesamt) estimates that in a population of about 80 million people, about 400,000 registered prostitutes were working in Germany in 2006, others estimate that the percentage of migrant women has grown from 52% to 60% between 1999 and 2005.¹² A large percentage of these foreign women are thought to be working in the country illegally.¹³ But while there is evidence from some regions that the number of prostitutes overall

10 Interview with Hildegard Hellbernd & Dina Rytvina, ONA e.V. Berlin in Berlin (June 12, 2007). (ONA was founded in 1999 to promote the rights and interests of Middle East and Eastern European women; the term 'ONA' means 'She' in several Slavic languages) [hereinafter ONA Interview 2007].

11 ONA Interview 2007, *supra* note 10; and, Interview with Nivedita Prasad, Ban-Ying, Berlin in Berlin (June 14, 2007) [hereinafter Ban-Ying Interview 2007].

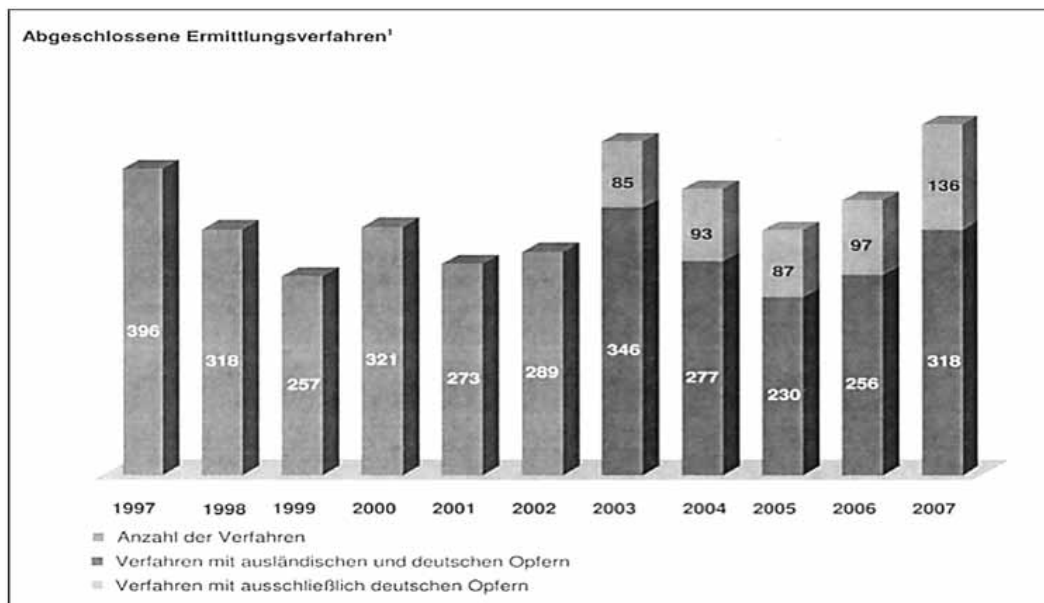
12 Maria Kontos & Kyoko Shinozaki, *Integration of Female Immigrants in Labor Market and Society. Policy Assessment and Policy Recommendations*, at 13 (Institut für Sozialforschung an der J.W.Goethe Universität Frankfurt, Working Paper No. 1 – WP4, Feb. 2007) *available at*, http://www.femipol.uni-frankfurt.de/docs/working_papers/state_of_the_art/Germany.pdf.

13 EMILJA MITROVIC, *WORKING IN THE SEX INDUSTRY, REPORT ON THE FINDINGS OF A FIELD RESEARCH: SOCIAL CHANGE IN DEALING WITH PROSTITUTION SINCE THE NEW LEGISLATION'S ENTRY INTO FORCE ON 1.1.2002* (Ver.di, 2004) [hereinafter Mitrovic 2004]. *English transl. available at*, http://mein-frei.verdi.de/besondere-dienste.hamburg/arbeitsplatz_prostitution/download/data/studie_englisch.pdf.

has been increasing since the last decade, the BMFSFJ (2008)¹⁴ argues that there are no reliable statistics on a national level to confirm these claims. It is therefore impossible to decide whether the Prostitution Act has contributed to an increasing number of prostitutes as charged by critics of the law. Some researchers have argued that Germany had already become a major destination for trafficked women prior to the law.¹⁵

The Federal Bureau of Investigations (BKA), however, provides crime statistics about trafficking, and although sex trafficking is generally considered a crime with a large number of unreported cases, its statistics should not be ignored.

Figure 1: Completed Police Investigations of Cases of Trafficking



Source: Menschenhandel, Bundeslagebild 2007, Pressefreie Kurzfassung, p. 5¹⁶

Figure 1 shows the number of completed police investigations in cases of trafficking for the purpose of sexual exploitation, illustrating a slight increase over the last ten years, with a significant rise in 2003, a year after the Prostitution Act was passed. The number of completed investigations ranges from a low of 257

¹⁴ *Supra* note 8.

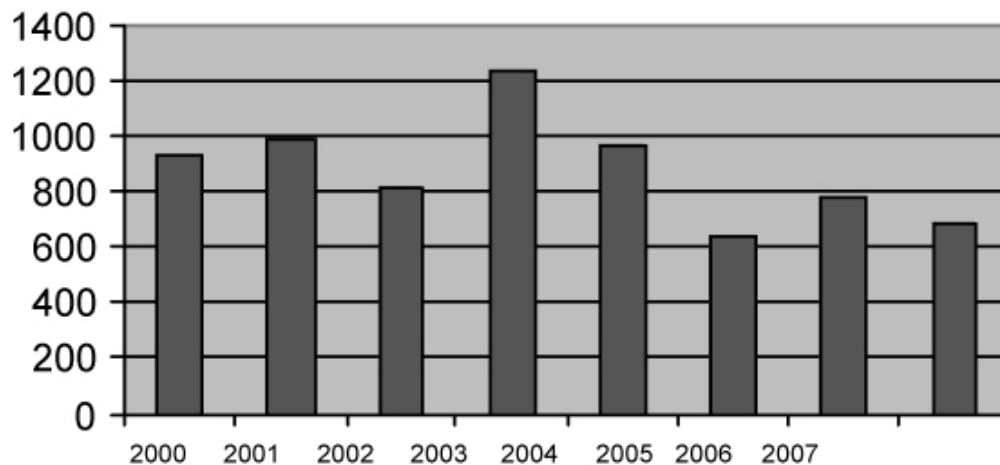
¹⁵ Herz & Minthe 2005, *supra* note 3 at 2 (citing IOM: Migrant Trafficking and Human Smuggling in Europe, Genf 2000). *See also*, ROBERT F. OBERLOHER, *MODERNE SKLAVEREI IM OK NETZ* (Wien 2003).

¹⁶ BUNDESKRIMINALAMT, *MENSCHENHANDEL: BUNDESLAGEBILD 2007*, (Bundeskriminalamt, 2007) available at http://www.bka.de/lageberichte/mh/2007/bundeslagebild_mh_2007.pdf. *Key translates to*, Number of investigations; Investigations involving foreign and German victims; and, Investigations involving exclusively German victims.

cases in 1999 to a high of 465 cases in 2007. However, if one considers the trend overall, there has been only a slight increase since 1997, with strong fluctuations from year to year. It is also interesting to note that since separate statistics were collected for cases involving exclusively German victims starting in 2003, these cases have grown significantly, from 20% in 2003 to 30% in 2007. Although these numbers have limited value in reflecting the actual trends of trafficking, due to the large number of cases that go unsolved and are therefore not reported, they could suggest that domestic trafficking plays a larger role than is generally acknowledged in the literature.

Looking at the number of actual victims of trafficking over time (see Figure 2), there is another surprise. While the number of investigations completed is rising, the number of victims overall has gone down significantly since a peak in 2003. These statistics most likely cover only a small part of the presumed cases of trafficking, and there might be other reasons for the decline,¹⁷ but if these statistics give any indication about trends regarding the number of victims of sexual exploitation in Germany since the passing of the Prostitution Act, there is little evidence that the new law had unleashed a wave of human trafficking to Germany.

Figure 2: Victims of Trafficking for the Purpose of Sexual Exploitation



Source: Bundeskriminalamt, Lagebild Menschenhandel 2000-2008

¹⁷ *Supra* note 5. According to the Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (2008) legislation concerning trafficking had to be changed in order to allow prostitutes to engage in employment-like conditions, without these employment-like conditions having to be regarded as forms of supporting prostitution/procurement of clients. There was initially critique that taking away the law against procuring would make it more difficult for law enforcement to initiate and complete trafficking investigations. The government, however, decided that the obligation of the law was to protect legal freedoms, not to set laws to allow prosecution of potential crimes. As there has been no sustained critique on behalf of law enforcement in response to these changed laws, the government decided there was no reason to revert to the original laws concerning prostitution.

Those who see the Prostitution Act as an attempt to do away with legal discrimination against prostitutes, however, charge that the law has done little to address the conditions of foreign prostitutes working in Germany illegally. Working without proper work or residence permits, they are not able to enjoy the protection the new law offers.¹⁸

Rather than blaming the Prostitution Act *per se*, they point to other significant changes in Germany that are suspected to have had an impact on the development of trafficking. These are first, a change in the residence regulations for aliens (AusländerG changed to Aufenthaltsgesetz 2005); second, the European Union (EU) expansions in 2004 when numerous Central and Eastern European States joined and in 2007 when Bulgaria and Romania became EU member states; and third, the legal amendment to the laws against trafficking passed in 2005 (Palermo Protocol) mentioned above, that aligned German law with U.N. definitions of trafficking.

This paper discusses only briefly the first and third of these changes. The new residence law (Aufenthalts Gesetz 2005) has been regarded by many as a deterioration of the previous law with regard to the ability of immigrants to work and reside legally in Germany.¹⁹ In addition, the amendment of anti-trafficking laws in 2005 extends anti-trafficking legislation to trafficking for labor exploitation. Considering that this law passed in 2005, there has not yet been sufficient time to recognize trends in legal practice to determine whether it would help improve the prosecution of characteristically hard to prove cases of trafficking.

Several critiques were voiced during interviews conducted in 2007 at Counseling and Information Centers for Victims of Trafficking (Fachberatungsstellen). As these have argued, a major contributor to immigrants' vulnerability with respect to trafficking is the German state itself. The changed residence laws (AufenthaltsG) and labor restrictions have led to an increase in the number of women vulnerable to trafficking. Employees at several of such centers (ONA, BanYing, KOK) argued that the EU expansion of 2004 facilitated travel between EU countries and allowed women from these countries to live in Germany legally. However, under the so-called 2+3+2 legislation, citizens from most of the newly added EU countries are not allowed to be employed in jobs that are providing social security benefits (health insurance, unemployment benefits, and pension payments) for the first two years, to be potentially expanded for another three years, and then again for another two, depending on the Government's assessment of the general employment market in Germany. Only in the year 2011 would citizens of these countries be able to become employees in Germany. Until then, they are only allowed to be self-employed, and

18 Herz & Minthe 2005, *supra* note 3 at 35 (citing Oberlies 2001).

19 For relevant German laws consult, KOK, e.V. "Legal Framework in Germany," <http://www.kok-buero.de/index.php?idcat=44&lang=3&PHPSESSID=8db860d1988ea35977437db442390>.

only as long as they can prove that their earnings generated are sufficient and allow them to pay for social security benefits out of their own pockets. Prostitution is thus one of the few available options for immigrants to earn enough money, as it requires no formal professional or language skills. However, although prostitution appears lucrative initially, it has proven hard for many foreign prostitutes to maintain income levels that would be considered adequate by the German state and, thus, has made such women susceptible to traffickers. According to this critique, women from EU countries remain below the radar screen of police investigations and surveillances more easily because, as EU citizens, they have valid immigration papers, and residence and work permits.

Assistance organizations for trafficking victims argue that, while German labor and immigration laws drive foreign women into the hands of sex traffickers, the German law regarding assistance to trafficking victims provides little help or incentive for victims to testify against their traffickers. Thus, although victims are granted a four week stay during which they can decide whether they will testify against their traffickers or not, their medical and psychological well-being is not ensured by the German government, but rather subject to the haphazard decisions and individual resourcefulness of German social workers. In addition, women awaiting trials to testify against their abusers are often living in inadequate housing arrangements, often collective housing for asylum seekers and thus in easy reach of their former traffickers. Finally, few victims have the prospect of remaining in the country to which they have been trafficked. Many are sent back upon completion of the trials in which they have served as key witnesses. This exposes many victims to serious harm and potentially new cycles of victimization and gives them little incentive to testify against their traffickers. Several advocates of victims of trafficking have thus demanded a fundamental revamping of German immigration laws to eliminate employment restrictions that make immigrants vulnerable to traffickers, to secure government assistance for medical and psychological services for victims, and following the Italian Model, a possibility for victims of trafficking to gain citizenship.²⁰ Echoing the concerns of O'Donnell Davidson,²¹ they also warn that the current anti-trafficking legislation might be used primarily

20 ONA Interview 2007, *supra* note 10 and Ban-Ying Interview 2007, *supra* note 11. See also, Nivedita Prasad & Babette Rohner, *Menschenhandel und Zwangsprostitution in Deutschland* in PROSTITUTION, PRAEVENTION, UND GESUNDHEITSFÖRDERUNG (Michael T. Wright et al. eds., Deutsche Aidshilfe, Berlin 2005) [Author's Transl. Prasad & Rohner, *Human Trafficking and Forced Prostitution in Germany* in PROSTITUTION, PREVENTION AND HEALTH IMPROVEMENTS (Michael T. Wright ed., 2005)] [hereinafter Prasad & Rohner 2005]; and, Veranstaltung im Deutschen Bundestag, Deutscher Frauenrat, *Bewegung für Europa und in Deutschland: Gegen Menschenhandel und für Betroffene – Chancen der deutschen Ratspräsidentschaft*, [Author's Transl. Event in the Bundestag of the Federal Republic of Germany, German Council for Women, *Movement for Europe and in Germany: Against Trafficking and For Victims – Chances for the German Ratspraesidentschaft*] (13. June 2007), (German) available at http://forum-menschenrechte.de/cms/upload/PDF/Dokumentation_Menschenhandel_130607.pdf.

21 JULIA O'DONNELL DAVIDSON, *CHILDREN IN THE GLOBAL SEX TRADE* (Polity Press, 2005).

as an attempt to restrict immigration, rather than to prevent trafficking or overcome trafficking altogether.

In conclusion, while the statistics on trafficking cases brought to justice have to be seen as providing an incomplete approximation to the real number of cases, they do not point towards an increase in trafficking since the new Prostitution Act of 2002. However, trafficking victims' advocates are drawing attention to the ways in which the German state, through its immigration, residence, and work authorization policies, impacts the labor market for prostitution and increases the vulnerability of women to traffickers, while doing little to rectify the victimization of trafficked women once they have been rescued from their assailants. Thus, rather than the Prostitution Act *per se*, which nonetheless does little to protect foreign women without legal status in Germany against exploitation,²² these advocates maintain that it is the German state that plays a significant role in structuring the supply of trafficking victims and making migrant women become vulnerable to traffickers.

2. Increased Labor Exploitation

a) Deteriorating Prices and Increased Labor Competition

On August 19, 2008, the tabloid newspaper BILD, one of the most widely read papers in Germany, reported a crisis in prostitution. Women from Eastern Europe were reported to flood the market with dumping prices, resulting in clients becoming increasingly stingy, and wanting more sex for less money. BILD cited a sex worker who a year ago got paid 150 Euros per hour, but who now was asked to do the same for a mere 30 Euros. According to BILD, other sex workers complained about having to pay high charges to managers, so that they often started earning only after their third client. They blamed young women from Central and Eastern Europe for spoiling their incomes with the dumping prices they offered.²³

The tabloid BILD, a notorious player in the sex industry itself, has a recipe for success involving a regular and generous supply of erotic visuals and stories and gains its profits, to a significant degree, from commercial sex advertisements. Against this backdrop, its reporting on deteriorating prices must also be seen as a means of deliberately informing sex clients of a potential bargaining tool. However, complaints about deteriorating prices have also become a frequently voiced, if not overarching concern among the people interviewed during my research.

22 Mitrovic 2004, *supra* note 13.

23 Marc-Andre Russau, *Pleite-Angst unter Hamburgs Huren*, Bild, available at <http://www.bild.de/BILD/hamburg/aktuell/2008/08/19/hamburgs-huren/pleite-angst-billig-konkurrenz-und-die-freier-werden-geiziger.html> (last accessed Apr. 11, 2008).

In conversations with older German prostitutes, the deterioration in the market for prostitution was often described as dramatic. Several informants have argued that a professional German prostitute used to never kiss a customer. Neither would she offer oral sex without a condom. In fact, some said, it was rare for a sex worker to actually engage in vaginal intercourse. The common practice instead was to simulate vaginal intercourse between ones' thighs ("Falle schieben"). In addition, while a specific price was negotiated for a particular service, additional services (for example for a client to touch the sex worker's breast) were added-on costs ("nach-kobbern"), so that by the time the client had finished, he had ended up paying significantly more than what had been originally agreed upon, thus increasing the profit for the prostitute.

Sex workers are likely to experience decreasing returns for their sexual labor due to the effects of aging, but it is not only older women who are affected by price deterioration. Young women also complained about finding themselves in a situation where it was increasingly hard to earn enough to make a living, while also maintaining one's freedom to be selective with customers and the services they demand. On occasion, German prostitutes held foreign sex workers responsible for the price drop-off in the industry.²⁴

But sex workers are not the only ones who are talking about a past era of easy money to be made in prostitution. In fact, almost all of those interviewed, and especially those who had been in business for 20 years or more, cite the enormous profit deterioration in the industry. Thus, as one brothel owner put it, a reasonably well-earning prostitute would make roughly what was today the equivalent of 1,000 Euros a night in the 1980s. Today, however, only the best sex workers would make the same kind of money. More typical would be incomes of about 300 Euros or less. The drastically lower income per day, she argued, was not only due to lower costs per service provided, but also because of the much lower number of customers today. In the 1980s and 1990s, she said, there were often so many clients that they had to wait in bathrooms and hideaway closets, because there was so little room and nobody wanted to be seen by another customer. This was echoed by yet another owner of an apartment-based brothel, who noted that the number of customers had dropped from an average of ten per prostitute per shift to an average of two or three today. To make ends meet, several brothel operators had lowered the prices for the sexual services offered – of which they usually earn 50%—or had

24 Several authors have attempted to calculate the average earnings of prostitutes but the numbers vary so widely or are generalized to such a degree that they are of little analytical use. While Mitrovic 2004 calculates that a female prostitute earns below 1500 Euros per month, because two thirds of her income are to be paid to brothel operators and pimps [*supra* note 13], the Bundeskriminalamt calculates that prostitutes earn two to six times as much per month.

to drastically lower the daily rent for the room, so as to make it lucrative enough for prostitutes to keep working.

Particularly low-priced commercial sex outlets are the so called Laufhäuser (literally ‘walk-through houses’). Instead of paying for discretion among clients, Laufhäuser are at the low end spectrum of commercial sex establishments. Laufhäuser typically have a large dormitory hall layout, with ten to 30 rooms per floor, on several floors. In these establishments, sex workers rent a room per day, usually with a sink but not always with a private bathroom, and use this room to work and sleep. During the opening hours of these establishments, usually from 11 a.m. to 2 or 3 a.m. the next morning, women open their doors dressed in lingerie, and sit on a chair or stand in the door to attract customers among the men who are circling these floors. Sex workers are free to leave their rooms whenever they want for how long they want. For using such establishments, women pay usually around 125 Euros a day, plus 25 Euros tax for their rooms. There might be additional costs that occur through food, utensils, and other needs. In one such establishment, the basic service, of twenty minute oral and/or vaginal intercourse was offered for 30 Euros. The rate of customers in such “discount brothels” tends to be higher than in others. At this basic service level, however, a woman has to have more than four customers, before she can actually earn money for herself. If at the end of the shift she has not been able to get enough customers to pay for her expenses, she cannot count on remaining in her room for long, as Laufhaus operators make profits almost exclusively from their rent. Such numbers are a shocking difference to the prices sex workers could demand in the golden era of the 1980s and 90s, when the average price for the basic sexual services cost the equivalent of 100 Euros. Even old time pimps, who had been working the business in the 80s, later found it too dangerous and unprofitable to remain in the business.

While it is difficult to assess the exact extent to which the income potential of prostitutes has deteriorated over the last years, it seems likely that there has been a significant drop in prices for services over time. The question is to what extent this is a result of the liberalization of commercial sex that the Prostitution Act likely brought about, and to what extent is it the result of a saturation of the sex market with immigrant labor. Alternatively, a price drop might be the result of a growing economic deterioration in Germany overall. Very likely, it is a combination of several factors. Whether cause or consequence, it is likely that this price decline is linked to an intensified exploitation of trafficking victims, to keep up profits for traffickers and, possibly, to create a secondary market with drastically lower rates than the one at legal establishments, and with heightened surveillance of the sex workers by pimps and traffickers. Anecdotal evidence from several cities supports this point and indicates that traffickers are increasingly focusing on street prostitution. Alternatively, however, it remains to be seen whether this price

deterioration would lead to a decrease in commercial sex in general, as profits might become better elsewhere.

b) Deteriorating Safe Sex Practices

Under the Venereal Diseases Act, health checkups for prostitutes were mandatory until 2000. They were abolished as it was recognized to be discriminatory to demand such checkups only for prostitutes. Mandatory health checkups had often been used as a form of repression for prostitutes. Since this law had been abolished, however, the contact of prostitutes with health departments has decreased drastically in a number of regions²⁵ and there is evidence that the rate of HIV infections is again on the rise.²⁶

The pressure to abandon “safer sex” (as it is called in Germany, instead of safe sex) practices has also been a frequent topic among sex workers. It has become a so-called “Club Standard” to offer oral sex without condoms, even in respectable and well-advertised establishments for commercial sex that officially subscribe to safe sex practices only. Prostitutes report that if they refuse to provide sexual services without condoms, their clients tell them that their colleagues offer such services and thus pressure them to conform, or otherwise leave. In the increasingly tight market for customers and lowered prices for services, and where sex workers are often paying inflated rates for rooms, these demands can be hard to resist. Colleagues working in the same establishment will usually deny accusations that they are undercutting their colleagues by offering condom-free sex. Women working in traditional brothels which typically possess a higher percentage of German and older women still consider it a taboo to provide oral sex without condoms. Many old-timers, who had been in the business for several decades, expressed utter disgust at the idea of oral sex without condom. In apartment brothels and nudist clubs, however, where sex workers tend to be younger and working only for a few days or a week at a time (thus facing less social pressure to conform to the practices of their colleagues) there is a noticeable trend towards greater abandonment of safe sex practices and an increase in the demand for more risky sexual behavior overall. Language barriers of immigrants have also been cited by some of the sex workers as a reason why there is less information about the risks of the trade and about established professional standards from the past.

Prostitute self-help organizations have argued that prostitutes are not necessarily more likely to be infected with STDs than the general population because, as sex

25 BMFSFJ 2008, *supra* note 5.

26 See, *HIV-Infektionen auf neuem Höchststand* [Author's Transl. *HIV Infections Reach New Record High*] STUTTGARTER ZEITUNG (GERMANY), May 3, 2006 at 18. See also, *Vier Prozent mehr HIV-Fälle*, [Author's Transl. *Four% Increase in HIV Infections*] STUTTGARTER NACHRICHTEN (Germany) May 7, 2008 at 11.

workers, they regard their bodies as their most important assets. It is therefore in their self-interest to be practicing safer sex. However, when women have little or no control over the conditions of their work, as is the case when they are sexually exploited by traffickers, they are less likely to maintain safe sex practices.²⁷ Trafficking victims typically are indebted to their traffickers for the cost of false passports and transportation. According to Prasad and Rohner,²⁸ trafficked women usually work at the lower end of the sex industry which involves house and hotel visits and cheaper brothels. In one case study, a client would be charged 80 Euros per visit, but received herself only 15-30 Euros. In another case, a woman working in a brothel received 40 Euros for a 20 minute sexual service, but retained only 5 Euros for herself. Considering the minimal income that women make under those conditions, and the large amount of debt they are supposed to work off, they cannot be too choosy with clients nor with the sexual practices demanded from them.²⁹

Particularly vulnerable are victims of trafficking who work in escort services and who do house and hotel visits. Here women are extremely isolated and can be easily put under pressure by their traffickers to conform to whatever demands a client makes, including the request for condom-free sex. Traffickers tend to be more concerned with pregnancy than with HIV infection, because their goal is to extract maximum profits from the women in a short amount of time, so that by the time an AIDS infection could be manifest, the “investment” in the purchase of a prostitute would have been paid off. But traffickers often also control the access to condoms; if they provide them at all, do so by charging exorbitant prices for them.³⁰

As the trend towards more unsafe practices seems to become endemic in the industry at large, it sends alarming signals of the relative deterioration of sex workers’ abilities to set the terms of the transaction, as well as about an apparently increasingly reckless consumer who is aware of the growing competition among sex workers and unconcerned about contracting sexually transmitted diseases himself. Looking at these circumstances, one could expect that the working conditions of trafficked women have now become even more brutal than before.

Returning to the question of the Prostitution Act as a cause of these conditions, it is not clear whether or to what extent the greater liberalization of the sex trade has played a role in the price deterioration and the abandonment of safer sex practices. Given that there seems to be a demographic shift towards a larger percentage of immigrant sex workers, it seems that the EU expansion and the global economic pressures have played a significant role in deteriorating work

27 Prasad & Rohner 2005, *supra* note 20 at 87-95.

28 *Id.*

29 *Id.*

30 *Id.*

conditions. And as long as immigrant sex workers are unable to gain the same protection as those legally working in the German sex industry, they are likely to experience deteriorating conditions, which collectively impacts those working in the industry in general.

So what lessons can be learnt from these findings in regards to the impact of the Prostitution Law on the economics of prostitution and what conclusions can be drawn from these observations about the particular conditions of sex trafficking? The conditions that were targeted as means to improve the social conditions of sex workers (labor protection, social security eligibility) in this industry seemed to be of limited significance. In fact, a series of factors seem to be at play that decisively influence the economic conditions of this labor market, and thus also the economic conditions for sex trafficking.

The effect of the Prostitution Law in de-stigmatizing sex workers and providing greater labor protection appears to be offset by other laws, such as the labor restrictions for citizens of most of the new Central and Eastern European EU member states, which might have facilitated the increased recruitment of trafficking victims from those states even after they had legally entered the country. Confronting a combination of open borders and restrictions to paid employment, these new EU citizens often enter the sex industry (one of few viable economic options), only to find out later that they need to depend on middle-men and traffickers to gain a foothold in this labor niche. The state is further aggravating this situation by providing little assistance to the victims of trafficking. Often the assistance that is provided does not even enable victims to speak out against their assailants, which then leads to the dismissal of cases or to only mild sentences for those charged with trafficking. The result is that the victim often finds herself sent back home, facing stigma or violence and new cycles of trafficking, while her trafficker—after a short sentence if any at all—might start a new cycle of crime and victimization.

The growing exploitation of those in the sex industry that this research found is the opposite of what the Prostitution Act intended to achieve. And while a lowering of the prices for sexual services might have to be expected as a consequence of the relative market liberalization, it is unclear what role the latter in fact played and to what extent other policies, such as the expansion of the European Union and its labor restrictions for the citizens of the new states, play a role in the growing exploitation of sex workers. It is likely, however, that the growing deterioration of labor conditions for women in the sex industry in general will be coupled with a growing brutality on the part of traffickers, whose dwindling profits might make them use ever more ruthless tactics and harder to access venues. Without being able to generate more adequate statistics about the number of women in the sex trade in general, and about the percentage of those working there as irregular migrants who are therefore largely unable to negotiate labor conditions and enjoy protections

afforded by the Prostitution Act, our ability to see clear trends over time is limited. Therefore, rather than coming to a conclusion about the effect that the Prostitution Act has had on trafficking, this paper illustrates how a number of confounding factors complicate our understanding of simple cause and effect relations.

Sex Markets and Human Trafficking: Cause-Effect and Policy Interventions

*Eric Lutz and Richard Lotspeich**

Commercial sex, or prostitution, is sometimes linked with human trafficking, which refers to coercive exploitation of labor services. People (primarily young women) are coerced into providing sexual services in a market exchange. Revenues from these exchanges are controlled by the prostitutes' handlers, who may share a portion of the earnings with them. But whatever earnings the prostitutes may accrue, they do not freely enter into these exchanges. This feature is the essential distinction between human trafficking in sex markets and prostitution that does not entail coercion.

Human trafficking imposes sharp injustices on trafficked persons and results in a lowered state of well-being for them. Human trafficking in sex work is particularly damaging because of the intimate nature of sexual services.¹ It often causes severely deleterious psychological and health effects. Clearly human trafficking into sex markets requires a policy intervention relieving these negative social outcomes and prosecuting the related human rights violations. But what specifically, should the policy be? A coherent response must provide specific approaches at both strategic and tactical levels. The present essay attempts to evaluate policy at the strategic level, while also making some suggestions on tactics.

At the 2007 National Prostitution Conference,² a point of contention arose between proponents of legalizing prostitution and advocates of suppressing prostitution in order to cope with human trafficking in the sex trade. The latter group argued that legalization of commercial sex would exacerbate the problem

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1 We rely on the conception of intimate relations described by Zelizer (2005, 14): "...interactions ... [that] depend on particularized knowledge received, and attention provided by, at least one person—knowledge and attention that are not widely available to third parties. ... knowledge involved includes such elements as shared secrets, interpersonal rituals, bodily information, awareness of personal vulnerability, and shared memory of embarrassing situations. The attention involved includes such elements as terms of endearment, bodily services, private languages, emotional support and correction of embarrassing defects." Zelizer is careful to note that these interactions do not necessarily occur in the context of caring relationships. Thus there is considerable scope for intimate injury.

2 Fourth National Conference: Prostitution, Sex Work, and the Commercial Sex Industry, University of Toledo, Toledo Ohio. 27 & 28 September 2007.

of human trafficking, a problem that both groups, *proponents* and *prohibitionists*, agree is socially damaging and should be opposed. The differences between them, at least as far as human trafficking is concerned, lie in policy strategy. The proponents confirmed their support for legalizing sex work, including prostitution, arguing by analogy that fraud in the mortgage market does not justify outlawing mortgages.

We agreed with the proponents in this debate, but found their line of argument to be lacking. Sexual services and mortgages are quite different, and the roles of the two markets in the larger economy are likewise quite distinct. The U.S. economy would register only a small impact if commercial sex were somehow fully suppressed, but similar elimination of mortgages would be economically disastrous. These distinctions make the argument by analogy less than compelling. However, a careful examination of the logical connections between human trafficking and sex markets can help to frame the debate on policy toward reducing human trafficking, and it provides significant support for the proponents of legalization.

Links and Conditions

The argument of the prohibitionists is *prima facie* appealing because the existence of a sex market is a necessary condition for human trafficking into sex work. However, it is not a condition sufficient in itself. There can be commercial sex without any associated human trafficking. Other social circumstances are required for the emergence of human trafficking related to sex markets. Two additional social circumstances are necessary: 1) the existence of a population vulnerable to human trafficking and 2) the ability and willingness of a trafficking organization to operate.

These three elements, vulnerable population, viable traffickers and a sex market, comprise a three-link chain of necessary conditions that together are sufficient for sexually oriented human trafficking. Policy intervention at any one of the links has the potential to reduce this particular form of human trafficking. Given this, we must question whether a policy that focuses on the last link is the best strategy. Indeed there are reasons to believe that attempts to suppress sex markets would, ironically, lead to more human trafficking.

Choice of Strategy

Given the logic of human trafficking laid out above, strategy choices can be framed as developing policies that focus on particular links in the chain of causality. Choices among policy approaches to reduce human trafficking should be guided by their effectiveness, cost and potential for unintended consequences,

which may be beneficial as well as deleterious to the social interest. This paper presents only preliminary considerations in such an evaluation. More complete analysis will require detailed benefit-cost analysis to reach firm conclusions.

First Link – Vulnerable Populations

Within a society, certain people are more likely to be subjected to human trafficking than others. Vulnerability comes in degrees and has two main aspects, personal security and economic status (which are also interlinked, as people with higher economic status generally have greater personal security). Both of these aspects of vulnerability are seen in the prevalence of young women from low-income backgrounds in sexually oriented human trafficking.

A lack of personal security makes a person more prone to kidnapping by a trafficking organization. When people have connections with stable families and inclusive social networks, such as schools, religious groups and social service agencies, they are less subject to exploitation by traffickers. Individual characteristics and behavior also play a role in personal security. People with more assertive personalities and better “street smarts” are more capable of protecting themselves. Young people who are alone in society and have a lower self-confidence are more vulnerable.

Human traffickers sometimes engage in their practices by facilitating the movement of people across international borders or between regions within a country (often from rural to urban areas) ostensibly to help them pursue economic opportunities that they lack in their home country or region. The basic motivation for such migration is economic, and people willing to undertake such a risky venture may be considered economically vulnerable. They become entrapped not through kidnapping, but by deception, resulting in their willing cooperation (at least initially) with traffickers.

Corresponding to these two types of vulnerability (personal and economic), there are two types of policy intervention available. Personal security can be improved through education and by developing stronger links between individuals and protective social organizations. Programs enhancing family support, raising awareness about the practices of traffickers, and providing crisis intervention to assist people who lack reliable links to protective social organizations are particular tactics that are already followed and could be enhanced. Training for law enforcement officers enabling them to recognize vulnerable individuals and guide them to the appropriate social services is another tactic for improving personal security. Policies based on education, training and provision of information would be relatively low-cost for governments. However, intervention and family support

need significantly more resources since they require trained personnel and physical facilities. Not all governments can support such an expansive set of services.

The problem of economic vulnerability is more difficult, and is more tied to general issues of economic development. Raising standards of living and improving economic opportunities for a vulnerable population is a tremendous challenge for governments. Yet the logic is clear. If people have enhanced economic opportunities, they will have less incentive to migrate to other countries or regions in search of better prospects. This would take them away from the reach of trafficking organizations that exploit individuals willing to migrate. However, it is often the case that economic development itself requires labor migration, notably from rural to urban areas. Thus, an appropriate policy to suppress trafficking would be an officially sanctioned and monitored program to support economic migrants. In this manner, migrants could pursue economic objectives but would not be as vulnerable to trafficking organizations. Such programs would also promote ties between the migrants and stable social organizations that enhance personal security.

While the suggestions made here are specifically concerned with reducing the potential for individuals to be trafficked into sex markets, the policies have a broader set of benefits as well. First, they would reduce the potential for trafficking for other purposes. Second, they would raise the well-being of the people supported by such programs. The main costs would be the public resources required to sustain the policies.

Second Link – Trafficking Organizations

The coercive tactics of trafficking organizations are violations of human rights and, in most instances, constitute violations of criminal law as well. Law enforcement agencies clearly have a responsibility to suppress these organizations. Improving the capabilities of such agencies through increased resources, training and intelligence would result in two kinds of beneficial outcomes. First, if specific organizations and individuals are prosecuted for their activities, the direct capacity for traffickers to move people coercively into sex markets would be reduced. Secondly, more robust law enforcement against trafficking raises the cost of engaging in the practice, which creates a disincentive for those traffickers who manage to evade prosecution. The economic model of criminal behavior—rational individuals pursuing self-interest while weighing potential gains and losses—is especially relevant to human trafficking. If the expected profit of trafficking is reduced, there will be less trafficking.

This strategy is linked in numerous ways to a government's general approach to law enforcement. It requires mobilization of the criminal justice system, development of intelligence and, perhaps, pursuit of diplomacy for the specific purpose of suppressing human trafficking. Like the reduction of economic vulnerability, the law enforcement approach to the problem of human trafficking is not cheap. There will be either less investigation and prosecution of other criminal activities, or more public expenditures devoted to law enforcement. Some advantages to this strategy are that it is the most focused of the three in terms of limiting sexually-oriented human trafficking and that it has considerable potential to suppress human trafficking more broadly.

Third Link – Sex Markets

If commercial sex were entirely eliminated, there would be no sex trafficking. But it is extremely difficult to fully suppress illegal markets, especially those that are well established and widespread – as are sex markets. It is extremely rare for law enforcement agencies to even attempt a significant reduction of prostitution. Much more effort has been applied to illicit drug markets, with limited success. To achieve complete suppression of such a market would impose an enormous resource cost, which is simply not practical.

Yet this does not mean, in itself, that efforts at suppression should not be pursued if society views the market activity as inherently imposing negative consequences. It is widely agreed that suppression of illicit drug markets constrains the use of drugs and, thus, ameliorates the extent of addiction. Then, wouldn't suppression of commercial sex, even if imperfect, also reduce human trafficking to sex markets? Even if it would, this policy strategy would still need to be rigorously compared to the other two in terms of cost and effectiveness before it is implemented. However, there is reason to believe that partial suppression of sex markets might, perversely, lead to more sexually-oriented human trafficking.

A numerical example can illustrate this possibility clearly. Consider a sex market served by 2000 sex workers, of whom 5% are trafficked women. This amounts to 100 trafficked persons. A reasonably successful suppression effort might shrink the market by half. But of the smaller number of sex workers, a higher proportion may be trafficked women. Suppose suppression leaves 1,000 sex workers, of whom 12% are trafficked. Now there are 120 trafficked persons.

Suppression imposes increased costs on sex service providers, which will shift the sex market equilibrium toward a reduced quantity and increased price. The experience of the U.S. Drug Enforcement Agency (DEA) is relevant here. The DEA evaluates its success in drug interdiction partly by following price changes.

A rising price is taken as an indicator of success in reducing supply. However, for the smugglers who remain successful, the higher price results in enhanced profits and serves as an incentive to continue their illicit activities, even in the face of increased costs.

Increased efforts at suppression would affect participants in illicit sex markets differently according to their skills of evading law enforcement. Those with superior skills may well find advantage in a more suppressed market, owing to the higher price of sex services. Trafficking organizations are arguably part of this group because they have developed particular skills and relationships in the underground economy that facilitate evasion of prosecution. Suppression would, thus, widen their profit margin, increasing the incentive to engage in human trafficking into sex markets.

Legalization would have the opposite effect. Price would decrease and the skills of human trafficking organizations in evading detection would become essentially valueless. There is little use of an ability to operate clandestinely in a free and legal market. Moreover, with legalization, the information that legitimate sex workers could provide about trafficking organizations and the commercial interests they have in the trade could be a force that assists law enforcement agencies in the suppression of human trafficking into sex markets.

Effective strategy for countering sexually-oriented human trafficking is informed by careful analysis of connections between human trafficking and sex markets. This essay identifies three essential links (necessary conditions) that support such trafficking: a vulnerable population, capable human trafficking organizations, and an active sex market. Only the presence of all three together constitutes a sufficient condition, which implies that policies to reduce trafficking could engage any of the links. The best strategy choices should involve a comparison based on effectiveness, cost and unintended consequences.

A strategy focusing on the third link—sex markets—does not fare well in this comparison. There are several tactics for pursuing a strategy based on the first link, and some of these are modest in their resource demands. Based on this initial and cursory analysis, a best practice approach would combine these with a law enforcement strategy directed against human trafficking organizations. Both of these strategic choices have the added benefit of suppressing human trafficking more generally and, being more focused, they would not require the extensive resources that would be involved in a suppression of sex markets large enough to have an equivalent impact on human trafficking.

Migrants' Participation in Smuggling: Towards an Agency Perspective

*Gabriella Sanchez**

The emphasis on explaining migration as a result of economic need is partially responsible for the emergence of a characteristic, yet problematic continuum of representations of migrants: from the *docile bodies* of the developing world, subjected to the capricious, external forces of the financial markets, to the crime, disease-prone men and women disrupting the cosmopolitan life of the more prosperous West.

This essay, based on observations conducted in the state of Arizona, suggests that the criminalization of undocumented immigration has led to forms of physical, institutional and state violence against undocumented immigrants. The sensationalism that many times accompanies the media coverage of these events has further silenced and marginalized migrant communities in general. At the same time, most migrants are aware of the series of challenges illicit migration poses, and in fact, in most cases, migrants, their families and communities are all part of the voluntary and intelligent decision to migrate. Bridging the gap between migrants' criminalization and their decision to migrate requires an improved understanding of the role played by migrants to secure smuggling services, as well as an analysis of the changes taking place within the social networks of migrants and human smugglers. Effective immigration enforcement, as well as advocacy efforts in favor of immigrants must acknowledge the role of changes on border and immigration policy in the adaptation of the smuggling industry. This may also require a reevaluation of the ways law enforcement and advocacy organizations alike think of migration, and migrants, *and* the role of the migrant as agent of his or her own migration which includes the contributions they make to the communities they become part of, as well as to those they leave behind. An analysis of human trafficking and smuggling that makes room for the role of agency allows for greater understanding of migration, especially in the midst of the de-territorialization of global modernity.

In the state of Arizona, and more specifically in Maricopa County, which includes the Phoenix metropolitan area, images of the criminal and disruptive migrant have become part of daily life through the reports of the subhuman conditions of drop houses; smuggler chases in the desert; raids at employment sites; murders

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and kidnappings of migrant women and children, the surveillance conducted by vigilante groups both along the U.S.-Mexico Border and in predominantly migrant neighborhoods. These characterizations have played a role in shaping the public opinion on migrants and U.S.-bound migration. Local law enforcement agencies were for years overwhelmed by the increasing cries for help coming not only from concerned citizens but also from undocumented immigrants who had become victims of the violence and competition among smuggling organizations. The agreements among state and federal criminal justice agencies to implement immigration enforcement activities¹ have alleviated some of the need by increasing the quality, the level and the kinds of responses local agencies are able to provide.

This collaboration, however, has not been free of criticism. Reports of racial profiling, abuse of power, human and civil rights violations have emerged, alongside protests from government officials, NGOs and other pro-immigrant rights organizations. In March of 2009, during Congressional hearings in Washington D.C., the City of Phoenix major Phil Gordon expressed his concern over Phoenix being perceived as “Alabama in the 1950s.”² The speaker of the House of Representatives, Nancy Pelosi, demanded an end to immigration raids that separate children from their parents, and labeled the detentions as “un-American.”³

In early 2005, Maricopa County set precedent by becoming the first jurisdiction in the country to charge *and* convict undocumented immigrants for conspiracy to commit their own smuggling into the country.⁴ Under Arizona Revised Statute 13-2319, immigrants arrested while being smuggled can be charged as co-conspirators of human smuggling, a felony offense involving an incarceration term.⁵ Despite the precarious, dangerous conditions in which many immigrants are found at the time of their arrest, their mere presence in the country is sufficient evidence to consider their actions criminal under the terms of the statute—and therefore, amenable for prosecution. Data released in late March 2009 by the Maricopa County Sheriff’s Office revealed that at least 23,056 undocumented immigrants

1 The program which has received the most scrutiny is 287 (g), which authorizes the secretary of the U.S. Department of Homeland Security (DHS) to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions, pursuant to a Memorandum of Agreement (MOA). Local law enforcement officers must, however, receive appropriate training and function under the supervision of U.S. Immigration and Customs Enforcement (ICE) officers.

2 Scott Wong, *Gordon: Sheriff Arpaio Giving State Bad Reputation*, The Ariz. Republic, (Mar. 27, 2009), at A available at <http://www.azcentral.com/community/peoria/articles/2009/03/27/20090327gordon0327-ON.html>.

3 Miriam Jordan, *Economy Tests Advocate for Immigrants*, Wall St. J. (Mar. 13, 2009), at A3.

4 *Court: Immigrants subject to Smuggling Law*, Associated Press (Jul. 17, 2008) at A.

5 For a discussion on the additional charges and the conditions surrounding arrests, refer to the Arizona Revised Statutes website: <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp>.

had been arrested since the new law went into effect.⁶ The implementation of ARS 13-2319 along with immigration enforcement in Arizona has only intensified the public's highly racialized perceptions of the migrant 'other,' given the fact that the Arizona Congress' decision passed in the context of a generalized anti-immigrant sentiment, which included the nativist rhetoric of several local politicians⁷ against migrants of Mexican origin.

Worldwide, the enforcement of practices like these has led to the creation of a hierarchy of immigrants. Specific victims of human trafficking (i.e. refugees, female victims of sex trafficking) are identified as worthy and in need of receiving the protection of the state, while others, even in the instances where violence at the hands of traffickers has been documented, are not considered in need of support or assistance, not only due to the fact that their entrance into the country takes place under unlawful circumstances, but increasingly on the basis of their origin.

There has been little or no attention paid to the ways individuals themselves think of their role in the migration process.⁸ Interviews conducted with detainees involved in human smuggling cases describe migration in terms that have little to do with the fear of violence. Family reunification efforts; the thrill of adventure; gendered rites of passage; the wish or even the *need* to challenge gender and gendered expectations are the most frequent reasons cited by the interviewees as their reason to migrate, along with economic need. As dangerous and brutal as their journeys across borders can be, detainees do not always define them in terms that may describe them as violent or traumatic (again despite the extreme conditions that may surround their journey). Their main concern, aside from a successful crossing, is the future and their likelihood to succeed. As a female migrant reports:

“We walked for days; we got caught eight times. It took us twenty eight days before we could get through, but we did it! We did our homework: we knew the smuggler. We would have never done anything to put ourselves in harms way: we have children to go back to. My father and my younger brother had crossed with the same man a few months before we did, so we knew we could trust him. We met with him in advance and he was very clear: he told us what to expect, what to do in case of an emergency, what to tell immigration officers

6 Recent statistics on immigrant arrests carried out by the Maricopa County Sheriff's Office, which has a 287(G) agreement in place with Immigrations and Customs Enforcement (ICE). Additional information on the Office can be found at <http://www.mcso.org>.

7 Mary Romero, *The Anti-Immigrant Backlash Post 9/11*, (Canada Watch: Special Edition - Deep Integration: North America Post Bush 2008).

8 Ilse Van Liempt & Jeroen Doomernik, *Migrants Agency in the Smuggling Process*, 44 International Migration Journal 165 (2006) [hereinafter Van Liempt & Doomernik 2006].

if we were caught. And the guide made sure my husband took breaks along the way.”⁹

The interviewee’s husband, a diabetic patient, developed a severe liver infection during that first trip which eventually forced him to return to his country of origin, as he was unable to perform any kind of physical activity. She, however, was not concerned about the hardships of the crossing. While she was saddened by her husband’s illness, her main fear at the time of the arrest was having to experience the anti-immigrant climate that had earned Arizona its reputation: she was afraid of becoming a target of *state* violence once *inside* the country:

“That is why we could not wait to leave Arizona behind; we had heard how mean the sheriffs were. We prayed so that we didn’t get stopped in Arizona. We were hoping to make it to a place where people were kind to us, where we would be allowed to work. But then we got into this accident. We were taken to the hospital and checked for injuries, but then they brought us here—the detention unit—and told us that we had committed a crime and that so we had to stay in jail.”¹⁰

Changes to immigration policy, the increase on border militarization, the development of state legislation have all played a role in the development of a series of practices aimed at stopping human smuggling. Local governments have passed laws and policies aimed at curtailing the financial operations of human smuggling organizations and placing limitations to the daily lives of the immigrants who are already within the country through housing ordinances that penalize the leasing of rental units to individuals who are unable to show proof of U.S. citizenship or residence.¹¹ For example, in the case of Arizona, local government seizes migrant remittances originated in the state of \$200 and above.¹² These practices reveal attempts at the local level to control undocumented immigration using economic measures, which has in turn led to the implementation of policies that result in even stronger forms of migrant victimization beyond those imposed onto migrants by global markets, like lack of access to affordable housing, dependence on

9 Interview with Ana Hernandez, Phoenix, AZ. (Mar. 25, 2008).

10 *Id.*

11 Housing ordinances targeting undocumented immigrants have been passed in Hazleton, PA; Escondido, CA; Avon Park, FL. The ordinance prevents landlords from renting to undocumented immigrants, and establishes fines for those who knowingly rent to those unable to provide verification of legal residence.

12 Press Release, Office of the Attorney General Terry Goddard, Western Union Ordered to Cooperate in Smuggling Investigations (Sept. 18, 2006), http://www.azag.gov/press_releases/sept/2006/WesternUnionOrder.pdf.

bogus money transfer arrangements, and loss of property due to lack of proper documentation.

These measures, aimed at limiting the ability of migrant communities to secure basic needs and therefore, discourage settlement, are also dependent on the construction of migration as economically-based. The acceptance of this notion has shifted the focus from the individual's decision to migrate to his or her potential to generate economic returns. Koser, Van Liempt and Doornik warn us against commodifying migration as this poses the risk of underestimating the motivations, experiences and rights of the migrants themselves.¹³ Koser goes further by reminding us that conceiving smugglers as business people could—and indeed *has*—led to their professionalization, ignoring the lack of respect many have for the rights and the dignity of their clients.¹⁴ I would also add that this reductionism of the definition of migration to merely economic terms does not only show disregard for an individual's decision to improve his or her life: it can give place to even more dramatic forms of violence than those already described and to further migrants' marginalization.

The inclusion of agency in the discourse of migration has the potential of becoming an alternative to the prevalent characterization of the undocumented immigrant as powerless and almost pathologically prone to exploitation. Acknowledging migrants as agents in their own decision processes to migrate, however limited by institutional structures, sets into motion alternative ways of conceiving human trafficking, and restores the human element at the center of the discussion on migration. For the thousands of human beings who do in fact become victims of the groups who prey on migrants, the recognition of their struggles and the conditions surrounding their migration can lead to the emergence of a restorative dialogue that gives each migrant the ability to regain control of his or her life and dignity. This will also require, without a doubt, questioning, criticizing, and fighting the ways in which criminal activities and immigration controls worldwide create the conditions that have led to the rampant exploitation of others.

13 Khalid Koser, *Why Migrant Smuggling Pays*, 46 *International Migration Journal* 3 (2008); Van Liempt & Doornik 2006, *supra* note 8.

14 *Id.*, Koser 2008.

Interview with Dr. Yakin Ertürk, the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences^{* **}

Dr. Mohamed Mattar, Executive Director of The Protection Project at The Johns Hopkins University School of Advanced International Studies (SAIS) [Mohamed Mattar]: I would like to start by asking you to define for our readers the role of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences and then to reflect on your work, especially what you have been doing in the last few years to comply with the U.N. mandate.

Dr. Yakin Ertürk, United Nations Special Rapporteur on Violence against Women, its Causes and Consequences [Yakin Ertürk]: This mandate was created in 1994, one year after the Vienna Conference on Human Rights. For the first time, violence against women was acknowledged as a human rights issue and during the same year, the Declaration on the Elimination of Violence Against Women was adopted by the U.N. General Assembly. And in 1994, the Commission on Human Rights, which is now the Human Rights Council, created this mandate as part of its procedures, called Violence Against Women, its Causes and Consequences. It looks at the issue of violence not only in terms of the harm done or injury caused, but by putting causes and consequences into its title and defining it as such, the declaration clearly links violence against women with subordination of women. Violence is thus defined as emanating from historical inequality between men and women which, I think,

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^{**} This interview was conducted via telephone on November 14, 2008. Dr. Yakin Ertürk was in Ankara, Turkey and Dr. Mohamed Mattar was in Washington DC, USA. Those also present in Washington DC, from The Protection Project were Ms. Elaine Panter, Director of Programs and Planning and Ms. Leanne Cochrane, Director of Legal Affairs.

is the strength of this mandate, because unlike many other types of human rights injuries, like torture, the remedy for violence is not just to respond to the violence, but really to prevent the violence.

As a Special Rapporteur, I have three tasks: The first task has to do with working within the framework of the definition in the declaration; carrying out annual country missions and so far, I have carried out 17.

Mohamed Mattar: Seventeen countries?

Yakin Ertürk: Seventeen, yes. And my predecessor had carried out something like 15, so a good number of countries have been specifically monitored within the framework of this mandate. These visits, of course, take place with the invitation of the government which we seek to monitor. We tell the government that we would like to go but then the government must invite us. Once they do invite us, they are compelled to collaborate with us and provide us with access to all the information.

This gives us a good opportunity to have very good coverage of the different problems of a given country. In addition to the government or state program(s), we generally have a parallel program with civil society that takes us not only to different stakeholders but also gives us access to actual victims. Therefore, a country visit is a fairly good way of zooming in on the problems in a given country, but it also feeds back into the paradigm itself, because by looking at different contexts and seeing how women in different contexts may experience similar diverging or converging problems, it helps us to sharpen our strategies and our theoretical perspectives on violence against women, which has been defined as something universal. But it is the universal and the particular, together, I think, that gives us a better picture of how different conditions can create different vulnerabilities.

My second task is to prepare annual reports for the Human Rights Council on issues that the Rapporteur feels are pertinent to moving forward with a particular mandate. I'm not a lawyer, I'm a social scientist, and what I have done when engaging with the international legal framework, is to try and define some of the legal terminology in layman's terms. For example, one of my reports addresses the concept of due diligence; I try to spell out what due diligence means and what governments or other actors must do to be diligent in responding to violence. In that report, I defined three major problem areas. The first problem was the lack of data and the dearth of data indicators. I presented my report on indicators this year. The second problem area was that of cultural discourse. In all countries, there is a tendency to reduce violence to a cultural

discourse whether it be in the form of cultural relativism, saying that it is our culture so universal norms don't apply, or conversely, as we've seen mainly in Western countries with large numbers of immigrant populations, social status is articulated as the main problem. Both cultural discourses separate violence against women from the gender inequality that we argue underlies it. Last year, my report addressed culture and violence. Finally, next year, I will be looking at the third problem area that I had identified, which is the economic infrastructure or the political economy of women's rights. In my report for next year, I will try to understand the material basis within which women's rights violations take place and also to address the issue of the two covenants—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights—particularly with regard to women who are in situations where there is no economic independence. Obviously, fighting violence becomes far more complicated under these circumstances. This completes the thematic area.

The last thing that I do as Rapporteur is to receive complaints from around the world. I find the complaint procedure to be one of the most useful and powerful aspects of this mandate because through individual complaints, we can communicate with the government and unlike treaty bodies, we do not need ratifications to do so. Also, there is no need to exhaust internal remedies before taking the complaints through the special procedure. So, while the issue is still at hand, the person can complain to the Rapporteur and this gives us a chance to communicate with the relevant governments. Sometimes we get results, but unfortunately this mechanism is not well known particularly in the area of women's rights. The complaint procedure is used less for violence against women than in other more conventional human rights areas such as torture, freedom of expression, and so forth.

Basically, these are the three working methods through which the Rapporteur addresses the human rights violations that fall under his or her mandate. In my case, this is violence against women. I consider my mandate as the first monitoring tool that penetrates into the private sphere of life as well because we look at domestic violence and intimate relationships and so forth.

Mohamed Mattar: Let me make a comment about the last aspect of the mandate because I find it really fascinating that you may receive complaints from victims. I am familiar with complaint submission or communication submission under the Optional Protocol of the Convention on the Elimination of All Forms of Violence against Women (CEDAW), and we made the case that there is a difference here because for the Optional Protocol to work, you

need ratification. In your case, anyone from any country around the world may submit a complaint to you, is that correct?

Yakin Ertürk: That is correct.

Mohamed Mattar: If this is the case, are you allowed to share with us what type of complaints you get? Once you get them, what do you do with them? Do you write to states and if so, do states respond to you?

Yakin Ertürk: Well, the communications procedure becomes public at the end of the year because all our communications, letters to the government and their responses are compiled in a report, but during the year, it is a confidential process. At the end of the year when my reporting cycle comes to the Human Rights Council, I produce a report containing the older complaints. However, to protect the victim I just insert the initials of the person concerned. The response rate to the complaints procedure in general is not very impressive. To my mandate, surprisingly, I think I fare a little bit better than my other colleagues. I think the response rate was around 35%.

There is a mixed response because some governments are more sensitive and they do respond while others do not. But where there is this sensitivity, it gives us an opportunity to change the situation. To give an example from my first year, three Iranian asylum seekers were living in Turkey and fortunately they read in the newspaper that I had been appointed. There are not too many civil organizations in Turkey that cater to refugees and asylum seekers so they were somewhat desperate. Their request for asylum was denied by UNHCR because their conditions were not typical refugee conditions, and the Turkish government had issued a deportation order. These women had been living in Turkey for over two years. Their personal lives had changed, they had gotten divorced from their husbands and they had become politicized and involved in political rallies against the Iranian government. So I wrote a letter; I think it was a joint letter—another Rapporteur joined me. We wrote to the Turkish government requesting an urgent action arguing that if sent back, these women could face violence. I also addressed the UNHCR. Of course, our primary target was the government. There are always other institutions or organizations involved, in particular some international organizations such as the U.N. or the International Criminal Court (ICC), consequently this gives us the opportunity to also address that particular entity. As a result of our intervention, the deportation order was suspended and the files of these women were reopened by the UNHCR. Two of the three women have since settled in a third country.

So this is how the mechanism works if we can use it effectively. Unfortunately, as I said, it is not sufficiently well known; secondly, women's issues are still not treated completely as conventional human rights issues; and thirdly, the Special Procedures do not have a follow-up mechanism. As you know, Rapporteurs are voluntary independent experts and we get support from the Office of the High Commissioner for Human Rights in Geneva, so the way we work does not really give us sufficient resources or time with which to follow up on these complaints. However, I think these complaint procedures have great potential if we can strengthen them through a better follow-up mechanism. This is something I have discussed with the other Rapporteurs. We have raised these issues at the Human Rights Council appealing to the states to strengthen these mechanisms.

Mohamed Mattar: A similar case like the one you mentioned was also filed in accordance with the Optional Protocol to CEDAW, I think it involved Pakistan and the U.K., but I'm not sure that it had a happy ending like in your case.

Yakin Ertürk: I'm not familiar with that case but, of course, one of the interesting cases that went to the CEDAW Committee was the Hungary case about domestic violence. The working group found the state of Hungary at fault for not sufficiently protecting the women complainants which I think was a major achievement...

Mohamed Mattar: Exactly.

Yakin Ertürk: ...and the procedure can be used by advocates around the world to negotiate about different national conditions. But again, whether it is the Optional Protocol to CEDAW or Special Procedures of the Human Rights Council, although these are very constructive and important tools, compliance is very much up to the national dynamics in a given country. You do not have any means of imposing the decisions.

However, I think we have made a great leap forward by bringing these kinds of issues to the international level. It certainly has brought about greater sensitivity around these issues and is part and parcel of an evolving and growing regime of women's rights. Hopefully, in all countries there are steps being taken in the right direction, whether they are small or large.

Mohamed Mattar: When you talk about these forms of violence against women, from your experience, what are we talking about? Mostly domestic violence or perhaps also sexual harassment? What forms of violence against women do you see in your travels and which do you try to cover in your reports?

Yakin Ertürk: It depends on the country that I go to. I visit very, very diverse countries like Sweden, for example—a very developed country where gender equality has achieved a very high level within the public sphere, and where domestic violence in discreet forms, maybe not in the very typical and outward form, but a sort of controlling behavior which reduces women's self-esteem and so forth, has been found to be quite common. This is in contrast to a country like the Democratic Republic of the Congo (DRC), where the most striking problem was sexual violence. I do not know if you would call it sexual violence anymore but, at any rate, in the DRC different forms of sexualized torture have become totally uncontained because of the complex situation. Countries like the DRC, in conflict and post-conflict situations where these problems become very visible, have led to the adoption of the recent Security Council Resolution 1820 on sexual violence in complex situations.

I always feel a little bit worried though when this type of violence is extracted as a consequence of a “complex situation,” or something like that, because most often, there is a continuum of violence. Violence during war time is very much built on the subordination of women in peace time and vice versa. Isolating certain types of violence can normalize other types of violence, so while we do have to respond to the urgent cases, no doubt, I try in my own work to link the different types of violence.

Sexual harassment, I think, has become a very common problem in many countries—for example, Algeria. After the Dark Age, I was told that sexual violence at the workplace was commonly used to push women out of the workplace and, as a result, they adopted a fairly good sexual harassment law. In some other parts of the world, including my own country, there is a well-known so-called ‘honor crime’ which is actually the murder of woman in its most brutal form and such genocide takes place in a different context in countries like Mexico and Guatemala. So the different contexts bring out certain types of violence as being more pronounced than others, but what is common I think, throughout the world, is the use of violence to keep women in their place whether it is within the home or outside on the street or at the workplace by imposing certain patriarchal controls over women.

Mohamed Mattar: So what about certain forms of marriage that some argue may constitute a form of violence against women, for example, early marriages, arranged marriages and so on?

Yakin Ertürk: Early marriage or forced marriages are, as always, on the agenda, as well as female genital mutilation, of course. Interestingly, I think Sierra Leone recently adopted a law. I have not seen the item myself but it was something

I read in a news article so I may not be describing the details very well, but it criminalized forced marriage, and I think this may be the first and only of its kind. I'm not aware of any other specific wording or laws on forced marriage but it is becoming more and more of a concern.

In particular, it is also taking a very transnational form. Girls from immigrant communities in Europe are being brought back to their countries of origin and being forced to marry back home. Therefore it is used as a new method of bringing in new migrants. European countries are very sensitive to this and have been adopting legislation which will discourage forced marriage from happening. But I do not think we sufficiently understand the complexities of the problem because in some contexts, the problem is not being sufficiently addressed as a form of violence against women but rather as immigration or other concerns.

Mohamed Mattar: Would you characterize arranged marriages in some of the Muslim countries as forms of forced marriage?

Yakin Ertürk: I think the dividing line can be very difficult. This is a distinction that is made by people who are working on the issue of forced marriage, but in reality, how do we determine what is "forced"? In practical terms this may be a problem. The phenomenon of arranged marriages of different sorts is quite common in many, many places, even if some argue that new institutional forms of linking—through the Internet and so forth—are becoming new versions of arranged marriage. I mean, the arguments can be stretched in many different directions.

I think there is a difference between the public and private spheres. As a sociologist, this is not an area that I have worked on so it will be very difficult for me offhand to give clear indicators distinguishing the two. But I think this is what the people who are working on the forced marriage issue are trying to come to terms with. As a matter of fact, there was a conference in Istanbul a couple of months ago. I was not able to go, but this was one of the issues - how do we isolate the issue of forced marriage without making overall generalizations where traditional forms of marriage may have coercive elements, but are nevertheless the result of traditional practices?

These are difficult areas and unless we are sensitive to making good distinctions, I think we can essentialize—again falling into the trap of essentializing certain cultures—so I'm glad you raised the issue because it is not always a very easy distinction. In some cases, yes, arranged marriages are forced marriages, but I think there is a grey line along the way.

Mohamed Mattar: What about trafficking in women? Is this part of what you cover or do you leave this issue to the U.N. Special Rapporteur on Trafficking?

Yakin Ertürk: The fact that there is a new mandate, which was created as you know in 2004, means that member states view this as a transnational problem - everybody is affected by it. There was a need for focused attention. Of course, in many of my country visits, I cannot help but look at trafficking because the country is either a receiving country or a sending country, and trafficking is a major form of violence against women. So, yes, I do address trafficking, but I have not looked at trafficking with the goal of producing a thematic report focusing strictly on this issue.

This summer, I led a mission to Moldova and, as you know, Moldova is one of the countries of origin for trafficking. In Moldova, I met many young women who were victims of trafficking. It is certainly the primary problem and I think there is a need for a very strong transnational solutions, for joint or common responsibility.

Some collaboration between police and other authorities is beginning to take place but we are still in need of a very effective transnational approach that is also a strong victim-oriented approach. Women often become re-victimized in many countries because these countries have no policies for the protection of trafficked women.

Trafficking is a serious problem, and two weeks ago, the Special Rapporteur of the European Parliament for Turkey and I did a joint two-day mission, looking at women's shelters in Istanbul and Ankara. We also looked at two shelters that were created specifically for victims of trafficking. These are very new institutions in Turkey. These types of institutions are new institutions in any receiving country.

So although there is some interest now in looking at trafficking aside from just treating it as a criminal act there is a little bit more concern now for the protection and safe return of women victims. I think we still have a long way to go, particularly in addressing the issue of repeat incidents of trafficking.

Mohamed Mattar: My impression—and I want to get your input here—is that governments are paying more attention to the issue of trafficking as opposed perhaps to other forms of violence against women. I'm saying this based upon my own experience – I travel, I see countries responding to the U.N. Protocol on Trafficking and perhaps the Trafficking in Persons Report that is published by the U.S., so countries are doing something - there are more shelters being

built. On the legislative side, there is a legislative movement; over 120 countries have changed their legislation on trafficking since 2000. Are you of the same opinion? Do you feel that there is more work done on the issue of trafficking?

Yakin Ertürk: I absolutely agree with you. It is interesting that when women are trafficked across borders, it becomes more of an issue because it involves many other law and order issues than violence against women. So I think it is a politically charged issue. Trafficking, of course, is often dealt with from the angle of prostitution—the sex factor—which again is an issue that many countries have taken a strong stand on. But internal trafficking rarely receives the same attention if you ask me, and internal trafficking has had, I think, probably a longer history than transnational trafficking. There is that connectivity in the way certain problems concerning women have been responded to.

Mohamed Mattar: Yes. You talk about all these forms and cases with real authority. Do you have data? Do you have statistics?

Yakin Ertürk: Absolutely.

Mohamed Mattar: What about the other reported cases of violence? In a country like Egypt, for example, there are many women who are being subjected to domestic violence but have not come forward and reported any incidents. So how do you address the issue of that in research and statistics and so on?

Yakin Ertürk: Well, this is one of the most urgent problems because, as we say, violence against women is still something that takes place behind closed doors. The majority of it is probably not reported. It only reaches the records if the woman is so severely beaten that she has to go to a hospital, she ends up at the police station, or if she has come to a point where she is willing to end her marriage. For the majority of women, reporting is not an option. This is for several reasons, of course, but one very important reason is that women have no confidence in a system that may re-victimize them.

What I have seen is that when systems start providing venues for women to report and when there is confidence in the system, reporting figures start increasing. But reporting is only the first step, and we are still far from a system in which reporting occurs regularly.

Secondly, there are no agreed upon indicators. What is violence? How do we define it? At institutions such as the police and health centers—which are the first places where violence has been solved—are there standardized ways of recording the cases?

These are all still very pending issues so most of what we know about violence against women is really only based on campus surveys and anecdotes. As a result, countries that have better databases appear as though they have more violence, even if that might not necessarily be the case. It is very interesting to speak with officials when I'm doing country visits. They will give me examples—I'm talking about authorities from developing countries—they will give me examples from developed countries and say, "Oh, in such and such country, one out of every four women faces violence." It is true, but most likely, that country has a better recording and reporting system. So as the system in responding to violence becomes better, figures often look much higher. That is one problem and there is a political dimension to it. Authorities from developed countries feel very uncomfortable with these inflated figures because it appears as though they may have more problems than developing countries, but this is not the case. Now that there is gender sensitivity, we need to move to the next step, which is gender competence.

Gender competence requires working on the basis of evidence and reliable data. My reports here were dedicated to the issue of indicators, which I presented to the Human Rights Council. We are still very far away from agreeing on basic indicators, and there is the problem of resources. Many countries feel that developing a good database requires resources – human resources as well as financial resources, among other complicating factors. But the process is still on-going. The General Assembly mandated the Statistical Commission to continue the indicators on violence against women. Therefore, I think in the coming years, we may come closer to a consensus on international comparable indicators, but we also need to be able to have indicators that allow for local sensitivities. Once we have come to a consensus on indicators, I think statistics will follow.

So far, very few countries have conducted comprehensive surveys, and very, very few have taken consistent measurements of violence as part of two or three year surveys. So our comparisons do not really make sense and I try to stay away from making any statements as to whether there is more violence here or there. However, I think we can talk a little bit more assertively with respect to the governments' response to violence. That is easier to measure.

Mohamed Mattar: Let's move from the scope of the problem to the appropriate government responses. My first question is regarding the legal framework. Let me tell you what I have in mind and then I will ask you whether the idea that I have makes sense or not.

Here at The Protection Project, we have been collecting the various forms of laws on domestic violence, sexual harassment, and so on, from several countries. Is there a possibility to draft a model law that covers all these aspects of violence against women? You have mentioned prevention. You mentioned protection, prosecution. There are certain measures that we apply regardless of the form of violence we are talking about.

My idea is to connect all these laws and then think about developing a model law. We can go to countries that do not have a legal framework or a law on violence against women and help them draft a law. We have been doing that, as you know, with trafficking for almost eight years now. Is that a good idea, or do you think every form of violence requires a different legal response?

Yakin Ertürk: Well, I'm not a legal expert. I think you probably have a better sense of the legal aspects of this issue, but given my experience, domestic violence has a very specific character that probably needs to be addressed within itself because for example, punitive measures may not always be the right option when it comes to domestic violence; whereas, it is when it comes to trafficking. It is when it comes to murder and so forth.

My predecessor, Ms. Radhika Coomaraswamy, I think in 2003, developed model legislation on domestic violence, which I know many civil societies have since used when they are lobbying for domestic violence. At the moment, I think only 60 countries or so have specific legislation on domestic violence. So it is still an area that we need to pursue in many countries. But can we have a comprehensive law that addresses violence against women? It is really beyond my expertise to answer. It seems as though it may not be feasible, but what I think needs to be done is to link domestic violence laws to criminal laws. However, the criminal code would also have to be revised to reflect this link.

Mohamed Mattar: Yes.

Yakin Ertürk: In many countries where there is no domestic violence law, when I address the authorities, they say to me, "Oh, there is no need for a domestic violence law. Battery and injury, these are crimes, and they are sufficiently addressed in our criminal code." But that does not happen in practice because of the very private nature of the experience of violence for a woman. Most of these experiences have not yet been sufficiently addressed.

In the domestic violence context, we need to think beyond simply arresting the perpetrators. The restraining order, of course, has been a powerful tool

that is increasingly used by many countries. Perhaps we need to think about more innovative forms of punishment that will prevent impunity, but at the same time challenge the state of mind, in a way, by encouraging such things like community services and so forth. I think we need to look at those issues beyond just purely law and order and see how different models can result from the passage of a comprehensive law.

Mohamed Mattar: I'm going to start with the 22 Arab countries. As you know, the Arab League drafts model laws. They have a model law on the family, marriage, divorce, child custody. They have a model law on trafficking. I went to the Arab League and said, "Well, let's develop a model law on violence against women."

Yakin Ertürk: I would love that. So what was the reaction?

Mohamed Mattar: Yes. Under the umbrella of the Arab Charter on Human Rights – as you know the Arab Charter on Human Rights just entered into force March 2008 – I sent a letter to the Secretary General and he said, "Okay, come over and let's have an official meeting on the Arab Charter on Human Rights and we can discuss violence against women and other issues." For the time being, I am collecting the laws, as I mentioned. So, if the idea is to try and develop a model law, perhaps it is more realistic if we are talking about the 22 Arab countries.

Yakin Ertürk: Well, this is an excellent idea because to my knowledge, I do not think there is any Arab country that has a domestic violence law at the moment.

Mohamed Mattar: Yes.

Yakin Ertürk: Next week, I'll be going to Doha for a conference. It is called "The Impact of Violence Against Women in the Family." The emphasis is on the family, but nonetheless, we are addressing violence against women.

Mohamed Mattar: Jordan I believe passed a law on domestic violence. I'm not sure, by the way, whether it is a law or it is still a draft. I believe it is a law. But you are right. In the 22 Arab countries, I think we can do something. They have common problems and they can be addressed at least on the legislative level.

Could you share with us some of the best practices? You travel a lot. You travel to many countries. What did you see that you like in terms of responses to the problem that you could share with us so we can share with other countries? Something that you perhaps refer to in some of these excellent reports that you wrote.

Yakin Ertürk: Well, I was in Catalonia just last week. They have recently adopted a law on violence against women. I think it took effect in May of this year. I did not see the content of the law, but I met with the government people and the parliamentarians and so forth. The Spanish law in 2004 was always regarded as good practice, a good example of strong law. The Catalan law apparently goes beyond that. Where it goes beyond is in the area of prevention and access to services.

Women, according to the provisions of this law, are entitled to receive counseling and support services from the moment they file their complaints until they go through the court and so forth, and ultimately until they can get back to their normal lives. Thus, this is very unique. And again, it is new law. How they will implement this is something we will have to wait to see. Other good examples? Nothing very strong.

Mohamed Mattar: What about in the area of prevention, public awareness? Are there some countries that are doing better jobs than others recognizing that they have a problem and doing something about it and educating the women and so on?

Yakin Ertürk: Well, of course, there are some. But I think that is one area where states have done the least. I think most of what states have done until now is to respond by passing laws. Of course, these laws are important but, as we know, they are not enough.

Beyond that, there is the shelter movement. I think the approach that we have now is that shelter is a last resort – women should not have to leave their homes. But in the area of awareness raising it still only reaches the lip service level. I think that is where the states need to be more diligent. As a social scientist, this is where I have always emphasized that states have to support civil action in this regard and also engage in public discourse that empowers the rights argument. Therefore, what leaders say at the highest level and the messages they send are also very important. For example, Turkey's Prime Minister has been promoting the idea of three children for every couple. If that is the only discourse a leader has to offer to his people, that worries the people. It totally shifts the attention away from changing society. The media, as well, has a very important role to play, but as we know, the media in all countries respond by sensationalizing aspects of violence against women. They tend to be very graphic.

So I think we still have a long way to go. I must say I cannot give any one particular example of a country in which there has been a major achievement in terms of preventing violence against women. Sweden is interesting because Sweden is a country of consensus. When an issue is accepted as a public policy issue, Sweden's efforts seem to create a consensus. That seems to be their method of moving forward. And women's issues have been very much on the agenda because of their strong women's movement. But even in Sweden, there have been ups and downs. There has been a backlash a couple of years ago that had a negative impact. Though it is still an area of struggle, the good news is that these issues are on the agenda of all societies. I do not know if I mentioned previously, but I did a mission to Saudi Arabia in February – a country where I lived about 20-25 years ago when I was teaching at the New York University and, at that time, I would have never dreamed that a Rapporteur on Violence Against Women could do official visits to Saudi Arabia. Violence against women is a subject that needs to be engaged with, but, of course, with sensitivity. Political and other sensitivities in every country place limits on engagement. Women's issues are always at the center of the sensitivities, unfortunately. There are sensitivities in terms of positions, the various power groups in a society. So, it is an area where restrictions always seem to intervene even when people have the best of intentions.

As other priorities impose themselves, I think there is a constant need to remind everybody that this is an important issue, that this is not a secondary issue to any other issue. We are still far away from establishing best practices. I think we have a long way to go.

Mohamed Mattar: When I say civil society, I mean not only NGOs. I would also like you to address the role of academic institutions like ourselves. You are a professor. We are here at The Johns Hopkins University School of Advanced International Studies. So if you can address, in two or three minutes, NGOs and academic institutions, schools and colleges, and your advice to an institution of learning like ourselves. What should we do to help fight violence against women?

Yakin Ertürk: Well, I always argue that paradigm, policy, and practice must be linked and that means that academia, activists, and policymakers have to listen to one another. I think academia can contribute in terms of its insight, its analysis, and its ability to provide reliable data with which to work. And if we look at the emergence of the gender agenda within the U.N., this is how it works. We can look at the 1970s. The academic contributions pretty much gave direction to the whole emergence of the Women in Development agenda. And

then in the 1980s, the Violence Against Women agenda gained importance. We made the most progress, I think, when these three elements had a strong interaction, whereas when they are in isolation, there is no opportunity for them to influence one another. So I see a very strong benefit to keeping academia, activists, civil society and decision makers in close contact with one another.

Mohamed Mattar: Thank you so much, Professor Yakin.

Book Review

Claudia Aradau, *RETHINKING TRAFFICKING IN WOMEN: POLITICS OUT OF SECURITY*, Palgrave MacMillan, 2008, hardcover \$74.95; £55.00

*Jean Allain**

Rethinking Trafficking in Women: Politics out of Security is a theoretical track which will have little practical application to the issue of trafficking and little interest beyond the narrow band of the academic sub-field theorising security studies. The book's end point is to rethink a specific band of women – illegal migrant sex workers – not as trafficked women, but as workers; by virtue of the politics of universality and equality, which, as radically conceived by the author would remove the illegal nature of prostitution (where prostitution is illegal), as well as border restrictions on economic migration. An *à la carte* approach to theorising gets us to this end point; yet the universal claims made in *Rethinking Trafficking in Women* take as their starting point a very specific situation (Eastern European prostitutes seeking work in the European Union), in a very specific timeframe (during the accession period of these States), which is not likely to be replicated. As a result, any claims to an overarching attempt to rethink trafficking in women must be deemed to fall short.

The first thing to note about *Rethinking Trafficking in Women* is that the book never considers trafficking *per se*, but instead women who have been trafficked. There is little reference to the regime established to address human trafficking manifest in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (the Palermo Protocol) of 2000 and the Council of Europe Convention on Action Against Trafficking in Human Beings of 2005 dealing with human trafficking. For Claudia Aradau, the issue is not women as objects of exploitation, but an emancipation of women as subjects of their lives and labour. That freedom is to be had by being able to sell one's labour legally in a society where no exploitation would take place and no borders exist. Yet, by failing to anchor her consideration of the trafficking elements of this book, beyond the narrow band she considers, she fails to take into consideration both the normative framework established within the United Nations and in Europe and the various examples of exploitation which take place within legal industries such as agriculture, construction, or domestic work; and that trafficking takes place within a State's borders.

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Dr. Aradau, a Lecturer in the Department of Politics and International Studies, based at the Open University in the United Kingdom, is not interested in ‘trafficking in persons’, that is, as set out in the same terms in both the Palermo Protocol and Council of Europe Convention wherein a person “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 ...” is recruited, transported, transferred or harboured with the aim of their exploitation. Instead, the subject of *Rethinking Trafficking in Women* is trafficked women involved in sex work. This negates the other types of exploitation mentioned in the U.N. Trafficking Protocol, that of: “forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs,” as distinct from “the exploitation of the prostitution of others or other forms of sexual exploitation.” For Aradau what is of interest is the governmental/structural elements which are causes of exploitation – illegal sex work (though there is no mention of the legal trade in the Netherlands and Germany) and border restrictions (though there is no mention of the fact that the Council of Europe Convention makes borders irrelevant as it applies to trafficking of a transnational or national character (see Article 2)). This is to the expense of considering the exploitation which is felt by women at the (violent) hand of the trafficker. Now, it is rather easy to criticise the text for what is not there; let us then turn to consider the text.

Coming at this book from the perspective of issues revolving around trafficking and exploitation as opposed to International Relations theory and security studies, it seems rather peculiar to the current approach to security studies as set out by Aradau that ‘security’ is the fundamental underpinning of society and hegemonic in character, so that those theorising in security studies become the gatekeepers of universal truths to which other, mere mortals, are blind. Thus Chapter 1 seeks to consider the issue of trafficking in women “in the absence of security.” For Aradau, in “the midst of a context defined by the ‘war of terror,’ where security of the EU and its member states has acquired a new urgency [here providing a citation], human trafficking is never far from the overarching concern with terrorism” (pp. 12-13). This would be fine, but for the fact that the United Nations Protocol was established well before the attacks of 11 September 2001; and the refinements made to that instrument by the 2005 Council of Europe Convention – during the ‘War on Terror’ era – related not to security matters but to solidifying the human rights prescriptions for the protection of the victims of trafficking.

Dr. Aradau considers the “literature boom across disciplines” of trafficking as an issue of “immigration, organized crime, prostitution, and human rights abuses” to be “underpinned by the assumption that human trafficking is a phenomenon whose truth is to be discovered.” Yet there is “no recognition that these are also socially constructed categories” and that what is being left out is “deeply

political” (pp. 13-14). Here we see the introduction of jargon, Hackin’s ‘vectoring’ (that trafficking is considered in the direction of migration, organized crime and prostitution); Foucault’s ‘problematization’ (wherein representation of the ensemble of what is said and what is not said leads to what is to be considered true and false, as an object of knowledge). With this, Aradau notes that by “means of problematizing trafficking in these terms [...] the trafficking literature vectors its object in the direction already traced by knowledge accumulated in the fields of migration, organized crime or prostitution.” And yet, as Aradau notes, these “representations are not natural constituents of trafficking but are already framed in a discourse of security” (pp. 13 & 15). Why these issues of migration, organized crime or prostitution are not ‘natural constituents’ of trafficking, but are of security is not explained, or better yet, not ‘problematized.’

Chapter 2 then moves to problematizing security, to consider the presence of the absence; and yet the “effects of security can only be understood by problematizing the problematization of security” (p. 40). So what then is security and how does human trafficking fit into it? Well, “[e]ven if human trafficking does not satisfy the conditions of possibility of threat, namely it is not of a military nature and it does not threaten the survival of the state, it can be integrated in a loose definition of national security” (p. 43). This is achieved by Aradau by opening security to a wider understanding by looking to security as a construct and to the Copenhagen School of security studies (and the Paris School) with its ‘sectoral differentiation’ of security and its consideration of the growth of securitization “by virtue of discursive constructions.” Where Aradau is concerned, having surveyed a number of the different approaches to security studies, she speaks of the distinction between its subject and ‘abject,’ between who is meant to be provided security and who is to be guarded against. Security is an order which establishes “the limit of the otherness” (p. 62), with the abject being excluded as being dangerous.

Having created apparent giants from windmills Aradau tilts, in Chapter 3, by moving to unmask security to considering three approaches – desecuritization, emancipation, and ethics – as a means of “conceptualizing the failure of the humanitarian approach to trafficking.” The author sees in these approaches an inability to deal with the ‘abject’ and turns, in the next Chapter, to consider the shape of the knowledge which is created with regard to victims of trafficking. The charge is that NGO representation of trafficked women is “consonant with the practices of security” (p. 90). That by providing trauma assistance in the guise of clinical and psychological interventions, NGOs identify women as pre-disposed to being trafficked by childhood violence and manifesting “potential delinquent behaviour in the future” (p. 116), and thus creating in them a security threat which needs to be addressed. But Aradau rejects his understanding, as a means of trafficked women

having a voice through the “resistance to the direct and immediate practices which attempt to define her and direct her actions.”

In Chapter 5, Aradau reveals her claims about the silenced voice of the abject, which are based on the “migratory projects of women.” To “think politics out of security,” she looks to Foucault, to Badiou’s conception of politics as “as disruption of the dominant situation,” to Žižek’s ‘politics of excess’, which is the “enacting of the impossible,” that is: the impossible within the current structure. The rethinking of trafficking in women thus reaches out rather far on theoretical tethers to get to where the author wishes to be. To reconstitute politics out of security Aradau seeks to make a distinction between trafficked women who see themselves as victims and illegal migrant sex workers who “do not deny the multiplicity of representations of trafficked women, but constitute the very limit of that representation” (p. 129). For Aradau, illegal migrant sex workers are the excessive element, in the politics of excess, those for whom it is impossible to represent within the structure of security. Victims of trafficking thus “emerge as a category only by negation of the category of illegal migrant sex workers” (p. 131).

To seek to redress this, Aradau looks once more to Badiou and his principles which give content to excessive elements: universality and equality. It is here that the radical nature of Aradau’s thesis unfolds. Equality requires a disruption of the political, that “all prostitutes are workers not only re-names all actors in the situation, but in doing so, it makes difference indifferent. The differences that count for the governing of human trafficking, those between foreigner and native, legality and illegality are suspended.” In so doing, Aradau argues, “as workers, foreign prostitutes make visible both the exploitation entailed by the recognition of only certain forms of work as legitimate and the inegalitarian state practice towards foreigners” (pp. 137 & 138).

Where Aradau sees the politics of excess materialising is in a particular case resulting from the Association Agreements between the European Union and Accession States in the early 1990s, wherein nationals of Accession States had the right to “take up and pursue economic activities as self-employed persons” with a right of residency. Here, as a result of the *Jane* case, determined by the European Court of Justice, Polish and Czech prostitutes were deemed to be working “as a service provide for remuneration”; and thus entitled to residency in The Netherlands to work as ‘window prostitutes’ in Amsterdam. In this way, as Aradau states, the case is seen as emancipatory as it redefines prostitution as work; though it has “not changed the valence of illegal migrant sex workers within the situation, as they have themselves been dis-identified from illegal migrants through the mediation of the European Agreements” (p. 164). It is to this issue Aradau turns to in Chapter 7: The Politics of Freedom.

Here Aradau is only half right in pointing out that where illegal migrant sex workers are concerned, their freedom in a foreign country “is a matter of the needs of the police or the judiciary”; their right to remain in a country being governed – beyond medical reasons (i.e. “to assist victims in their physical, psychological and social recover” – See Articles 13 and 14 of the 2005 Council of Europe Convention) – by the assistance needed and provided to the investigating and prosecuting authorities. “Through a re-reading of Hobbes,” Aradau shows “that what makes claims to liberty unthinkable in relations to the situation of trafficking is not security, but the absence of equality” (p. 187). The equality being denied is the right to work anywhere on the globe unfettered by the State and its borders; or as Aradau writes: “Illegal migrant (sex) workers can activate an insurrection politics [they being the “dangerous migrant other”], that challenges the inegalitarian premises of the constitution of states and the exclusionary effects of their governmental practices” (p. 179).

If anything, theorising about a subject should lead to claims to universality – of being applicable in general terms; yet Claudia Aradau’s *Rethinking Trafficking in Women: Politics out of Security* fails in two ways. First, it fails to place exploitation at the center of the act of trafficking, so that Aradau looks, primarily to illegal migrant sex workers, without engaging with the fact that to be trafficked means more: it means violence, coercion and exploitation; and it is not necessarily sex work. Second, drawing on the isolated experience of Eastern European States during their accession years to the European Union, Aradau writes that “work can open a new form of collective action and redefine the boundaries of the political community. Those who work become part of the situation and could even claim residence and a ‘path’ to citizenship rights” (p. 191). This rethinking of trafficked women holds only for citizens of the European Union. Beyond conceptualising international borders away, prostitution as work is of limited benefit to an overall re-think of trafficking. In sum, *Rethinking Trafficking in Women* is about challenging “situations of inequality and unfreedom by calling into question the particular mode of counting and representation in a situation.” Through a torturous path of theorist, from which Aradau takes as she sees fit, the author gets to where she wants to be: that by the removal of international borders and the legalisation of prostitution, trafficking might dissipate.

In closing: what is to be understood by the subtitle of *Rethinking Trafficking in Women: Politics out of Security*; to this I leave the final word to Claudia Aradau, as an example of the book’s approach: “Politics out of security un-vectors the security problematization of human trafficking and draws attention to the deployment of a particular *dispositive* that attempts to close off collective struggles against the closure of political communities” (p. 194).

Trafficking in Persons: An Annotated Legal Bibliography Delineating Five Years of Development, 2005-2009

*Mohamed Mattar**

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Introduction

This bibliography covers articles on trafficking in persons published primarily in United States legal journals during the years 2005-2009. It is intended as a supplement to the work of Mohamed Y. Mattar, "Trafficking in Persons: An Annotated Bibliography" published in the *Law Library Journal*, 96 (2004): 669, and which was the first comprehensive attempt to compile articles about trafficking in persons into one source. Annotated bibliographies, such as this, serve to guide further scholarship in the field of trafficking in persons. In order to assist researchers, the journal articles have been categorized under a number of different headings, adhering to the same format as that chosen by Mattar in the first legal bibliography on trafficking in persons, but with the addition of new headings felt necessary given the increasing development of literature in the field since 2004. Given the expansive definition of trafficking in persons we have adopted, new fields of categorization include the relationship between: trafficking in persons and civil society; trafficking in persons and human security; trafficking in persons and state corruption; and trafficking in persons and law enforcement. Two new categories have been added dealing with the victim of trafficking, one general, and one specific to the trafficking victim under United States law. As legislation develops, something that is particularly true in the United States, (which has witnessed in the William Wilberforce Trafficking Victims Protection Act of 2008, the passage of the third authorization to the Trafficking Victims Protection Act of 2000), is that the focus has switched in the legislation from criminalizing the act of trafficking and punishing the perpetrator to the desired endpoint of ensuring that the victim of trafficking is removed from the situation which made her initially vulnerable to trafficking and preventing her re-victimization. Thus, contemporary and developed approaches to the issue of trafficking in persons address social and economic issues, which is another category added to this second edition of the bibliography. Finally, there is an added category of 'trafficking in persons and psychological coercion,' since an important and powerful component of any trafficking in persons criminal offense is the inclusion of psychological intimidation as a non-physical form of coercion. One heading found in the previous bibliography and omitted from this bibliography is that of the 'Distinction between Trafficking in Persons and Smuggling of Aliens'; this omission is a consequence of the concrete establishment of such a distinction in the past five years.

In addition to the journal articles, this bibliography seeks to provide a brief outline of recent books published in the field of human trafficking. Missing from the journal articles collection is any comprehensive discussion of the issue of

trafficking and data collection, an issue that is tackled more completely in many of the books. The books vary in perspective from memoirs of trafficking victims, to symposium compilations and inter-governmental publications. By adding books to the journal articles, The Protection Project endeavors to expand the resources available to those scholars using this bibliography as a key resource to assist academic research on trafficking in persons.

Journal Articles

Definition of Trafficking in Persons

Hathaway, James C., “The Human Rights Quagmire of Human Trafficking.” *Virginia Journal of International Law*, 49 (Fall 2008): 1.

Hathaway argues that the modern anti-trafficking campaign, as expressed internationally through the U.N. Protocol, privileges a small subset of persons subject to contemporary forms of slavery with consequent marginalization of the majority of the world’s slaves. The U.N. Protocol is therefore undeserving of the near unanimous support it has received. He comments that no more than three% of modern slaves meet the definition of a ‘trafficked’ person as defined by the Protocol, thus making the Protocol, which is the primary international legal instrument to combat modern day slavery, ‘partially vision-ed.’ A core problem with the current approach is deemed to be the focus on the prevention of cross-border movement and the subsequent intensification of efforts to prevent the arrival of unauthorized non-citizens. It is suggested that the criminalization of smuggling may increase the risk of human trafficking. It is argued that because the majority situation gets neglected, the current approach to combating slavery has the effect of exacerbating human rights abuses further.

Trafficking in Persons as a Form of Slavery

Bales, Kevin and Cornell, Becky, “The Next Step in the Fight Against Human Trafficking: Outlawing the Trade in Slave-Made Goods.” *Intercultural Human Rights Law Review*, 1 (2006): 211.

This article argues that as laws are made to address enslavement, such laws should also include clear requirements and penalties covering the transport and sale of slave-made goods, as well as the exploitation of trafficked persons. Bales and Cornell address the working definition of slavery as the complete control of a person through violence or the threat of violence for economic exploitation, a situation in which the enslaved person is paid nothing beyond basic subsistence, and cannot walk away. Due to the variety of forms of human exploitation, there are grey areas within this definition. With this in mind, the purpose of this article is to discuss the social and economic relationships that undeniably constitute enslavement. The authors discuss how a ruling by the Supreme Court in a 1864 Slave Trade Case that made it illegal for an American to profit from slavery, regardless as to where the slavery took place, still can be applied today. This ruling can still be applied today if the trade in slave-made goods is supportive of a system

of slavery, and if United States entities are knowingly profiting from this trade. This article includes a model state law on human trafficking that the Department of Justice made available and the authors' recommendations for state legislation.

Bravo, Karen E., "Exploring the Analogy Between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade." *Boston University International Law Journal*, 25 (Fall 2007): 207.

Bravo analyzes the Trans-Atlantic slavery 'of old' with the 'modern-day slavery' of human trafficking and concludes the contemporary situation to be yet more egregious than its predecessor. Bravo criticizes previous use of the analogy charging most with a comparison between the surface superficialities only. However, the article progresses to suggest that the analogy is effective and can, if understood correctly, be utilized to address the modern problem of trafficking in a more effective way than any of the legal or conceptual frameworks currently at play.

Walter, Marilyn R., "Trafficking in Humans: Now and in Herman Melville's Benito Cereno." *William and Mary Journal of Women and the Law*, 12 (Fall 2005): 135.

Walter addresses slavery in 19th century America as a backdrop to modern-day human trafficking. The author retells a story written by Herman Melville in 1855 about the slave trade and provides a discussion of slave mutinies and fugitive slave laws. Walter then turns to a description of modern-day human trafficking, discussing the similarities and differences between the two types of slavery and the context within which each of them is/was executed. The author argues for a stronger enforcement of both the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children and the U.S. Trafficking Victims Protection Act, more intensive prosecution, especially directed towards large trafficking rings, and increased efforts toward prevention.

Trafficking in Persons and Globalization

Chastain, Claudine, "The Nexus Between Free Trade Agreements and the Trafficking of Human Beings." *Washington University Global Studies Law Review*, 5 (2006): 587.

In examining free trade agreements, Chastain concludes that any agreement between developed and developing nations must consider the needs of those people most likely to be negatively affected. This is accomplished by examining the "push" and "pull" factors of international migration as linked to globalization and free trade agreements, as well as by analyzing the means and ends of illegal migration in relation to free trade agreements, specifically in terms of human trafficking.

Chastain then recommends that the United States and other developed countries refrain from entering into free trade agreements with developing countries until the latter have the proper infrastructure to prevent exploitation and further suffering of indigent and vulnerable people.

Estella Nagle, Luz., “Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude.” *Wisconsin International Law Journal*, 26 (Spring 2008): 131.

The article discusses the nexus between globalization and human trafficking, in essence, the commoditization of the human being. The distinction is drawn between smuggling and trafficking in order to allocate responsibility and the advent of globalization is recognized as having aided the advance of human trafficking. It is argued that the influence of domestic and multinational corporations on immigration and labor practices needs to be factored in to any future policy aimed at eradicating human trafficking. The labor practices of many such entities take advantage of trafficked victims. It is therefore necessary for governments, international organizations and multinational corporations to work in unity to circumvent human trafficking in a globalized fashion in the same way that globalization aided human traffickers in the first place.

Jones, Loring, “Globalization and Human Trafficking,” 34 *Journal of Sociology and Social Welfare*, (June 2007):107.

This paper presents a description and analysis of trafficking in persons in a global context. Decision makers seeking to make global migration more humane need to know about the dynamics and processes of trafficking, as well as ways to combat it. Definitional controversies, contextual issues (including the dynamics and processes of trafficking), and consequences of this movement for individuals and societies are discussed.

Trafficking in Persons and Organized Crime

Turner, Jackie, “Intersections between Diasporas and Crime Groups in the Constitution of the Human Trafficking Chain.” *British Journal of Criminology*, 49 (March 2009): 184.

Turner argues that globalization has fuelled the accelerated migratory flows of recent decades and changes in patterns of contemporary migration, which have revitalized interest in diasporas, as well as the growth of transnational organized crime groups, among them those that engage in human trafficking. Globalization has had a transforming influence on population and migration flows, which has created new opportunities for diasporas to thrive. This article displays the links

between globalization and changes in migratory flows as well as the link between organized crime and human trafficking. By linking these four concepts, Turner argues that the global trade of humans is under the local management of organized crime groups.

Trafficking in Persons and the Prostitution Debate: Criminalization, Legalization, and Decriminalization

Farley, Melissa, “Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly.” *Yale Journal of Law and Feminism*, 18 (2006): 109.

This article focuses on the economic motive to conceal violence in prostitution and trafficking. Farley states that prostitution is a form of sexual violence that results in massive economic profits for some of its perpetrators. She argues that the sex industry is a global enterprise because it has domestic and international sectors, marketing sectors, a wide range of physical locations out of which it operates in each community, is controlled by many different owners and managers, and is constantly expanding as technology, law, and public opinion allow. This article discusses and analyzes some of the data on the harms that prostitution, pornography and trafficking cause. However, this information has to be culturally, psychologically, and legally denied because to know it would hinder with the business of sexual exploitation. Farley creates a list of seven things that we, the public, cannot know about prostitution in order to be able to view it as a job. Included in this list are the following: that prostitution is extremely violent; that racism and class prejudice, like sexism, are intrinsic to prostitution; that prostitution, pornography and trafficking meet or exceed legal definitions of torture; and that when prostitution is legalized or decriminalized, it gets worse. This article concludes with the suggestion of comparing the institution of prostitution to that of slavery to help abolish prostitution. This comparison is used because prostitution requires a sexualized identity just as slavery requires a racialized identity, and both institutions are fueled by racism and sexism.

Trafficking in Persons for the Purpose of Prostitution

Aromaa, Kauko and Lehti, Martti, “Trafficking for Sexual Exploitation.” *Crime and Justice*, 34 (2006): 133.

This article discusses current international approaches to the regulation of trafficking for prostitution and other forms of sexual exploitation. Trafficking

of humans for prostitution and sexual exploitation in general dominates current trafficking discussions and policy planning, especially in Western countries. The link between prostitution, trafficking, and organized crime also exists in the prostitution debate today and is used as a rationale for both more liberal prostitution policies and tighter control measures. This article addresses: the analysis and synthesis of existing data; development of the concept of trafficking in women in international legislation, discussion, and research; the crime's volume and geography; prevention and control of trafficking; and proposes steps that need to be taken if we are to know more about human trafficking for sexual exploitation and how it can better be prevented and controlled. Aromaa and Lehti conclude that the globalization of the international economy and the consequent transformation of local economies and societies, as well as the deepening inequalities in wealth and living standards, have led to a simultaneous increase in international migration and in trafficking in persons related to both illegal labor markets and commercial sex markets. The authors end with the suggestion that the best ways to prevent prostitution-related trafficking and prostitution as a whole are to support and facilitate social and economic development in the countries on the losing side of the current globalization course and work to achieve an equal and balanced global economic and social development.

Todres, Jonathan, "The Importance of Realizing "Other Rights" To Prevent Sex Trafficking." *Cardozo Journal of Law & Gender*, 12 (Summer 2006): 885.

Todres argues for the necessity of addressing a comprehensive set of rights in order to address, in the long-term, the single abuse of sex trafficking. The article highlights five such "other rights": the right to be free from gender-based discrimination; the right to be free from other forms of discrimination; the right to birth registration; health rights; and, the right to education. Ensuring that such rights are upheld will help states fulfill their international legal obligations and raise the standard of living for the vulnerable, who are so often the targets of sex trafficking. Supplementary to these rights is the principle of sustainable development and the enforcement of the three components of anti-trafficking legislation: criminalization, prevention and assistance, with an increased emphasis placed upon prevention programs and the rehabilitation and reintegration of victims into their communities.

Torgoley, Shaheen, P., "Trafficking and Forced Prostitution: A Manifestation of Modern Slavery." *Tulane Journal of International and Comparative Law*, 14 (Spring 2006): 553.

Considered by many to be a modern manifestation of slavery, the trafficking of women and children for purposes of prostitution is a major problem in the United States and throughout the world. Torgoley looks at domestic and international prostitution through the lenses of its history and modern occurrence as well as the Thirteenth Amendment and modern day mechanisms used to combat forced

prostitution in the United States and abroad. The author concludes that because of the international nature of the crime, enforcement in the United States has had minimal effectiveness in stopping the institution at large. Instead of addressing simply the end results, it is critical to focus on the various social circumstances such as poverty and sexism, that are at the root of the problem.

Trafficking in Women for Military Prostitution

Parsons, Brian, “Significant Steps or Empty Rhetoric? Current Efforts by the United States to Combat Sexual Trafficking Near Military Bases.” *Northwestern Journal of International Human Rights*, 4 (Spring 2006): 567.

Parsons discusses the age-old problem of brothels sprouting up near U.S. military bases abroad. Whilst it is a policy of the U.S. government to combat sex trafficking, the demand supplied by the U.S. military actually serves to fund the criminal activities of sex traffickers. In 2004, President Bush issued a national security directive establishing zero-tolerance for United States citizens’ involvement in trafficking abroad, including the military. This directive symbolized a renewed aggression in the approach of tackling sex trafficking and the United States’ role in supplying the demand for it. Parsons examines the U.S. efforts to tackle the problem of sex trafficking near military bases. The article considers the recent change in the Manual for Courts-Martial (MCM) changing the solicitation of a prostitute from an ambiguity to an obvious offense and the Military Extraterritorial Jurisdiction Act (MEJA) of 2000 which extends U.S. jurisdiction over civilian contractors of the U.S. Department of Defense. Parsons concludes by stating the weaknesses of the recent changes and that the attitude of the military regarding prostitution through trafficking education must be further changed to eradicate the decades of implicit encouragement of prostitution.

Soto, Jorene, “‘We’re Here to Protect Democracy. We’re Not Here to Practice it:’ The U.S. Military’s Involvement in Trafficking in Persons and Suggestions for the Future.” *Cardozo Journal of Law & Gender*, 13 (Summer 2007): 561.

This article discusses how the U.S. military has fueled the demand for trafficked persons in overseas military operations. The article discusses the Trafficking Victims Protection Act (TVPA) and the Uniform Code of Military Justice (UCMJ) and its proposed amendment, concluding that it is insufficient to address the problem. Soto argues for more stringent penalties and more effective training for the military in order to adequately address this grave concern.

Trafficking for the Purpose of Marriage

Jackson, Susan H., “Marriages of Convenience: International Brokers, Mail-Order-Brides, and Domestic Servitude” *University of Toledo Law Review*, 38 (2007): 895.

The International Marriage Broker Regulation Act (IMBRA) of 2005 expands federal regulation of the burgeoning “mail-order bride” industry by requiring international matchmaking agencies to conduct minimal criminal background checks on their U.S.-based clients and disclose the results to participating women, obtaining their signed consent before releasing any contact information to male clients. Defenders of the law’s constitutionality accurately but incompletely describe IMBRA’s purpose as preventing domestic violence and human trafficking against immigrant women. IMBRA is also intended to target a form of involuntary servitude hidden by marriage: forced and coerced extortion of domestic and sexual services, practices intrinsic to women’s experiences of slavery in the United States.

Lindee, Kirsten M., “Love, Honor, or Control: Domestic Violence, Trafficking, and the Question of How to Regulate the Mail-Order Bride Industry.” *Columbia Journal of Gender and Law*, 16 (2007): 551.

This article suggests that not only may mail-order brides become trafficking victims, forced into sex work or domestic service, but also that the International Marriage Broker (IMB) industry *per se* constitutes a form of sex trafficking. IMBs potentially expose women to domestic violence and abuse without offering adequate protections or resources, and IMBs potentially facilitate international trafficking in women. The article examines the rationales for regulating the IMB industry—specifically, the purported connections between the industry and both domestic violence and trafficking—and traces pre-International Marriage Broker Regulation Act (IMBRA) attempts to deal with problems associated with the IMB industry. IMBRA approaches the purported IMB problem primarily as one of domestic violence, rather than international trafficking. As this article argues, IMBRA ignores many of the more systemic power imbalances between mail-order brides and consumer husbands, and between mail-order bride exporter countries and mail-order bride importer countries, that render the IMB industry problematic. By enacting IMBRA, the United States has taken a major step toward addressing the perceived IMB problem. Unfortunately, IMBRA does not address the troubling power imbalances that may render informed consent impossible even after informational imbalances have been corrected, and that may render the IMB industry an international sex trafficking (rather than international romance) industry. As such, IMBRA simultaneously mis-recognizes and under-recognizes both the IMB problem and IMB victims. In order to correct such mis-recognition and under-recognition, IMBRA’s regulatory scheme should be augmented by further regulations, which should be pursued in conjunction with international agreements.

Trafficking in Children for the Purpose of Child Sex Tourism

Fritsch, Cerise, “Cambodian Government Attempts to Combat Child Sex Tourism with Approval of Anti-Trafficking Law.” *Public Interest Law Reporter*, 13 (Winter 2008): 100.

The article discusses the problem of child sex tourism in Cambodia and describes new legislation that the Cambodian government has passed in response to the problem—the Law on Combating Human Trafficking and Sexual Trade. The author describes the details of the new legislation and the gaps that it is trying to close with respect to child trafficking and child sex tourism. The article also discusses the U.S. PROTECT Act, which facilitated the prosecution of U.S. citizens for sex crimes against children outside of the country, and outlines the efforts of NGOs in Cambodia to address the problem.

Trafficking in Children for the Purpose of Illicit Inter-Country Adoption

Meier, Patricia, J. and Zhang, Xiaole, “Sold into Adoption: The Hunan Baby Trafficking Scandal Exposes Vulnerabilities in Chinese Adoptions to the United States.” *Cumberland Law Review*, 39 (2008-2009): 87.

This article focuses on inter-country adoption between China and the United States. The Hunan baby trafficking case uncovered vulnerabilities in China’s system of inter-country adoption that have not yet been addressed. Meier and Zhang provide background on China’s inter-country adoption program, domestic adoption practices, and child trafficking. China’s former one-child policy caused thousands of children to be abandoned, which led to the country’s program for inter-country adoptions. China’s Center for Adoption Affairs oversees this program and creates requirements for participating orphanages, potential adoptees, and foreign adoptive parents. The article discusses different international, Chinese, and United States’ laws that oversee the adoptions of Chinese children by Americans. Chinese law criminalizes trafficking for adoption and the United States law focuses on regulating adoption. Meier and Zhang suggest that anti-trafficking measures, in regards to the Trafficking Victims Protection Act (TVPA), should apply to the buying and selling of babies for adoptions. The authors further suggest that China should fight human trafficking on three fronts: supply, demand, and distribution because just having laws forbidding trafficking is not going to prevent it from happening.

Smolin, David M., “Child Laundering as Exploitation: Applying Anti-Trafficking Norms to Intercountry Adoption Under the Coming Hague Regime.” *Vermont Law Review*, 32 (Fall 2007): 1.

This article considers the Hague Convention on Intercountry Adoption and its commitment to prevent the traffic of children. The article advocates for the position implicit within the Hague Convention that buying and selling children for the purposes of adoption may be harmful and is a form of child trafficking. Smolin discusses how this perception contrasts with the positive image of adoption within the United States and disputes the contrary position of the U.S. Department of State. Smolin continues to suggest that child trafficking has been regulated by the federal government to a secondary concern after the facilitation of adoptions. The author argues that this principle of the Hague Convention must be embraced before it can be successful.

Smolin, David, M., “Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children.” *Wayne Law Review*, 52 (Spring 2006): 113.

Through evidence, analysis, and the citation of various sources, Smolin attempts to expose the widespread existence of child laundering within the intercountry adoption system. Thus the author seeks to challenge both the ethical and legal legitimacy of the system itself. Part II of the article documents and describes a significant incidence of child laundering within the intercountry adoption system. Part III evaluates those features of the adoption system which contribute to the incidence of such illicit practices, and then proposes reforms which could make the intercountry adoption system less hospitable to child laundering. In the end, Smolin concludes that while the proposed reforms may be rational, it is not clear that there is a rational reason to hope for their adoption.

Trafficking in Children for Military Purposes

Tiefenbrun, Susan, “Child Soldiers, Slavery and the Trafficking of Children.” *Fordham International Law Journal*, 31 (January 2008): 415.

This article focuses on the use of children in armed conflict. Abducting children for the purpose of sexual exploitation and armed conflict clearly fall within the definition of trafficking as defined under the international agreements of the Palermo Protocol, the Convention on the Rights of a Child (CRC) Protocol on Children in Armed Conflict and the International Labour Organization (ILO) Worst Forms of Child Labor Convention 182. Tiefenbrun charts the scope of child soldiering and the various forms of abuse that take place before examining the root cause of child soldiering and the reasons for its expansion and concluding with suggestions to improve the legal framework used in the prosecution of this crime.

Trafficking in Persons for the Purpose of Domestic Servitude

Beydoun, Khaled Ali, “The Trafficking of Ethiopian Domestic Workers into Lebanon: Navigating Through a Novel Passage of the International Maid Trade.” *Berkeley Journal of International Law*, 24 (2006): 1009.

The author describes the plight of Ethiopian domestic workers being trafficked into Lebanon, and the lack of any meaningful measures put in place to prevent the problem. The article serves mostly as an academic plea, urging a heightened level of alarm and action on the part of the international human rights community.

Shawn Hsu, Kevin., “The Ineffectiveness of Current United States Anti-Trafficking Policy in Protecting Victims of Trafficking for the purposes of Domestic Servitude.” *Georgetown Journal on Poverty Law and Policy*, 14 (Fall 2007): 489.

In this article, Shawn discusses the ineffectiveness of current United States’ policies to combat trafficking for the purpose of domestic servitude, by providing not only the history of domestic servitude in the country, but also by investigating the connection and the effectiveness of governmental practices in preventing abuse of victims of trafficking in domestic servants.

Labor Trafficking

Polulyakh, Diana, Ra, Sue Young, “Comments on the Spring Symposium: Invisible Chains: Human Trafficking and Forced Labor in the United States.” *Journal of Law & Social Challenges*, 8 (2006): 165.

The article sums up the findings of the Journal of Law and Social Challenges and Center for Law and Global Justice spring symposium. The symposium showcased a diverse group of practitioners, advocates, and academics that must cooperate to effectively combat the issue of human trafficking and forced labor. The illegal business of trafficking humans is a quickly-growing industry that has far-reaching, global effects. Traffickers capitalize on the weakness, poverty, and limited opportunities of their victims to entrap, coerce, and intimidate them into various forms of servitude. Knowledge about these social factors is necessary to inform legal strategies. The global community must set a standard of cooperation between autonomous states to ensure that the laws against trafficking of each country are implemented and upheld.

Organ Trafficking

Pugliese, Elizabeth, “Organ Trafficking and the TVPA: Why One Word Makes a Difference in International Enforcement Efforts.” *The Catholic University of America Journal of Contemporary Health Law and Policy*, 24 (Fall 2007): 181.

This article discusses the necessity of including organ trafficking in any definition of human trafficking. This would be in accordance with the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, and enhance enforcement efforts by allowing the passage of other laws which would enable law enforcement to prosecute all individuals involved in the trafficking process. The article charts mythical and real stories of organ trafficking. Pugliese progresses to investigate the status of organ trafficking legislation under United States federal law, advocating that it be added as a form of trafficking in the Trafficking Victims Protection Act (TVPA). A separate organ trafficking law, the author believes, does not address the issue as adequately as the comprehensive TVPA might where organ trafficking to be included. Yet, the article primarily calls for uniformity with regard to definitions of human trafficking among nations in order to carry out effective collaborative international efforts.

Trafficking in Persons: Addressing the Issue of Demand

Dillon, Sara, “What Human Rights Law Obscures: Global Sex Trafficking and the Demand for Children.” *UCLA Women’s Law Journal*, 17 (Winter 2008): 121.

This article focuses on the demand for trafficked children and its global nature, Dillon perceives to be the main issue within child sex trafficking. The article progresses to criticize the impervious nature of international human rights law to the problems of women and children. Specifically, Dillon notes that the development of international human rights law has not been about the victim of the violation. Dillon also criticizes the tendency of international legislation to define the many different variations of trafficking under one ‘trafficking’ definition, neglecting the fact that each form has a complex motivation and mode of demand. In a closing ponderance, the article closes on the unknowable nature of child sex tourism and why it occurs.

Vega, Connie de la, “The Role of Women in Peacekeeping and Peacemaking: Devising Solutions to the Demand Side of Trafficking.” *William and Mary Journal of Women and the Law*, 12 (Winter 2006): 437.

The author explores the role of armed conflict in the demand for prostitution and sex trafficking, and discusses the need for a greater involvement of women in post-conflict reconstruction and peace making. The U.N. responded to the growing demand in trafficked women and children, resulting from the global war on terror, by creating a Special Rapporteur on Trafficking in Persons, Especially in Women and Children. In 2005, the U.N. Commission on the Status of Women identified trafficking demand as an area that needs specific attention. The article discusses in detail U.N. Security Council Resolution 1325, which addresses the consequences that conflicts have on the lives of women and children and promotes gender analysis and equality in the peacemaking and peacekeeping process. The author then discusses the role of the military and of post-conflict peacekeepers in human trafficking and the unequal representation of women in the peacemaking process. Finally, the author provides recommendations for improvements in all of the aforementioned areas.

Yen, Iris, “Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand Through Educational Programs and Abolitionist Legislation.” *Journal of Criminal Law and Criminology*, 98 (Winter 2008): 653.

Yen focuses on the demand side to sex trafficking. Strategies that only address the supply side of human trafficking are deemed inefficient and ineffective. Instead, focus should be shifted equally to the male demand for the sexual services of prostitutes. Yen assumes that sex trafficking is fundamentally an economic problem that can be addressed by appropriate incentives to the supply and demand sides. The article argues that sex trafficking can be addressed through educational and legislative measures. Educating men that use prostitutes by changing male attitudes toward prostitution and criminalizing the procurement of prostitution itself are suggested as two effective remedies to sex trafficking by suffocating the demand.

Health Effects of Trafficking: HIV/AIDS

Kinney, Edi C. M., “Appropriations for the Abolitionists: Undermining Effects of the U.S. Mandatory Anti-Prostitution Pledge in the Fight against Human Trafficking and HIV/AIDS.” *Berkeley Journal of Gender, Law & Justice*, 21 (2006): 158.

Kinney argues that the recent campaigns of anti-prostitution feminists, faith-based organizations and socially conservative policymakers to end human trafficking and forced prostitution have had a direct impact on U.S.-backed initiatives to combat

human trafficking abroad. This has resulted in a series of policies attached to U.S. funding, including the imposition of anti-prostitution and anti-sex trafficking provisions into grant agreements, which have severely curtailed the sorts of interventions NGOs can employ in public health, HIV/AIDS prevention, and anti-trafficking initiatives. Not only does this not help to prevent the spread of HIV/AIDS, or to assist the massive tide of migrants compelled to work in slavery-like conditions, but it often keeps commercial sex workers from accessing anti-sex trafficking enforcement as well as AIDS prevention and outreach programs. The article contends that as long as the United States seeks to implement strict abolitionist policies in efforts to combat HIV/AIDS and human trafficking throughout the world, many promising interventions will be abandoned, as opportunities to forge alliances with targeted communities and their advocates fall by the wayside.

Trafficking in Persons: Economic and Social Perspectives

Diep, Hanh, “We Pay – The Economic Manipulation of International and Domestic Laws to Sustain Sex Trafficking.” *Loyola University International Law Review*, 2 (Spring/Summer 2005): 309

Diep argues that the growth of the illegal sex industry, and therefore international sex trafficking, is driven by international economics and local politics. The rise of the sex trafficking industry is fueled by the supply and demand model. Similar to any other service industry or business, the sex trade is perpetuated by consumer consumption. She also comments that some nation-states turn a blind eye to the problem in order to further profit from the sex industry financially. Furthermore, discrepancies in international law and blurred definitions of both victims and perpetrators facilitate the profitability of the trade and the vulnerability of the victims. As such, the international economic conditions which sustain the illegal sex industry must be dismantled, while the global community establishes a consistent and uniform legal framework to combat sex trafficking.

Ray, Nilanjana, “Looking at Trafficking Through a New Lens.” *Cardozo Journal of Law & Gender*, 12 (Summer 2006): 909.

Ray advocates for the need to reconceptualize trafficking to produce a more effective remedy. Ray works through four frameworks of looking at trafficking: (1) the morality framework; (2) the violence against women framework; (3) the law enforcement framework; and (4) the labour migration framework. The article concludes that all four frameworks view trafficking from the *post-facto* end of the spectrum. Ray argues that an effective framework for analyzing trafficking must start before the point where the trafficker seizes control of the traffickee. It must go to a point pre-trafficking where the victim becomes vulnerable whether that

occurs through economic or social factors. It must also go beyond the point where trafficking ends – if we return victims to the same economic or social situation that made them vulnerable prior to the trafficking, then we do no more than re-supply the structural cycle in which trafficking thrives. Ray states that trafficking is a symptom of such problems and this root cause ought to be addressed before trafficking might be tackled effectively.

Todres, Jonathan, “Law, Otherness, and Human Trafficking.” *Santa Clara Law Review*, 49 (2009): 605.

Todres argues that “otherness” is a root cause of both inaction and the selective nature of responses to the abusive practice of human trafficking. This article justifies that otherness operates across multiple dimensions to reinforce a conception of a virtuous “Self” and a lesser “Other.” This concept, according to Todres, shapes the occurrence of human trafficking, drives the demand for trafficked persons, influences the perceptions of the problem, and restricts legal proposals to end the practice. This article attempts to display the impact of “otherness” on the understanding of human trafficking and legal responses to it. Todres separates this article into four parts. Part I defines otherness. Part II discusses how “otherness” makes certain populations more vulnerable to human trafficking. Part III discusses recent legal responses to human trafficking and focuses on international legal response, as well as the United States’ approach. The purpose of this section is to explain how otherness operates to impede the effectiveness of legal responses. Part IV focuses on steps that the author suggests will begin to address the effects of otherness in order to rework the way we respond and understand human trafficking. This article aims to clarify a deeper understanding of human trafficking and to offer a prescription for reducing the harsh effects of otherness on both efforts to combat human trafficking and the individuals that now suffer such abuses by examining human trafficking through an otherness-aware framework.

Trafficking in Persons and Human Security

Mattar, Mohamed, Y., “Human Security or State Security? The Overriding Threat in Trafficking in Persons.” *Intercultural Human Rights Law Review*, 1 (2006): 249.

This article recognizes that trafficking in persons is a violation of human rights that for the most part affects women and children and that, as such, should be seen not only as a crime against the State but as a crime against the individual that poses a threat to human security. Mattar argues that understanding the real threat in cases of human trafficking affects the regulations that a legal system must incorporate to combat trafficking. This article focuses on: personal security and safety compared

to human security; the methods that can be used in legislation to protect the rights of a trafficking victim; the causes of human insecurity; human trafficking as a threat against the individual, not the State; the acknowledgment of all forms of trafficking; confronting all actors in the trafficking enterprise; and the involvement of NGOs and civil society in the fight against trafficking in persons. Mattar lists eight different recommendations for addressing trafficking in persons as a human security issue including: addressing the primary causes of human insecurity in the context of trafficking in persons; shifting the focus from recognizing trafficking in persons as a threat against State security to trafficking as a threat to human security; and allowing the NGOs and civil society to function freely, while at the same time emphasizing State responsibility in combating trafficking in persons.

Trafficking in Persons and State Corruption

Fahey, Diane, L., “Can Tax Policy Stop Human Trafficking?” *Georgetown Journal of International Law*, 40 (Winter 2009): 345.

This article recommends taxation as an economic incentive that would recruit, as allies in this war, the wealthy residents of countries where government officials or the governments themselves are participating in trafficking. Fahey suggests that if government corruption is the most significant factor that leads to trafficking, then we need to direct our efforts toward eradicating government corruption while at the same time respecting State sovereignty. This article proposes that the governments of the world’s major economies, where the wealthy invest the majority of their money, re-impose the withholding of tax on the interest income from investments. The governments can then agree to reduce the withholding of tax rates on residents of complicit countries if trafficking is reduced. The complicit governments would have the incentive to reduce human trafficking as a means of acquiring revenue from developed countries through a refund of a portion of the withheld tax. Fahey suggests this economic solution will apply pressure on governments that are in positions of power to achieve change, and at the same time does not hurt those who are the most vulnerable to trafficking, the poor. This article reviews: the global community’s response to human trafficking; the lack of sanctions that encourage governments to ratify treaties that support human rights but allow governments to avoid complying with their obligations without consequences; and fiscal burdens that await developed countries that developing countries already face from insufficient tax revenues.

Trafficking in Persons and the Role of Civil Society

Kara, Shashi Irani, “Decentralizing the Fight Against Human Trafficking in the United States: The Need for Greater Involvement in Fighting Human Trafficking by State Agencies and Local Non-Governmental Organizations.” *Cardozo Journal of Law & Gender*, 13 (Summer 2007): 657.

This article advocates for increased involvement from NGOs and local agencies in the fight against trafficking in persons. Kara argues that NGOs are best placed to provide assistance to trafficking victims due to their decentralized and dispersed nature. They have unique capabilities to turn trafficking victims into trafficking survivors. Kara reflects on the top-heavy nature of the current U.S. approach which is primarily based around federal legislation. Though states are increasingly legislating against trafficking, they must also play a more active role.

Trafficking in Persons and Law Enforcement

Clawson, Heather J., Dutch, Nicole, Yacoubian, George S., “An Examination of Law Enforcement Responses to Human Trafficking in the United States: A Compliance Assessment of U.S. Obligations Under Customary and Conventional International Law.” *U.C. Davis Journal of International Law and Policy*, 15 (Fall 2008): 157.

This article examines the extent to which law enforcement practices meet United States’ obligations to victims of human trafficking under customary and conventional international law. The authors split this article into four sections. Part I addresses the obligations of the U.S. to trafficking victims under customary international law and human trafficking-related instruments to which the U.S. is a State Party and describes the U.S. Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 and 2005, and discusses the International Criminal Court (ICC), with an emphasis on the prosecution of human trafficking offenders. Part II provides practical findings from a federally-funded research program that examined U.S. law enforcement responses to trafficking victims. In Part III, the authors conclude that the U.S. is complying with its obligations to trafficking victims under international law. Finally, Part IV puts forth recommendations for addressing the needs of human trafficking victims.

Harrold, Marc M., “A New Kind of Traffic[king] Cop on the International “Beat” of Human Trafficking.” *Charleston Law Review*, 1 (2006): 97.

The article addresses the challenge human trafficking poses to local law enforcement philosophies. This article attempts to illuminate the current legal and law enforcement landscape in an effort to move toward solutions to eradicate

human trafficking. In particular, legislative and law enforcement efforts must embrace international best practices and shrug off enforcement methods that, while effective in the context of other types of crime, are ill-suited to fighting this battle. Federal enforcement agencies must recognize local law enforcement agencies as partners. These groups must, in turn, recognize social service providers and non-profit agencies as partners. Together these groups can forge a new direction in modern policing—toward a permanent end to slavery in our time.

Trafficking in Persons and Psychological Coercion

Hidalgo, Jose and Hopper, Elizabeth, “Invisible Chains: Psychological Coercion of Human Trafficking Victims.” *Intercultural Human Rights Law Review*, 1 (2006): 185.

This article argues that physical abuse is not the only way to maintain control over a person; psychological coercion is a major strategy that traffickers use to enslave victims. The article notes that there has not been much research done on the psychological coercion of trafficking victims, but by looking at information about other victims of abuse such as: prisoners of war, torture survivors and victims of domestic violence, it is clear that psychological manipulation can be used as a means of control. Hidalgo and Hopper look at the Trafficking Victims Protection Act (TVPA) and how it criminalizes a wider range of non-physical forms of manipulation compared to previous laws that only criminalized the use or threat of physical or legal force. This article mentions the idea of ‘Stockholm syndrome,’ where victims begin to have a connection with their captors as a form of a defense mechanism, but this usually leads to a bond with them. A trafficking victim does not have to be physically tied down to stay where they are being held captive—psychological abuse can be just as strong as any chain, just not always visible.

Kim, Kathleen, “Psychological Coercion in the Context of Modern-Day Involuntary Labor: Revisiting United States v. Kozimski and Understanding Human Trafficking.” *University of Toledo Law Review*, 38 (Spring 2007): 941.

This article examines psychological coercion in cases of modern-day slavery. It reviews the Supreme Court decision in *United States v. Kozimski* and its rejection of psychological coercion in cases of involuntary servitude. Kim states that recognition of psychological coercion in situations of involuntary labor is a key element of new laws seeking to combat trafficking but that the meaning of psychological coercion must be clarified before the Trafficking Victims Protection Act’s (TVPA) reversal of *Kozimski* can possess substantive force. The author is concerned with developing an effective legal model to guide the evaluation of psychological coercion in future human trafficking cases.

The Trafficking Victim: A Victim-Centered Approach

Baker, Katrina Lynne, “Don’t Forget the Family: A Proposal for Expanding Immediate Protection to Families of Human Trafficking Survivors.” *Fordham International Law Journal*, 30 (February 2007): 836.

This article argues that the protections afforded to survivors of trafficking should be expanded to their families. Despite increased costs, Baker states that expanding such protections will achieve three important goals: (1) permit the survivor to feel secure in coming forward knowing their family will not be harmed; (2) permit the survivor to come forward and cooperate openly with law enforcement; and (3) permit prosecutors to adhere to their duties of witness protection, which extends to family members in imminent danger.

Cheung, Calvin C., “Protecting Sex Trafficking Victims: Establishing The Persecution Element.” *Asian American Law Journal*, 14 (May 2007): 31.

Given that four out of 10 trafficking victims originate from Asia, Cheung focuses on the asylum relief available to such victims and the necessity of proving a “well-founded fear of persecution.” This article examines the jurisprudential development of this requirement and ways to satisfy it in the U.S. under the refugee laws, but warns that the gap must be bridged between the courts’ demands of asylum adjudications and the reality of the process for the victims.

Moore, Heather, C., “How Strong Collaboration Between Legal and Social Service Professionals Will Improve Outcomes for Trafficking Survivors and the Anti-Trafficking Movement.” *Intercultural Human Rights Law Review*, 1 (2006): 157.

This article discusses and demonstrates how attorneys can protect and yield better legal outcomes for their clients by collaborating with social service professionals specifically, and by reconsidering their own roles in serving trafficking survivors, not only as legal advocates, but also as informal mental health advocates. The criminal justice system can be commonly recognized as a source of revictimization for survivors of violent crimes. Supportive and empowering interactions with the system will usually lead to positive outcomes, whereas insensitive interactions usually lead to negative outcomes. From attorneys working with social workers, the awareness of a client’s needs and capabilities will increase and minimize the chances of revictimization. Moore argues that coordinated and strategic collaboration among the multiple systems that trafficking survivors come across will improve each system’s response to this group, which will increase the probability of achieving desired outcomes of protection, prevention, and prosecution. Included in this article is the case of one model of comprehensive service system, the Coalition to Abolish Slavery and Trafficking (CAST), which

has legal and social services that compliment and support each other within one agency to better serve clients.

The Trafficking Victim under United States Law

Angel, Carole, “Immigration Relief for Human Trafficking Victims: Focusing the Lens on the Human Rights of Victims.” *University of Maryland Journal of Race, Religion, Gender and Class*, 7 (Spring 2007): 23.

Angel argues that the scope of U.S. federal law is too broad to fully address the competing goals of the three Ps: Prevention, Protection and Prosecution. The article focuses upon the Trafficking Victims Protection Act (TVPA) and immigration relief for victims of trafficking, namely the T-Visa. Angel argues that while the TVPA sought out a comprehensive approach to dealing with the problem of trafficking, the required interplay between community, law enforcement and the victim creates a legal web with a number of holes. Angel suggests that future efforts to address the problem remain within the overall framework but be fine-tuned to the victims’ needs.

Cianciarulo, Marisa Silenzi, “Modern-Day Slavery and Cultural Bias: Proposals for Reforming the U.S. Visa System for Victims of International Human Trafficking.” *Nevada Law Journal*, 7 (Summer 2007): 826.

Cianciarulo examines the U.S. T-Visa process, its problems and proposed reforms. It is proposed that a Trafficking and Exploitation Victims Assistance (TEVA) program be established to limit the interaction between federal law enforcement agents, such as Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) officers, and trafficking victims or potential victims. TEVA personnel would be trained to be sensitive to the different interpretations ‘force’ and ‘coercion’ can have so as to overcome cultural bias within the system.

Haynes, Dina Francesca, “(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act.” *Georgetown Immigration Law Journal*, 21 (Spring 2007): 337.

Haynes describes the personal will and agency displayed in many trafficking victims. The author argues that this will is a necessary aspect of trafficking victims survival process, something U.S. governmental personnel must learn to understand. The article is framed around ‘Ahn’s story’, and uses it to show that the granting of a T-Visa does not necessarily end the trafficking victim’s exploitation. Haynes also argues that the trafficking issue should be reframed through the lens of migration.

Kim, Kathleen, "Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States." *Hastings Women Law Journal*, 16, (Winter 2004): 1.

In this article, Kim provides a strict analysis on the effectiveness of the Trafficking Victims Protection Act (TVPA). She states that the TVPA was created to establish a private right of action for persons trafficked to the U.S., and includes prevention programs and protection mechanisms for trafficked persons. Protection measures for trafficked persons in the U.S. are dependent on federal law enforcement choosing to investigate and prosecute trafficking violations, which leaves many trafficked persons excluded from protection benefits or full access to justice. Kim believes it would be beneficial to use civil litigation as a means by which trafficked persons can claim their human rights; civil litigation could provide better remedies to individual clients and further help to eradicate human trafficking.

Nam, Jennifer S., "The Case of the Missing Case: Examining the Civil Rights of Action for Human Trafficking Victims." *Columbia Law Review*, 107 (November 2007): 1655.

This article examines the right to civil remedy for trafficking victims enacted in the United States under the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 and is critical of the low numbers of victims that have filed for civil remedy since the enactment. Nam discusses why the article has been so underused, basing conclusions upon an empirical research study. Nam concludes that trafficking victims have neither the means nor the safety to pursue this remedy. The article concludes with recommendations for how to bolster the use of the civil remedy right.

Nel, Sasha L., "Victims of Human Trafficking: Are They Adequately Protected in the United States?" *Chicago-Kent Journal of International and Comparative Law*, 5 (Spring 2005): 3.

Nel argues that the issue of human trafficking has evolved into a vast and uncontrollable phenomenon. People are being exploited like resources in the one of the greatest human rights challenges. Focusing on trafficking specifically within and into the U.S., Nel states that additional public awareness and protection of victims is necessary. While the development of trafficking laws dates back to 1904, legislation has not done enough to frame an international consensus and definition of trafficking. Furthermore, the Trafficking Victims Protection Act (TVPA) falls short of offering protection to all victims of trafficking, and fails to address the entire process of trafficking. However, the U.S. has made significant strides in offering benefits to victims, repatriation, reintegration, health services and paths to citizenship, but needs to exert more effort in the training of officials and the spreading of awareness.

Rieger, April, “Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States.” *Harvard Journal of Law & Gender*, 30 (Winter 2007): 231.

This article criticizes the eligibility requirements to obtain benefits under the Trafficking Victims Protection Act (TVPA) as overly rigid. The barriers cited include victim identification, qualification as a victim of ‘severe trafficking’ and the requirement to cooperate with law enforcement. The last section of this article discusses avenues of civil justice available to victims of sex trafficking.

Srikantiah, Jayashri, “Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law.” *Boston University Law Review*, 87 (February 2007): 157.

Srikantiah argues that U.S. anti-trafficking efforts are constructed around a narrow concept of the stereotypical victim. The stereotype is one of a meek, passive victim of sexual exploitation. The article suggests this stereotype has had tragic consequences for victims of labor trafficking and sex trafficking who do not fall within this category. The article argues the a successful anti-trafficking policy must be based upon the totality of victim’s stories and that the undocumented immigrant worker is sometimes in need of as much protection as the meek, passive victim of sexual exploitation.

Tiapula, Suzanna L., Millican, Melissa, “Identifying the Victims of Human Trafficking.” *Prosecutor*, 42 (January - March 2008): 34.

This feature article focuses on the practical aspect of investigative strategies for identifying human trafficking victims and the statutory tools available under U.S. law. The identification of human trafficking victims is difficult and resource-intensive. The authors note that collaboration between agencies is key to a successful investigation and prosecution of instances of human trafficking.

Trafficking in Women and International Human Rights Law

Cole, Alison “Reconceptualising Female Trafficking: The Inhuman Trade in Women.” *Cardozo Journal of Law & Gender*, 12 (2006): 789.

This article analyzes the current international approach to female trafficking in order to propose a method for its reconceptualization. The discussion is limited to the trade in women for the purposes of forced prostitution during peacetime. Cole calls for a coordinated international initiative to provide a uniform basis for combating traffickers. According to Cole the International Criminal Court (ICC) and its jurisprudence regarding Crimes Against Humanity (CAH) could provide a framework for reconceptualising female trafficking, invoking universal jurisdiction

and thereby giving due regard to the gravity of the crime. It is, however, recognized that it remains to be seen whether subsequent State practice will serve to confirm the status of female trafficking as a CAH. As a matter of construction, female trafficking fits within the terms and spirit of CAH as set out in the International Criminal Court (ICC) Statute. As a matter of policy, female trafficking is best addressed on the international basis that CAH provide, outside the domestic policy debates which have hindered international efforts to combat the inhuman trade in women.

Haider, Aliya, “Out of the Shadows: Migrant Women’s Reproductive Rights Under International Human Rights Law.” *Georgetown Immigration Law Journal*, 22 (Spring 2008): 429.

This article focuses on the reproductive rights of migrant women under international law and advocates for the safe-guard of such rights by States individually and on the international level. International human rights law ensures migrant women’s right to life, right to be free from sexual violence and exploitation, right to health care, right to reproductive self-determination and right to non-discrimination. There are more women than ever who are migrating, resulting in what Haider calls the ‘feminization of migration.’ Female migrants come mainly from developing regions and the ethnic differences that may exist within their host country can result in hostility toward such women. Migrant women also include victims of trafficking. Such women are particularly vulnerable to violence and exploitation because their legal status is uncertain and their societal position is marginal. Trafficking differs from other types of migration because it is often involuntary. Trafficked women experience routine violence, confinement, coercion, deception and exploitation, which violates their core reproductive rights and human rights to life, liberty, security, freedom from torture and freedom from sexual violence.

Halley, Janet; Kotiswaran, Prabha; Shamir, Hila; Thomas, Chantal, “From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism.” *Harvard Journal of Law & Gender*, 29 (Summer 2006): 335.

This article was born out of an exchange between the four authors, each taking up an individual section of the text to lay out the individual project which has formed the basis for her views. The authors have developed the term ‘governance feminism’ to describe the achievements of feminists in international humanitarian legal institutions. That is to say, they address the criminalization of sexual violence against women as a feminist goal, and to the degree it has been successful, believe that the international legal order has accepted feminists into the power elite. Part I of the article describes governance feminism and part two develops methods for studying governance feminism; Part II also considers the various regulatory regimes for commercial sex.

O'Brien, Melanie, "Prosecuting Peacekeepers in the ICC for Human Trafficking." *Intercultural Human Rights Law Review*, 1 (2006): 281.

The reason for the publication of this article is the increasing number of cases of U.N. peacekeepers committing crimes against women such as trafficking, forced prostitution, rape, and sexual slavery. The central focus of this article is the question of whether a crime committed by a U.N. peacekeeper would be considered a valid subject matter according to the Rome Statute for the International Criminal Court (ICC) to prosecute. O'Brien addresses the additional issue of whether crimes of trafficking, enforced prostitution, sexual slavery, or rape fall within the definitions of crimes against humanity or war crimes. The pressure placed on States and organizations to guarantee some degree of accountability for crimes against women is due to the advancement of women's rights. However, the unwillingness of governments to admit to these atrocities or to compensate women, regardless of public knowledge of these crimes, shows that much more work is needed because it is a slow process; the changing of procedures in a system require a transformation of common positions. O'Brien concludes that it will be unlikely for a peacekeeper to be prosecuted by the ICC for a crime against humanity, but it is possible for one to be prosecuted for a war crime because the Rome Statute is meant to only deal with only the most severe crimes. The article suggests that the ICC should not be looked upon to fill the empty space left by unwilling nations and a poor U.N. accountability system, nor as a real solution to the problem of prosecuting peacekeepers for crimes against women involving sexual slavery, trafficking, rape, and enforced prostitution.

Trafficking in Children and International Law

Garrard, Virginia, "Sad Stories: Trafficking in Children – Unique Situations Requiring New Solutions." *Georgia Journal of International and Comparative Law*, 35 (2006): 145.

This paper argues that although the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was an important step forward in the fight against human trafficking, a new international agreement is needed, which, standing alone and developed in a human rights context, addresses specific issues related to child trafficking and contains more effective provisions such as stronger enforcement mechanisms and greater participation of NGOs. Garrard critiques the Protocol, describing why the current effort against trafficking is not enough to protect children, and offers some preliminary suggestions for developing a new international tool to combat trafficking in children. The new instrument should stand alone and be developed in a human rights context, focusing attention not only on prevention and punishment of perpetrators, but also on strong

provisions relating to the protection of child victims. Further, it should provide for stronger enforcement mechanisms than in previous agreements, especially in the area of protection.

Matthews, Stacey, “International Trafficking in Children: Will New U.S. Legislation Provide an Ending to the Story?” *Houston Journal of International Law*, 27 (Spring 2005): 649.

The article begins by listing specific cases of trafficking. It then discusses the five “w’s” of trafficking: what, where, who, why and when. The main focus is on child sex trafficking in the international community and how it is being dealt with legally. The Convention on the Rights of the Child, the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution and the Trafficking Victims Protection Act of 2000 are listed as mediums which combat child exploitation to some degree. While the U.S. has several strict pieces of legislation which address trafficking in children, when taken in isolation, they represent a fragmented approach to a broad problem, and lose much of their potency. Specific examples of such legislation include the PROTECT Act and the Trafficking Victims Protection Act (TVPA), both of which are analyzed and scrutinized. The article suggests that in order to effectively combat child trafficking, many successful legislative approaches must be combined into a comprehensive approach. As such, the article is skeptical of the success of U.S. legislation and decrees that human rights groups and NGOs will continue to be instrumental in this fight.

Scarpa, Silvia, “Child Trafficking: International Instruments to Protect the Most Vulnerable Victims.” *Family Court Review*, 44 (July 2006): 429.

This article is an informational overview of trafficking in children and the international instruments intended to deal with the problem *i.e.* the U.N. instruments and Special Rapporteurship mechanisms as well as the instruments of the International Labour Organization (ILO). Scarpa discusses the various forms: sexual exploitation; labour exploitation; street begging; illegal adoptions; children in armed conflict and organ trafficking, the difficulties with lack of data and the possible causes of child trafficking.

Trafficking in Persons and International Law

Fredette, Kalen, “Revisiting the U.N. Protocol on Human Trafficking: Striking Balances for More Effective Legislation.” *Cardozo Journal of International and Comparative Law*, 17 (Winter 2009): 101.

This article provides a review of the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and suggests measures

to supplement the global fight against human trafficking, either by improving the protocol or by creating a new legal instrument. The author argues that the U.N. Protocol needs to have more definitive and obligatory measures for victim protection, as well as more steps to address the root causes of human trafficking. The article concludes that, in the case of human trafficking, the balance between getting more support for a legal instrument and including more obligations and stronger language within the instrument should be tipped in the direction of the latter, to reflect the gravity of the problem. The author also argues in favor of an instrument geared specifically towards child protection, since the large-scale international support for children's rights would pave the way for a more uniform acceptance of such an instrument, compared to a more comprehensive instrument. The article gives an outline of the key provisions of the U.N. Protocol, the definitions of human trafficking included in the Protocol and the approach of the Protocol geared towards prosecution, prevention and protection.

Gekht, Anna, "Shared but Differentiated Responsibility: Integration of International Obligations in the Fight Against Trafficking in Human Beings." *Denver Journal of International Law and Policy*, 37 (Winter 2008): 29.

Gekht argues that in order for anti-trafficking policies to become successful, they must combine and integrate the various obligations of the involved countries into a single non-fragmented framework built on the foundations of the norms of international human rights law. Countries of origin, transit, and destination must take control of their role in the shared responsibility for ensuring the protection of the crucial social, political, and economic rights of the victims. This article analyzes the obligations and responsibilities of States drawing from these norms, general principles of international law, and specific legal provisions concentrating on human trafficking directly. Gekht proposes a model of differentiated State responsibilities based on a simplified system of legal human rights commitments which are integrated within other areas of international law. This proposed model creates a two-fold anti-trafficking model of state responsibility. The author suggests that the international response to trafficking needs to recognize the victims and their rights, and be more reflective of the views of those most affected. In order to prevent and punish trafficking, the development of a multinational, multi-level coordinated legal standard is required.

Mattar, Mohamed Y., "Comparative Models of Reporting Mechanisms on the Status of Trafficking in Human Beings." *Vanderbilt Journal of Transnational Law*, 41 VNJTLL 1355, (November 2008)

A comprehensive approach to combating trafficking in human beings requires precise knowledge of the scope of the problem and constant evaluation of government responses. Reporting on the status of human trafficking achieves both goals. This article is designed to examine the various human trafficking reporting

mechanisms, including reports that States are required to submit to the United Nations as well as national reports whereby governments engage in a process of self-assessment. Comparative models from Europe and the United States are examined. The article analyzes reports released by inter-ministerial task forces as well as congressional hearings held on progress made and future steps that must be taken. This article advocates establishing an independent and competent national rapporteur or a similar mechanism to assess government actions to combat the problem and recommend changes that should be implemented to reform existing frameworks. While reporting is an essential element of monitoring the status of human trafficking, it has not received adequate attention. This article attempts to provide the first comprehensive study on the issue.

Mattar, Mohamed, Y., “Incorporating the Five Basic Elements of a Model Anti-Trafficking in Persons Legislation in Domestic Laws: From the United Nations Protocol to the European Convention.” *Tulane Journal of International and Comparative Law*, 14 (2006): 357.

Mattar analyses the structure of anti-trafficking legislation, arguing that any such legislation must incorporate five basic elements to be effective. The five elements are: first, that trafficking must be recognized as a specific crime and be subject to serious penalties; second, the trafficked person must be recognized as a victim of a crime entitled to basic human rights, but also that there exist a number of associated victims which Mattar refers to as the “4 Vs,” namely, the derivative victim, the vulnerable victim, the potential victim, and the presumed victim; third, countries should adopt a comprehensive “5 P” approach, namely, prevention, protection, provision, prosecution and participation; fourth, laws must target all actors in the trafficking enterprise, such as the natural person, the legal person, the private person, and the public person; and fifth, a transnational approach must be pursued in order to successfully tackle the crime. This should occur through extraterritoriality, extradition and the exchange of information.

Nagan, Winston P., Medeiros, Alvaro de, “Old Poison in New Bottles: Trafficking and the Extinction of Respect.” *Tulane Journal of International and Comparative Law*, 14 (Spring 2006): 255.

This article traces trafficking from its slavery roots to modern international law. It considers African slavery, the U.N. Convention Against Transnational Organized Crime and the accompanying Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and U.S. policy on trafficking through the Trafficking Victims Protection Act (TVPA) 2000 and its amendments.

Piotrowicz, Ryszard, “The UNHCR’s Guidelines on Human Trafficking.” *International Journal of Refugee Law*, **20 (2008): 242.**

On April 7, 2006, the Office of the United Nations High Commissioner for Refugees (UNHCR) published the ‘Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked’, aimed at assisting practitioners and decision-makers in applying the Convention on the Status of Refugees of 1951 to particular situations. This article focuses on the entitlement of the victim of the crime of trafficking in human beings to international refugee protection in light of the guidelines.

Zalewski, Anna, “Migrants for Sale: The International Failure to Address Contemporary Human Trafficking.” *Suffolk Transnational Law Review*, **29 (Winter 2005): 113.**

This article provides a description and a history of the phenomenon of human trafficking and discusses the international response to the problem, namely the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Zalewski argues that these international initiatives can be strengthened by exploring trafficking through the lens of migration. She points to some specific measures that can make the U.N. protocol more effective, including the incorporation of human rights protection and the application of the protocol to the domestic laws of separate countries.

Trafficking in Persons under United States Federal Law

Bradbury, John G., “Human Trafficking and Government Contractor Liability: Is FAR 22.17 a Step in the Right Direction?” *Public Contract Law Journal*, **37 (Summer 2008): 907.**

This article is set against the backdrop of the DynCorp International Inc. crisis in Iraq where DynCorp employees engaged in human trafficking activities. Federal Acquisition Regulation 22.17 was enacted in order to provide accountability for contractors of the military, so that like peacekeepers, they could be prosecuted in the United States for crimes committed abroad – a previous loophole in the legislation. However, Bradbury assesses the success of FAR 22.17 to be poor. He suggests FAR 22.17 possesses ambiguous terminology and penalizes contractors for employee behavior that is unrelated to the performance of the contract itself. Bradbury suggests that the over-breadth of FAR 22.17 be addressed through limiting FAR 22.17 to the actual performance of the contract and concluding that the source problem is better addressed through broad anti-trafficking regulations such as the U.S. Trafficking Victims Protection Act (TVPA).

Chacon, Jennifer M., “Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking.” *Fordham Law Review*, 74 (May 2006): 2977.

Chacon critiques the U.S. Victims of Trafficking and Violence Protection Act (TVPA) of 2000 and concludes it unable to satisfy its goal of preventing human trafficking and protecting the victims of such. Chacon determines that U.S. labor and immigration incentives actually create a climate that assists trafficking and the U.S. anti-trafficking law does nothing to dissuade this negative impact. Chacon argues U.S. law gives an unrealistically narrow definition of trafficking that in turn limits assistance to purely ‘innocent’ victims of trafficking. The Act has, in Chacon’s words, been ‘ineffectual’ with regard to domestic trafficking because it does not correct the failings of past trafficking legislation, namely: the presumptive criminality of migrants; a willingness to sacrifice the protection of migrants in the furtherance of criminal prosecutions; a conflation of trafficking and prostitution; and, a racially biased conception of trafficking.

Chang, Grace and Kim, Kathleen, “Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s).” *Stanford Journal of Civil Rights & Civil Liberties*, 3 (August 2007): 317.

Chang and Kim discuss the consequences of the United States approach toward human trafficking and evaluates individual U.S. policies in the areas of prostitution, labor migration, sexual and reproductive health rights. Ultimately, the authors seek to facilitate the creation of a new anti-trafficking paradigm that evaluates trafficking within a broader framework as opposed to the current ‘narrow’ policy of the United States which limits its focus primarily to anti-prostitution efforts, so that trafficked persons such as migrant workers might be protected against these negative aspects of U.S. policies.

Chuang, Janie, “The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking.” *Michigan Journal of International Law*, 27 (Winter 2006): 437.

Chuang is critical of U.S. unilateral sanctions under the Trafficking Victims Protection Act (TVPA), claiming that such sanctions go against international law principles and have the potential to compromise wider international cooperation on human trafficking under the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children. The author also discusses how the current unilateral world system has affected the global responses against human trafficking. The article includes a description of international anti-trafficking measures and provides a definition for human trafficking. It further explores trafficking in a criminal justice and in a human rights context and outlines the U.S. legislative response to the problem. The author concludes that any anti-

trafficking measure, including U.S. sanctions, should be geared towards larger international cooperation and participation.

Coonan, Terry, “The Trafficking Victims Protection Act: A Work in Progress.” *Intercultural Human Rights Law Review*, 1 (2006): 99.

This article reviews the Trafficking Victims Protection Act (TVPA) and sees it as a work in progress. Coonan states that the TVPA provides unprecedented tools for United States governmental agencies and non-governmental organizations to combat trafficking in persons. The author acknowledges that there have been a few issues with the implementation of the law as well as its format, but the progress made combating trafficking and prosecuting traffickers is significant. This article gives an assessment of the law’s theoretical framework and its implementation, as well as identifies the challenges that remain on the theoretical and practical levels.

Giampolo, Angela D., “The Trafficking Victims Protection Reauthorization Act of 2005: The Latest Weapon in the Fight Against Human Trafficking.” *Temple Political and Civil Rights Law Review*, 16 (2006): 195.

This article critiques the latest tool in combating human trafficking in the U.S. and abroad, and analyzes how the newest U.S. Trafficking Victims Protection Reauthorization Act (TVPRA) fits into the current arsenal of anti-trafficking legislation. The article specifically discusses the TVPRA and emphasizes its most significant provisions and the valuable impact it will have on human trafficking victims. Giampolo also highlights the shortcomings of the TVPRA, concentrating on provisions that were regrettably removed from the bill proposed in the House of Representatives, as well as other areas where the U.S. legislation falls short of the rights-protective stance it claims to possess with respect to human trafficking.

Green, Sally Terry, “Protection for Victims of Child Sex Trafficking in the United States: Forging the Gap Between U.S. Immigration Laws and Human Trafficking Laws.” *University of California Davis Journal of Juvenile Law & Policy*, 12 (Summer 2008): 309.

Green focuses on the specific challenges faced by child sex victims of human trafficking and the protections available to them. This article strives to construct a picture of human trafficking through the eyes of children and to describe the obstacles that they confront when seeking protection in the United States. It identifies the gap which has been created between the social and political policies embedded in the human trafficking legislation and those immigration law provisions that were intended to provide protections for child sex victims. Furthermore, this article argues that extending the adjustment of status provisions in the immigration code to include a rebuttal presumption of lawful permanent residency status or, alternatively, a rebuttable presumption of the dependency standard for child sex trafficking victims is imperative. Green talks about the U.S. Trafficking Victims

Protection Act (TVPA) in terms of the three Ps: prevention, prosecution and protection and calls the protection arm to be the less significant of the three. The T-visa and the SIJ visa are also criticized. Green advocates for a presumption of lawful permanent residency status to non-U.S. citizen child sex victims permitting them the opportunity to “outgrow” the conditions of abuse and neglect.

Kandathil, Rosy, “Global Sex Trafficking and the Trafficking Victims Protection Act of 2000: Legislative Responses to the Problem of Modern Slavery.” *Michigan Journal of Gender and Law*, 12 (2005): 87.

In this article, Kandathil states the Trafficking Victims Protection Act (TVPA) is the strongest, domestic legislative effort to combat international trafficking, but adds that with some changes it could be more efficient. First, Kandathil explains that the TVPA should exclude the “consent” of a trafficked person as a defense to trafficking violations, because in many cases, social or economic factors, or violence, deception, and intimidation are used to force a victim to consent to trafficking. This form of consent violates The Thirteenth Amendment, which forbids slavery; an individual cannot sell themselves into bondage. Kandathil also believes the TVPA should be amended to meet international standards to acknowledge the crime aspect of trafficking and treat victims uniformly. Kandathil emphasizes the importance of addressing the demand side of sex trafficking by punishing those who purchase the services of trafficked women. Last, the importance for increasing education, training and public awareness are all stressed as means to reduce the trafficking issue.

King, Sarah. “Human Trafficking: Addressing the International Criminal Industry in the Backyard.” *University of Miami International and Comparative Law Review*, 15 (Spring 2008): 369.

King traces the modern legislative development in the trafficking in persons arena, comparing international law with U.S. law and the laws of individual U.S. states. King acknowledges trafficking in persons as a criminal industry that requires distinct laws apart from kidnapping. Attention is paid to the victim centered approach of much of the legislation, where victims are protected after the event from further harm within foreign legal systems.

McClain, Takiyah Rayshawn, “An Ounce of Prevention: Improving the Preventative Measures of the Trafficking Victims Protection Act.” *Vanderbilt Journal of Transnational Law*, 40 (March 2007): 579.

This article argues that the U.S. Trafficking Victims Protection Act (TVPA) is primarily focused upon the after-effects of trafficking and needs to do more to prevent trafficking in the first place. McClain argues that the root of the problem can only be addressed through the tackling of issues such as gender and economic

inequalities. The U.N. Protocol is cited as an example of a better instrument with regard preventative measures and a human rights approach is also considered.

McKeown, Margaret, M. and Ryo, Emily, “The Lost Sanctuary: Examining Sex Trafficking Through the Lens of United States v. Ah Sou.” *Cornell International Law Journal*, 41 (Fall 2008): 739.

This article discusses one of the earliest court cases of trafficking for sexual exploitation in American history, *United States v. Ah Sou*. The authors look through the lens of Ah Sou’s legal battle to investigate the development of international human rights norms, the “domestication” of these norms in U.S. law, and the significance of these changes for the protection of trafficking victims in the twenty-first century. Ah Sou was deported in 1906. The purpose of this article is to answer the question of whether today’s legal regime would provide a legal remedy for Ah Sou. In framing the inquiry this way, the authors evaluate developments in international human rights law and U.S. domestic law in their historical context by using the case of Ah Sou as a measurement.

Medige, Patricia, “The Labyrinth: Pursuing a Human Trafficking Case in Middle America.” *Journal of Gender, Race and Justice*, 10 (Winter 2007): 269.

This article critiques the protections available to trafficking victims and uses the 2006 Migrant Farm Workers’ Case in Colorado as an example. Medige criticizes the number of agencies involved in any one anti-trafficking case. At a minimum, Medige advocates for the establishment of a clearing house or ombudsman overseeing prosecution and victim assistance and a system of legal representation.

Merzon, Sonia, “Extraterritorial Reach of the Trafficking Victims Protection Act.” *George Washington International Law Review*, 39 (2007): 887.

This note attempts to determine whether the United States can do more for victims of trafficking in countries where prosecution of human trafficking is prevented by corruption, lack of resources, or absence of political will by applying the U.S. Trafficking Victims Protection Act of 2000 (TVPA), to prosecute human traffickers for acts committed outside of the United States. Merzon highlights instances of successful implementation of the TVPA’s “global reach” provisions, citing examples of improved law enforcement capabilities in other countries and introduces the idea of extending U.S. domestic laws to try human traffickers for acts committed in other countries, if those countries failed to prosecute the perpetrators. According to Merzon, in some circumstances, even in the absence of any territorial links to the crime of human trafficking, the United States can and should extend the TVPA to punish human traffickers through the exercise of universal prescriptive jurisdiction.

Lee, Suzy and Song, Charles, "Between a Sharp Rock and a Very Hard Place: The Trafficking Victims Protection Act and the Unintended Consequences of the Law Enforcement Cooperation Requirement." *Intercultural Human Rights Law Review*, 1 (2006): 133.

This article discusses the Trafficking Victims Protection Act (TVPA) that was passed by United States Congress in 2000 and the requirement stated in the Act to comply with all law enforcement requests in order to receive a T-Visa. The authors argue that the law enforcement cooperation requirement should be eliminated because the T Nonimmigrant status provisions within the TVPA are too narrow. Lee and Song discuss the idea that the requirement to cooperate with law enforcement is unnecessary due to the fact that victims can be subpoenaed to testify by prosecutors as witnesses, as well as be designated as material witnesses, thereby requiring potentially uncooperative witnesses to post bond, report regularly to law enforcement officers, or even remain in detention until the relevant testimony is obtained. The authors believe that these methods can be more effective than the requirement stated in the TVPA. The requirements under the TVPA are putting victims of trafficking in a very difficult situation of choosing either cooperating with law enforcement or being removed from the United States. Due to this tough decision, victims of trafficking are not receiving much needed protection, and the prosecutorial means for punishing and preventing the crime of human trafficking may be suffering as well.

Starks, Victoria L., "The U.S. Government's Recent Initiatives to Prevent Contractors from Engaging in Trafficking in Persons: Analysis of Federal Acquisition Regulation Subpart." *Public Contract Law Journal*, 37 (Summer 2008): 879.

This article discusses the complicity of military contractors in human trafficking, through the utilization of forced labor. According to the author, some contractors in areas such as Afghanistan and Iraq use trafficked laborers, because their work is cheaper and because the risk of punishment is relatively small. The article outlines the problem of human trafficking, the initiatives that the U.S. government has undertaken in the fight against human trafficking, and the interaction between government contracts and trafficking. The article then discusses the strengths and weaknesses of the Federal Acquisition Regulation Subpart 22.17 enacted in 2006 and outlines necessary future steps on the part of the U.S. government to prevent contractors from engaging in human trafficking.

Stevens, Rachel, "The Trafficking of Children: A Modern Form of Slavery, Using the Alien Tort Statute to Provide Legal Recourse." *Whittier Journal of Child and Family Advocacy*, 5 (Spring 2006): 645.

While acknowledging that creation of domestic laws designed to combat trafficking in persons is an excellent foundational framework on the part of individual nations,

the author identifies a need for further action. The article suggests that the solution can be found in the form of the Alien Tort Statute (ATS), a United States law that grants U.S. federal courts jurisdiction over “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” Stevens concludes that the trafficking of children is a modern form of slavery and is thus actionable against private individuals under ATS and applicable case law. Therefore, the ATS is a powerful tool of concerned parties and child victims in responding to the trafficking of children in today’s international society.

Tiefenbrun, Susan W., “The Cultural, Political, and Legal Climate Behind The Fight to Stop Trafficking in Women: William J. Clinton’s Legacy To Women’s Rights.” *Cardozo Journal of Law & Gender*, 12 (Summer 2006): 855.

This article examines the Clinton administrations’ furtherance of women’s rights in the United States. The culmination of this effort was the Trafficking Victims Protection Act (TVPA) of 2000. Tiefenbrun is complimentary of the Clinton administration’s efforts, concluding it to have left an unprecedented legacy in the furtherance of women’s rights. Three sources of women’s rights legislation are examined: Family and Medical Leave Act of 1993; Violence Against Women Act of 1994; and, the TVPA of 2000 and subsequent reauthorizations. It is suggested that a cultural change has occurred in the attitude toward women as a consequence of the administration’s behavior, a change that has also affected the Bush administration.

Tiefenbrun, Susan W., “The Domestic And International Impact Of The U.S. Victims of Trafficking Protection Act Of 2000: Does Law Deter Crime?” *Loyola University Chicago International Law Review*, 2 (Spring/Summer 2005): 193.

This article is a study of the effectiveness of the U.S. Trafficking Victims Protection Act (TVPA) in combating human trafficking both in the U.S. and in other countries. The author measures the TVPA impact using a number of metrics from the U.S. Department of Justice, the annual Trafficking in Persons reports issued by the U.S. Department of State, as well as a number of Congressional Hearings on the subject. Some of the metrics utilized include arrest and prosecution statistics, evaluation of victim protection programs and assessment of trafficking legislation outside the U.S. The author concludes that the TVPA has contributed to the fight against human trafficking domestically and internationally, and discusses in detail the different accomplishments of the legal instrument.

Tiefenbrun, Susan W., “Sex Slavery in the United States and the Law Enacted to Stop it Here and Abroad.” *William and Mary Journal of Woman and the Law*, 11 (Spring 2005): 317.

Tiefenbrun examines the impact the Trafficking Victims Protection Act (TVPA) has had on human trafficking and sex slavery elimination. Statistics alone do not

adequately convey the effect the TVPA has had, as they are often unreliable and reflect a largely clandestine industry. According to Tiefenbrun, the U.S. had by the year 2000 recognized its insufficient efforts in combating human trafficking, prompting the signing of the TVPA. The TVPA and the annual Trafficking in Persons Report (TIP) reports have garnered much international support and yielded many positive results including the prosecution of several trafficking individuals and crime rings, the protection of victims as well as several health and social benefits for victims.

Tiefenbrun, Susan W., “Updating the Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?” *Case Western Reserve Journal of International Law*, **38** (2006-2007): 249.

The article examines the impact of the U.S. Trafficking Victims Protection Act (TVPA) on the crime of sex trafficking, enforcement of the law, and progress resulting from the law since October 2000, on both a domestic and international level. According to Tiefenbrun, the TVPA has had a slow but steady domestic and international impact on sex trafficking activities. Domestically, there is no doubt that the TVPA has helped reform the flawed United States policy of punishing the sex-trafficked victim rather than the perpetrator. The TVPA has also resulted in a small, but important, increase in arrest and convictions of traffickers both in the United States and in some countries abroad, where financial assistance and advice of the United States have been used effectively to amend existing trafficking laws or create new laws imitating the TVPA. Internationally, the TVPA has resulted in the increase of U.S. economic and social assistance to other countries to support the creation, enactment and enforcement of anti-trafficking legislation abroad.

Torg, Cynthia, S., “Human Trafficking Enforcement in the United States.” *Tulane Journal of International and Comparative Law*, **14** (Spring 2006): 503.

Torg asserts that while efforts to protect victims and prevent further victimization are clearly important goals for the United States and the international community, effective prosecution is the most important factor to eradicating human trafficking. Prosecution, combined with the imposition of significant penalties, not only provides protection by eliminating the perpetrator’s immediate ability to exploit the victim, but also serves to deter future criminal acts. Concerted efforts must be made to apprehend and incarcerate traffickers, seize their assets, disrupt transportation pipelines, and eliminate the corruption that facilitates human trafficking. This essay describes the approaches adopted by the United States in order to target both the supply and demand sides of trafficking, including multiagency task forces and the passage of the 2005 U.S. Trafficking Victims Protection Reauthorization Act (TVPRA). Additionally, the author describes the need for aggressive and

innovative actions on the parts of prosecutors and law enforcement in order to keep trafficking at the forefront of the public concern.

Wolken, Cynthia L., “Feminist Legal Theory and Human Trafficking in the United States: Towards a New Framework.” *University of Maryland Law Journal of Race, Religion, Gender and Class*, 6 (2006): 407.

The article explores how the current legal framework on combating human trafficking is failing; why it is failing, and what can be done to improve it. Wolken outlines and summarizes the current social and political attitude toward global human trafficking, which almost completely fixates on sex trafficking to the exclusion of other forms of exploitation. According to Wolken, the current feminist frameworks are contributing to ineffective policies for protecting trafficking victims. While subordination and cultural feminism theories have proven inadequate as applied to human trafficking in the United States, their deconstruction and application will be useful in formulating a better feminist theory on the relationship between gender and dominance in the trafficking industry. However, a human rights framework might be the best—or even the only—successful framework to address and incorporate the experience of all trafficking victims into the discourse, regardless of their status. It will more effectively marry theory and political strategy and place human trafficking where it belongs, in the larger context of globalization and the exploitation of groups of people based on their race, class, religion, country of origin and (rather than only) gender.

Trafficking in Persons under United States State Law

Butkus, Adam S., “Ending Modern Day Slavery in Florida: Strengthening Florida’s Legislation in Combating Human Trafficking.” *Stetson Law Review*, 37 (Fall 2007): 297.

This article argues the importance of first understanding the various elements of the modern definition of human trafficking in order to know how to prevent it, punish its perpetrators and protect its victims. This article also analyses the multiple legislative changes the Congress and particularly the state of Florida have been making in order to eliminate human trafficking within United States territory.

Garber, Matthew, “Chapter 240: Human Trafficking – Combating the Underground Slave Industry in California.” *McGeorge Law Review*, 37 (2006): 190.

This article outlines the reasons behind enacting Chapter 240 into California law to combat human trafficking. Garber states that Chapter 240 will provide criminal penalties for the violation of trafficking; it will create a new civil cause of action

for human trafficking; and it will set forth requirements to protect victims from the undesirable immigration consequences that may result from reporting a human trafficking violation. This article closes with the suggestion that state legislators should encourage a more effective approach to combat trafficking by revising criminal statutes and partnering with the federal government.

Kuhn, Jennifer A. and Stankus, Alison L., “Effective Implementation of the Trafficking of Persons and Involuntary Servitude Articles: Lessons from the Criminal Justice System Response to the Illinois Domestic Violence Act.” *Northern Illinois University Law Review*, 28 (Spring 2008): 215.

Kuhn and Stankus perceive the history of domestic violence and corresponding legislation in Illinois to be critical to understanding how to address the problem of human trafficking. A history of the difficulties of the Illinois Domestic Violence Act is used to predict barriers to the effective implementation of the Trafficking Articles added in 2005 to the Illinois Criminal Code. Kuhn and Stankus conclude that legislative action alone is insufficient to protect victims of human trafficking and that the criminal justice system itself must take proactive measures to implement the harsher penalties in prosecutions and deliver the victim assistance available under legislation. This will ensure that victims of trafficking become protected in the way that victims of domestic violence failed to be.

Mariconda, Stephanie, L., “Breaking the Chains: Combating Human Trafficking at the State Level.” *Boston College Third World Law Journal*, 29 (Winter 2009): 151.

Mariconda argues that additional actions must be taken on a state level within the United States to combat trafficking in persons. This article is separated into three parts. Part One addresses the different industries that take advantage of human trafficking within the United States, as well as analyzes how the human trafficking industry operates and the effects on victims. Part Two discusses current federal legislation to combat human trafficking with an overview of the MANN Act, Trafficking Victims Protection Act and the PROTECT Act. Part Three discusses state anti-trafficking legislation with an analysis of a potential Massachusetts Bill as an example for other states to follow.

Payne, Michael C., “The Half-Fought Battle: A Call for Comprehensive State Anti-Human Trafficking Legislation and a Discussion of how States Should Construct Such Legislation.” *Kansas Journal of Law and Public Policy*, 16 (2006): 48.

This article attempts to raise awareness of the issue of human trafficking into the United States and the measures taken to address the problem. It is argued that the

covert nature of the crime in the 21st century requires more than enacting simple anti-slavery legislation to unshackle the victims. Although this crime is a global epidemic, this article seeks to discuss what can and must be done by the people of the United States to eradicate human trafficking and its effects here. This article also demonstrates that Congress and state legislatures must take aggressive actions to prevent the trafficking of human beings into the U.S., to prosecute perpetrators of this crime and to protect its victims. Although the federal government has taken proactive and commendable steps towards reducing the number of individuals who are subjected to the perils of this evil industry, those steps are primarily oriented towards prosecuting traffickers and preventing future trafficking. According to Payne, the Trafficking Victims Protection Act (TVPA) of 2000 and the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 relating to protecting and assisting those individuals who have already fallen victim to trafficking are largely superficial and fail to take into account the true problems faced by trafficking victims—fear, confusion, ignorance, and poverty. This void must be filled by enactment of state-level anti-human trafficking legislation. Because of their more immediate accessibility, state and local agencies, along with private charities, are better equipped than federal agencies to meet the urgent needs of trafficking victims.

Richard, Stephanie, “State Legislation and Human Trafficking: Helpful or Harmful?” *University of Michigan Journal of Law Reform*, 38 (Winter 2005): 447.

Richard argues that state legislation, which has not included any of the comprehensive protections for victims found in the Victims of Trafficking and Violence Protection Act (VTVPA), raises serious concerns about victims’ access to social service benefits, immigration status, witness protection, effective investigations, and legal remedies. Given these concerns, the article concludes that states should tailor future legislation in this area to more fully meet the needs of victims. Identifying human trafficking as a highly prevalent human rights violation within U.S., Richard concludes that a multidimensional anti-trafficking approach between both state and the federal government is required. The VTVPA sets the best available benchmark for such a comprehensive approach, as it addresses the delicate balance between prosecution of perpetrators and protection of victims.

Tanagho, John, “New Illinois Legislation Combats Modern-Day Slavery: A Comparative Analysis of Illinois Anti-Trafficking Law with its Federal and State Counterparts.” *Loyola University Chicago Law Journal*, 38 (Summer 2007): 895.

This comment describes the Illinois Anti-Trafficking Law (“Trafficking in Persons and Involuntary Servitude Act 2005”) and compares it to federal and state anti-

trafficking legislation. Tanagho concludes that Illinois has been largely successful both legislatively and at the executive level, but also critiques that lack of regulation regarding mail-order brides and the absence of legislation criminalizing sex tourism.

Vergara, Vanessa B. M., “Looking Beneath the Surface: Illinois’ Response to Human Trafficking and Modern-Day Slavery.” *University of Toledo Law Review*, **38** (Spring 2007): 991.

This article is a discussion of the Illinois anti-trafficking legislation and the Illinois Rescue and Restore Campaign; as well as the State Executive’s initiative that partners with the federal government to raise awareness and provide training to those most likely to encounter victims of trafficking. Vergara commends Illinois for its approach and urges other States and first-responders to follow suit.

Country and Regional Case Studies on Trafficking in Persons

Amiel, Alexandra, “Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation.” *Buffalo Human Rights Law Review*, **12** (2006): 5.

Despite being a violation of every major human right, the author argues that human trafficking has not been traditionally treated as a human rights issue. With a focus on the European approach to combating trafficking, specifically trafficking of women into and within the European Union (EU), Amiel concludes that in order to eradicate the trafficking problem, states must adopt a “multi-disciplinary, integrated, holistic and coordinated approach that focuses on (i) preventing trafficking, (ii) punishing the perpetrators and (iii) protecting, rehabilitating and reintegrating the victims.” States must follow the lead of the Council of Europe in integrating a human rights perspective into their current counter-trafficking strategies. These counter-trafficking measures should also aim to improve the economic, social and cultural rights of susceptible individuals rather than affording victims minimal civil and political rights. The article concludes that the root causes of trafficking must first be targeted and eradicated within origin countries, and victims must be empowered through education and opportunities within their own countries, in order for the number of vulnerable victims be diminished.

Askola, Heli, “Violence Against Women, Trafficking and Migration in the European Union.” *European Law Journal*, **13** (March 2007): 204.

This article examines the evolving European Union (EU) policy against human trafficking, especially trafficking that targets migrant women for sexual exploitation. It maintains that even though action against trafficking is now firmly on the

EU agenda, current policies excessively focus on repressive measures and lack attention to the broader setting in which the exploitation of migrants takes place.

Braspenning, Cindy, “Human Trafficking in the Netherlands: The Protection of and Assistance to Victims in Light of Domestic and International Law and Policy.” *Intercultural Human Rights Law Review*, 1 (2006): 323.

This paper provides insights into Dutch policy regarding the protection of and assistance to victims of human trafficking. After an introductory analysis of their treatment and legal rights, the author then compares the protection and assistance provided to victims of human trafficking in the Netherlands with two established international policy frameworks. These two frameworks; the Protocol to Prevent, Suppress and Punish Trafficking Persons, Especially Women and Children and the Organization for Security and Co-operation in Europe’s Action Plan to Combat Trafficking in Human Beings, serve as important elements in the fight against this global problem. Braspenning suggests that any further efforts taken to combat human trafficking will not be effective without a holistic, interdisciplinary, and long-term approach that addresses all aspects of the human trafficking problem. Additionally, the author makes several recommendations to the Dutch government to increase its effectiveness in the fight against human trafficking.

Caraway, Nancie, “Human Rights and Existing Contradictions in Asia-Pacific Human Trafficking Politics and Discourse.” *Tulane Journal of International and Comparative Law*, 14 (Spring 2006): 295.

This article focuses on the efforts of Asian countries to deal with the problem of trafficking in persons, commencing with the 2000 Asian Regional Initiative Against Trafficking (ARIAT) action plan. Caraway looks at the unique impact trafficking has had on the Asian world and how this is fuelled by demand from both Western and Asian males. The article also considers the role of sweatshops in Asia and notes that vulnerable populations will ultimately make purely economic choices that can often result in trafficking. The need to clearly conceptualize trafficking is articulated and a different approach between addressing trafficking in women and trafficking in children, for example, is advocated. Caraway commends certain Asian countries on their efforts but ultimately concludes that trafficking still exists because there is a lack of political will to tackle it.

Cicero-Domínguez, Salvador A., “Assessing the U.S.-Mexico Fight against Human Trafficking and Smuggling: Unintended Results of U.S. Immigration Policy.” *Northwestern University Journal of International Human Rights*, 4 (December 2005): 303.

The author discusses the differences between human trafficking and human smuggling, specifically across the U.S.-Mexico border. Cicero-Dominguez

describes the international and domestic laws in Mexico that apply to human trafficking, as well as the assessment of the trafficking problem in Mexico, based on U.S. government evaluations. The strict U.S. immigration and deportation laws, along with the lack of sufficient information sharing between the U.S. and Mexican authorities, have resulted in a number of criminal deportees remaining in border towns in Mexico and engaging in criminal activity there. The author also discusses some positive developments in addressing both human smuggling and human trafficking, on the part of both the U.S. and Mexico and provides a number of proposals for increased inter-country collaboration.

Crawford, Christa Foster, “Cultural, Economic and Legal Factors Underlying Trafficking in Thailand and their Impact on Women and Girls from Burma.” *Cardozo Journal of Law & Gender*, 12 (2006): 821.

This article presents a study of the trafficking of women and girls in Thailand and recommends that the demand side of prostitution be further addressed. Crawford makes further recommendations to trafficking policy, asylum policy, migration policy, labor policy and emphasis is placed upon the need for an economic alternative to prostitution for trafficking victims.

Dietel, Clara A., “‘Not Our Problem:’ Russia’s Resistance to Joining the Convention on Action Against Trafficking in Human Beings.” *Suffolk Transnational Law Review*, 32 (Winter 2008): 161.

This article explores the approach of the Council of Europe on Convention on Action against Trafficking in Human Beings to preventing human trafficking and Russia’s decision not to sign it. Dietel first looks at the historical overview of human trafficking, in both Russia and the rest of the world. The article then takes the reader through the development of the trafficking convention by the Council of Europe, and analyzes Russia’s refusal to sign the convention. Finally, Dietel proposes that Russia must sign the Trafficking Convention to effectively prevent and combat human trafficking.

Histed, Christine, “Turning the Red Light Green: Bulgarian Accession into the European Union and Its Impact on Sex Trafficking.” *Temple International and Comparative Law*, 21 (Fall 2007): 387.

This article discusses the many challenges Bulgaria will have to address regarding human trafficking due to its recent accession to the European Union. Bulgaria will need to work actively not only with the European Union itself in order to fulfill its requirements, but also with NGOs in order to address the underlying causes of trafficking and attempt to eradicate the roots of trafficking problems. The author recommends that Bulgaria use its position as a new member state in the European Union to combat trafficking women.

Kalaitzidis, Akis, “Human Smuggling and Trafficking in the Balkans: Is it Fortress Europe?” *Journal of the Institute of Justice and International Studies*, (2005): 1.

In this article, Kalaitzidis argues that transnational crime organizations are responsible for the huge increase in human smuggling and trafficking because these organizations have only recently come under strict analysis. Specifically, European efforts to control irregular migration in the Balkan region are examined. The definition for the concept of transnational crime, human smuggling, and human trafficking are also included in this article. Kalaitzidis discusses the idea of “Fortress Europe” and how the region is affected by human trafficking and smuggling. A conclusion is reached that Europe is unable to deal with both smuggling and trafficking because there is no common policy for the entire region. Even with border controls, there is a steady flow of illegal immigrants, many controlled by transnational criminal organizations. Kalaitzidis provides minimal optimism that Europe will be able to reduce the number of victims from smuggling and trafficking.

Leevan, Sarah, “Comparative Treatment of Human Trafficking in the United States & Israel: Financial Tools to Encourage Victim Rehabilitation and Prevent Trafficking.” *Cardozo Public Law, Policy and Ethics Journal*, 6 (Spring 2008): 773.

The United States has the finances and is in a global position to respond effectively to trafficking in persons. It has emerged as the dominant global force by enacting local legislation recognizing the international nature of the problem and demanding accountability from the rest of the world. Israel, like the United States, is home to hundreds, even thousands, of trafficking victims. Israel’s strategic and equally accessible location relative to Africa, Europe, and Asia as well as its relatively porous border with Egypt permits Israel to serve both as a destination and a transit country for migrants and victims of trafficking. Additionally, both Israel’s legalized prostitution industry and Israeli social perceptions of foreigners from third-world countries allow widespread ignorance of the existence of sex and labor trafficking. This article examines the differences between the United States and Israeli policy and emphasizes the importance of creating a legal definition for trafficking in persons. Leevan argues that neither country provides sufficient means of financially empowering victims of trafficking. It is suggested that property confiscated from traffickers under legislation should be used to directly compensate victims.

Lindo, Victoria, "The Trafficking of Persons into the European Union for Sexual Exploitation: Why It Persists and Suggestions to Compel Implementation and Enforcement of Legal Remedies in Non-Complying Member States." *Boston College International and Comparative Law Review*, 29 (Winter 2006): 135.

This article focuses on human trafficking in the European Union (EU) and discusses some of the factors that have allowed this problem to persist, despite measures on the part of EU states to combat it. The article provides a brief overview of sex trafficking into the European Union and summarizes the measures taken by the Union to address the problem, as well as the progress attained by individual member states in the implementation and enforcement of legislation. Finally, the author provides a number of recommendations that would help member states improve their legislative measures against human trafficking and provides a statistical summary table showing the status and merit of anti-trafficking work within each European Union country, based on the 2005 U.S. Trafficking in Persons Report. The author concludes that the absence of strong implementation on the part of individual EU members and the insufficient attention paid to preventing human trafficking within the EU are two of the factors that have allowed the trafficking in persons to continue. The author suggests using penalties against member states that are not putting sufficient efforts into their anti-trafficking work.

MacIntosh, Constance, "Assessing Human Trafficking in Canada: Flawed Strategies and the Rhetoric of Human Rights." *Intercultural Human Rights Law Review*, 1 (2006): 407.

Despite Canada's reputation as a strong advocate of human rights, and even recent reports that the country continues to fight on behalf of the victims of trafficking, in 2003 Canada was downgraded to a Tier 2 country in the U.S. Department of State's Trafficking in Persons Report. Canada's downgraded ranking reflected deficiencies in two key areas: conviction of traffickers and protection of victims. In this article, MacIntosh argues that Canada's rhetoric of protecting the human rights of trafficking victims is at odds with its practice, in that trafficking victims are treated essentially the same as any other irregular migrant. In addition to an overview of the available information regarding the extent of trafficking in Canada, the author closely examines the consequences of the Canadian strategy for trafficking victims, as well as its success (or failure) in meeting the obligations set forth within the various conventions it is a party to.

Mattar, Mohamed, Y., "State Responsibilities in Combating Trafficking in Persons in Central Asia." *Loyola of Los Angeles International and Comparative Law Review*, 27 (Spring 2005): 145.

Mattar chooses to focus on the region of Central Asia because it is recognized as one of the most important source regions for trafficking in women and calls for the

governments of these countries to step up their efforts to combat this crime. The author outlines the scope of the problem and the different forms trafficking in the Central Asian countries takes before analyzing the factors that contribute to the particular vulnerability of women and children in Central Asia. Mattar concludes the recent independence of many Central Asian states to be a major reason for this vulnerability. The article progresses to examine the international obligations of such states with regard to trafficking, advocating for a transnational approach that involves cooperation between countries and increased involvement and proactivity from individual governments.

Morrow, Katherine L., “Soccer, Sex, and Slavery: Human Trafficking in the World Cup.” *Tulane Journal of International and Comparative Law*, 17 TLNJICL 243, (Winter 2008)

Before the 2006 World Cup in Germany, it was estimated that 40,000 women would be trafficking into the country to accommodate fans attending the event. In this article, Morrow discusses the responsibility the Fédération Internationale de Football Association (FIFA) and other athletic organizations have in the way of human rights. Additionally Morrow talks about how the German Government prepared for and combated against the estimated increase in human trafficking during the summer of 2006 and how those same tactics can be used effectively during the South African World Cup in 2010.

Munro, Vanessa E., “Stopping Traffic?” *British Journal of Criminology*, 46 (March 2006): 318.

This article describes and compares anti-trafficking initiatives in the UK, Australia, Holland, Sweden and Italy and discusses how different gaps in the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, set the stage for such domestic responses. The problem of human trafficking is explored in the context of changing global conditions and the different types of human trafficking, different from sex trafficking, are discussed. The author also highlights the difference between human trafficking and human smuggling, by pointing out the role of consent in trafficking cases.

Pochagina, Olga, “Trafficking in Women and Children in Present-Day China.” *Far Eastern Affairs*, 35 (2007): 82.

This article examines domestic features in China that play a role in the increase in trafficking in women and children. Attention is given to trafficking in children in terms of the impact of Chinese population policy, traditional child sex preferences, and the market economy. Illegal adoption is identified as another form of child trafficking, and how Russian-Chinese criminal groups pursue Russian women and children is addressed.

Raffaelli, Rosa, "The European Approach to the Protection of Trafficking Victims: The Council of Europe Convention, The EU Directive, and the Italian Experience." *German Law Journal*, 10 (March 2009): 205.

This article focuses on analyzing and evaluating the European approach to protecting victims of human trafficking. Raffaelli argues that European law is too constricted to protect victims effectively and that offering protection to all victims, whether they want to cooperate or not, is necessary in protecting human rights, as well as implementing criminal law to its fullest extent. Raffaelli illustrates that European laws are inadequate by comparing the European Council Directive 2004/81/EC and the Council of Europe 2005 Convention to the Italian Law on Protection of Trafficked Persons.

Regmi, Kumar, "Trafficking Into Prostitution in India and the Indian Judiciary." *Intercultural Human Rights Law Review*, 1 (2006): 373.

This paper provides a critique of the Indian Supreme Court's actions in the field of sex trafficking. The author argues that the Supreme Court has contributed to discrimination against trafficking victims and that a change in approach is required to address the problem of trafficking. The article includes a description of the reality of contemporary sex trafficking, a discussion of international and Indian legal instruments related to trafficking and a summary of related litigation in India. The author concludes that the Indian Supreme Court needs to take a more humane approach towards the victims of sex trafficking.

Richelson, Sarah, "Trafficking and Trade: How Regional Trade Agreements Can Combat the Trafficking of Persons in Brazil." *Arizona Journal of International and Comparative Law*, 25 (Fall 2008): 857

This article establishes the framework of trafficking in persons globally and uses Brazil as a case study in anti-trafficking efforts. Brazil combats trafficking through a combination of three different tactics: the changing of legal standards from a law-enforcement approach; the increasing of social and psychological support services from a human-rights approach; and taking action against slave labor conditions from a labor rights approach. The author addresses the idea of how trade agreements have the potential to simultaneously stimulate the economic growth necessary to improve living standards, and to reorient society to combat trafficking in the long term, just by adding language that addresses rights of workers in these agreements seeing as how they already have international standards for goods.

Sembacher, Anke, "The Council of Europe Convention on Action Against Trafficking in Human Beings." *Tulane Journal of International and Comparative Law*, 14 (Spring 2006): 435.

This article provides an in-depth analysis of the Council of Europe Convention addressing: the preamble; purpose of the Convention; definitions; victim

protections and assistance; and, methods of prevention. Throughout the article, Sembacher refers to the accompanying Explanatory Note to the Convention. At the time of writing, the Convention had not been ratified by a single nation – Sembacher discusses the possibilities for such reluctance, concluding that the strong victim assistance provisions are relatively new concepts to the Council of Europe member states.

Shah, Svati P., “Distinguishing Poverty and Trafficking: Lessons From Field Research in Mumbai.” *Georgetown Journal on Poverty Law and Policy*, 14 (Fall 2007): 441.

This article is based upon the author’s field research conducted in Mumbai, India during the course of 2002 -2003 and addresses the intersection of human trafficking and poverty. Shah discusses the dynamics of migration, citizenship and sexual commerce, preferring the discussion on human trafficking to focus on these concepts over the interplay between ‘poverty’ and ‘trafficking’ - terms Shah argues should not be used interchangeably.

Steele, Sarah, “Trafficking in People: the Australian Government’s Response.” *Alternative Law Journal*, 32 (March 2007): 18.

This article discusses the Australian Government’s legislative and policy responses to people trafficking since the 1990s. The author describes recent legislative amendments and policy initiatives and identifies issues with these developments. In particular, the author examines the government’s locating of human trafficking as an organized cross-border criminal activity, and asks if this narrow approach to the phenomenon is appropriate.

Surtees, Rebecca, “Child Trafficking in Southeastern Europe: Different Forms of Trafficking and Alternative Interventions.” *Tulane Journal of International and Comparative Law*, 14 (Spring 2006): 455.

This article seeks to challenge the normal perception of trafficking in the Southeastern Europe region as occurring in young women for the purpose of sexual exploitation. Instead, Surtees focuses the article on the trafficking of children, primarily through labor, begging, delinquency and adoption. Surtees’ purpose in writing the article is to more appropriately guide policy and programs intended to address the problem of trafficking in the region.

Tavella, Anne M., “Sex Trafficking and the 2006 World Cup in Germany: Concerns, Actions and Implications for Future International Sporting Events.” *Northwestern University Journal of International Human Rights*, 6 (Fall 2007): 196.

In her article, Tavella explores the anti-trafficking efforts employed in Germany during the 2006 World Cup, the influence and effectiveness of the international

community's preventative preparation for this event, as well as the implications for future international sporting events. In addition, she emphasizes the necessity of using events such as these as a vehicle to combat sex trafficking.

Tiefenbrun, Susan and Edwards, Christie J., "Gendercide and the Cultural Context of Sex Trafficking in China." *Fordham International Law Journal*, 32 (February 2009): 731.

The article explores how the cultural context in China contributes to various forms of human trafficking in the country. The "one-child" policy in China, combined with strong social pressures in favor of having a son in the family have led to a variety of practices, including killing baby girls, abortion of female fetuses, the purchase of trafficked baby boys to obtain a son for the family and the sale of women for marriage, to compensate for the shortage of women in the country. The article explores the international legal instruments related to human trafficking, as well as the trafficking laws in China and the U.S. It also includes a description of the various forms of human trafficking within China (both domestic and international), as well as the root causes of trafficking, which include the "one-child" policy, infanticide, sex-selective abortions and the non-registration of girl-children at birth. Finally, the article describes the changes in gender dynamics and policies in China and suggests that reforms geared towards increased gender equality are needed to combat the sex trafficking in the country.

Yun, Kerry E., "How Japan's Recent Efforts to Reduce Sex Trafficking Can Be Improved Through International Human Rights Enforcement Mechanisms: Fulfilling Japan's Global Legal Obligations." *Buffalo Human Rights Law Review*, 13 (2007): 205.

This article traces the modern history of women's status in Japan and discusses Japan's recent steps to combat trafficking, including Japan's Plan of Action and amendments to the criminal and immigration laws. Although these amendments constitute important first steps, significant problems are not addressed adequately, including the need for more effective measures to stem supply and demand of trafficking victims. According to Yun, Japan must honor its obligations under international human rights law to ensure all women's rights in Japan, and recommends non-state actors and other governments to use international human rights enforcement mechanisms to address sex trafficking within Japan. Yun is also suggesting important changes to the Japanese government in terms of additional resources and methods needed for more effective implementation and monitoring, while providing support for victims.

Books

Agustin, Laura Maria, SEX AT THE MARGINS: MIGRATION, LABOUR MARKETS AND THE RESCUE INDUSTRY, (Zed Books, 2007).

This book explodes several myths: that selling sex is completely different from any other kind of work; that migrants who sell sex are passive victims; and that the multitude of people out to save them are without self-interest. Laura Agustín makes a passionate case against these stereotypes, arguing that the label “trafficked” does not accurately describe migrants’ lives and that the “rescue industry” disempowers them. Based on extensive research among migrants who sell sex and social helpers, *Sex at the Margins* provides a radically different analysis. Frequently, says Agustín, migrants make rational choices to travel and work in the sex industry. Although they are treated like a marginalized group they form part of the dynamic global economy. This book helps to understand the increasingly important relationship between sex markets, migration and the desire for social justice.

ASEAN AND TRAFFICKING IN PERSONS: USING DATA AS A TOOL TO COMBAT TRAFFICKING IN PERSONS, (International Organization for Migration, 2007).

To succeed in the fight against such trafficking, ASEAN member countries need access to the best possible information. This includes the raw data about the trafficking situation, and the information and knowledge this can generate about “what will work” to prevent trafficking, protect victims and prosecute traffickers. This report is the first step in getting access to better data and ultimately better information and knowledge about trafficking in persons.

Askola, Heli, LEGAL RESPONSES TO TRAFFICKING IN WOMEN FOR SEXUAL EXPLOITATION IN THE EUROPEAN UNION, (Hart Publishing, 2007).

This book looks to the European Union approach to combating trafficking in women for sexual exploitation and attempts to analyze comprehensively the advent of trafficking itself and also ways to best address the problem. The book looks at trafficking in women for the purpose of sexual exploitation from a migration policy context, but also from the perspective of prostitution and the Free Movement principle which underpins the Union. In Chapter 5 Askola conducts an in-depth study of the legislative anti-trafficking framework in the EU and the need for criminal justice cooperation between states. The book closes by investigating the international position of trafficking by positioning trafficking within the framework of a violation of women’s human rights. In the conclusion Askola remarks that there exists a general reluctance throughout the European Union to engage in the debate as to whether or not trafficking policies should also tackle the issue of demand for the sexual services so often provided by victims of trafficking.

Bales, Kevin, ENDING SLAVERY: HOW WE FREE TODAY'S SLAVES (University of California Press, 2007).

The author provides a guide for eliminating the plague of slavery that continues to this day, involving some 27 million slaves worldwide producing \$13 billion in goods and services. Bales provides a thorough overview of slavery, including its history, its methods, the lives of its victims around the world and the conditions under which it flourishes (modern slaves “are cheap, and they are disposable”); most importantly. He considers practical matters, including fundraising, increasing awareness among the general public and convincing governments to pay attention.

Batstone, David, NOT FOR SALE: THE RETURN OF THE GLOBAL TRADE AND HOW WE CAN FIGHT IT, (Harperone Publisher, 2007).

With 2007 bringing the 200th anniversary of the climax of the 19th century abolitionist movement, the world pays tribute to great visionary figures such as William Wilberforce and Frederick Douglass for their remarkable strides toward framing slavery as a moral issue that people of good conscience could not tolerate. This anniversary serves as a reminder that slavery and bondage still persist in the 21st century. Trafficking in people has become increasingly transnational in scope and highly lucrative. Human trafficking is today the third most profitable criminal activity in the world, generating \$31 billion annually.

Brown, Eleanor, “Out of Sight, Out of Mind? Child Domestic Workers and Patterns of Trafficking in Cambodia.” *International Organization for Migration*, (January 2007).

The book talks about the process and mechanisms of trafficking within Cambodia for two target groups, commercially sexually exploited women and girls and child domestic workers. The research objectives sought to understand how the pull factors in different provinces lead to migration and trafficking. It also tries to understand how the process of migration could constitute trafficking.

Cameron, Sally and Newman, Edward, TRAFFICKING IN HUMANS: SOCIAL, CULTURAL AND POLITICAL DIMENSIONS, (United Nations Press, 2008).

This publication aims to deepen understanding of the social, economic and political contexts of human trafficking: the recruitment and transportation of human beings through deception and coercion for the purposes of exploitation. It gives a voice to ‘critical’ views which argue that trafficking challenges are inseparable from broader debates about human rights and migration.

DeStefano, Antony M., THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED, (Rutgers University Press, 2007).

DeStefano opens this book by narrating a variety of specific stories of human trafficking situations presently occurring in the United States. The author then

outlines the global response to trafficking, including an in-depth narrative on the development of the United Nations Trafficking Protocol and events leading up to the enactment of the U.S. Trafficking Victims Protection Act of 2000. Attention is also given to the impact of September 11th, 2001 and the war in Iraq on U.S. policy toward organized crime and trafficking in persons.

Dewey, Susan, *HOLLOW BODIES: INSTITUTIONAL RESPONSES TO SEX TRAFFICKING IN ARMENIA, BOSNIA, AND INDIA*, (Kumarian Press, 2008).

Dewey outlines her main goal in writing this book as a means of demonstrating how sex trafficking and institutional responses to it are social processes supported both directly and indirectly by the complicity of societies. Out of her three ethnographic studies in Chapters 3, 4 and 5, of Armenia, Bosnia and India, the author perceives bureaucracy and social discrimination to consistently hinder counter-trafficking efforts. Trafficking in women for the purposes of sexual exploitation is considered to be comprised of four elements: movement to at least one location away from an individual's choice of origin; prostitution; female gender; and a lack of life choices.

GLOBAL TRAFFICKING IN WOMEN AND CHILDREN, (Obi N.I. Ebbe and Dilip K. Das ed., Taylor & Francis Group, 2008).

All four chapters in Part I of this book are written by the same author, Obi N.I. Ebbe and focuses on presenting an overview of the trafficking phenomena. It addresses the definition, nature and scope, causes and control and prevention efforts regarding trafficking in women and children. Part II of the book presents chapters by individual authors focusing on case studies in specific countries: Japan, China, India, Nigeria, Nepal, Bosnia & Herzegovina, Moldova, the United States of America, Sierra Leone, the United Kingdom, Australia and Croatia are all addressed. Few of the chapters also focus the country case study on law enforcement and the operational perspectives on combating trafficking.

HUMAN TRAFFICKING, (Maggy Lee ed., Willan Publishing, 2007).

This book is a compilation of papers on different aspects of trafficking in persons. A number of regions are considered in different papers: Liz Kelly looks at Central Asia; and Ewa Morawska at Eastern Europe. Both Mary Bosworth and Michael Grewcock consider trafficking from an immigration perspective, the former 'Immigration detention in Britain' and the latter, 'Australia's war on illicit migrants.' Linquist and Piper in their joint effort discuss the connection between HIV/AIDS and counter-trafficking as contemporary forms of global problems. They highlight three types of relationship between HIV/AIDS and trafficking: one, recent responses to both show a degree of organizational continuity, as NGOs and IGOs are key players in both; two, the female prostitute is a 'critical 'site'' of intervention in both; and three, both are subject to the control of particular state interests in the absence of political will to implement a rights-centered framework.

Di Nicola addresses in her paper the age-old problem of researching into human trafficking; she looks at definitional problems, methodological limitations, inaccessibility of traffickers and victims and political sensitivities.

HUMAN TRAFFICKING, HUMAN SECURITY AND THE BALKANS, (H. Richard Friman and Simon Reich ed., University of Pittsburgh Press 2007).

This book deals comprehensively with the issue of trafficking in persons in the Balkans. It is a compilation of works, considering: the effect of Albania's transition to democracy on human trafficking; policy responses by Balkan states to the onslaught of human trafficking; international efforts to combat trafficking; the role of peacekeepers and their involvement in trafficking in persons in Bosnia and Herzegovina, the political and global dimensions to combating trafficking in the Balkans; and the compulsory status of transnational efforts. To close, the editors contribute an analysis of human trafficking from a human security perspective.

Locher, Birgit, TRAFFICKING IN WOMEN IN THE EUROPEAN UNION: NORMS, ADVOCACY-NETWORKS AND POLICY CHANGE, (VS Verlag 2007).

This book emerged as the product of the author's 2002 dissertation thesis. Locher begins by considering the structure of the European Union and the theories behind its integration. The purpose in devoting chapter two to early European integration is to try and extract a constructivist ontology that could also be used to understand the current empirical study on human trafficking. Locher then turns to norms in international politics, particularly EU politics as a means of explaining trafficking in women. Specifically, she argues that the policies of the EU are expressions of the anti-trafficking norm at the regional level. Chapter 4 completes the theoretical section of the book by outlining a framework for analysis upon which the empirical chapters of this book are based. Locher argues through her analysis that the early absence of EU anti-trafficking policies is a result of the disjuncture between norm adoption and norm implementation.

Mam, Somaly, THE ROAD OF LOST INNOCENCE, (Anne Carriere Paris, 2005; Virago Press, 2008 transl.).

The Road to Lost Innocence is a memoir of the author's early life in Cambodia in which she recounts her own story of becoming a trafficking victim, living in brothels from the age of 12. In her early twenties, Mam escaped with the assistance of a French aid worker to become an activist and fervent fighter against trafficking organizations in Cambodia and elsewhere. Mam is cofounder and president of 'Acting for Women in Distressing Situations' (AFESIP) and president of the 'Somaly Mam Foundation, a U.S. based organization.

MEASURING HUMAN TRAFFICKING: COMPLEXITIES AND PITFALLS, (Ernesto U. Savona and Sonia Steffanizzi ed., Springer Science + Business Media 2007).

This book is comprised of selected papers presented at the International Scientific and Professional Advisory Council (ISPAC) of the United Nations Crime Prevention and Criminal Justice Programme's international Conference on "Measuring Human Trafficking: Complexities and Pitfalls" held in Courmayeur Mont Blanc, Italy in December 2005. It addresses the definition of trafficking in human beings, the complexities of gathering accurate and credible data measuring the scope of the problem and the viability of qualitative and quantitative research.

Obokata, Tom, TRAFFICKING OF HUMAN BEINGS FROM A HUMAN RIGHTS PERSPECTIVE: TOWARDS A HOLISTIC APPROACH, (Martinus Nijhoff Publishers, 2006).

Obokata's book is based on the doctoral thesis he completed at the University of Edinburgh. Obokata's goal is to analyze human trafficking from a human rights perspective delving deeply into the obligations of individual states under international human rights law as well as those of non-state actors. The author considers such issues as the role intergovernmental and non-governmental organizations can play in the fight to combat trafficking in persons as well as national case studies from Thailand, Poland and the United Kingdom.

Parrot, Andrea and Cummings, Nina, SEXUAL ENSLAVEMENT OF GIRLS AND WOMEN WORLDWIDE, (Praeger Publishers, 2008).

This book investigates sexual slavery in all its forms, including, trafficking, war-induced sexual slavery, ritual sexual slavery, forced marriage and sexual servitude. It also looks at the legislation and initiatives introduced by states to prevent sexual exploitation. Chapter 8, highlights specific instances of 'shining stars'; individuals, NGOs and national governments who have taken strong and courageous steps in an effort to combat sexual slavery and trafficking in women. Chapter 10 addresses the U.N. Declaration on the Elimination of Violence Against Women of 1993, the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons and closes with a look at some of the positive outcomes of the initiative to fight sex slavery such as the right of a victim to compensation.

Penttinen, Elina, GLOBALIZATION, PROSTITUTION AND SEX-TRAFFICKING: CORPOREAL POLITICS, (Routledge, Taylor & Francis Group, 2008).

This book has its origins in the author's PhD thesis. Penttinen explores the relationship between globalization and the sex industry, concluding that globalization has 'subjectivated' individuals in a gendered and ethnicized way. The growth of what Penttinen calls the 'sexscape' has been fostered by neoliberalism and the economic restructuring and libertarian ideologies that justify the

commercialization and commodification of individual bodies which accompany it. 'Sexscapes' is the business of the excluded whose only option is to perform as a means of survival. The global sex industry is also described as a form of 'shadow globalization' and the "Eastern girl" is the embodiment of this. In Chapter 4, Narratives of embodied globalization, Pettinen details the life of a foreign sex worker in Helsinki that the reader might 'feel' the events taking place.

Riben, Mirah, THE STORK MARKET: AMERICA'S MULTI-BILLION DOLLAR UNREGULATED ADOPTION INDUSTRY, (Advocate Publications, 2006).

This book incorporates a mix of approaches: part analysis; part case studies from the front lines, part hand-book, part up-to-date law and policy review.

Samarasinghe, Vidyamali, FEMALE SEX TRAFFICKING IN ASIA: THE RESILIENCE OF PATRIARCHY IN A CHANGING WORLD, (Routledge, Taylor & Francis Group, 2008).

Samarasinghe studies female sex trafficking in the Asian countries of Nepal, Cambodia and the Philippines. In each case, the author gives a country profile outlining the estimated numbers of persons involved in the trafficking industry and the forms of trafficking most prevalent. The flows of trafficking are also considered and the government and NGO response to the problem in each country. Outside of the case studies, the books opening chapters address general topics such as definitions of trafficking and the different analytical approaches taken in the discourse on female sex trafficking; These include: the gender rights approach; the development approach; the criminal networks approach; the labor approach; the abolitionist approach; the migration approach and the health approach.

Skinner, E. Benjamin, A CRIME SO MONSTROUS: FACE-TO-FACE WITH MODERN-DAY SLAVERY, (Free Press, 2008).

As a journalist, the author recounts his experience of trafficking in persons from his travels and investigations worldwide. The book opens with the author's journey to Haiti in an effort to demonstrate the ease with which one can encounter the victims of the trafficking industry. Chapter 2 moves with Skinner in location to the United States and his meeting with the U.S. Ambassador-at-Large to Monitor and Combat Trafficking in Persons at the time John Miller and how the United States adopted its war on modern-day slavery in three different stages. The book switches its focus to trafficking in a number of different countries such as Romania, Sudan and India but these case studies are interspersed with the continuing interest of the author in Miller and the efforts of the U.S. Office to Monitor and Combat Trafficking in Persons.

TRAFFICKING AND THE GLOBAL SEX INDUSTRY, (Karen Beeks and Delila Amir ed., Lexington Books 2006).

This book is the outcome of the ‘Trafficking [in persons] & Trade: The Impact of Globalization on Women’ Conference held in Denver, Colorado, on March 14-15, 2003. It contains a collection of papers by different authors and is divided into four parts: Migration and Trafficking: Definitions, Conditions, Routes and Policies; National Security, Organized Crime, and Civil Conflict; Laws, Legislation and International Involvement; and National and Local Initiatives and Service Models.

TRAFFICKING AND WOMEN’S RIGHTS, (Christien L. van den Anker and Jeroen Doomernik ed., Palgrave MacMillan 2006).

This book focuses on trafficking in women. It is a compilation of studies by different contributors across Europe, including a former Austrian Federal Minister on Women’s Issues; a freelance journalist that writes regularly for the *Guardian* and *La Repubblica* newspapers; a senior researcher at the Bureau of the Dutch Rapporteur on Trafficking in Human Beings and numerous university lecturers and professors. Issues dealt with within the book include trafficking for the purpose of prostitution, the legal provisions designed to combat trafficking, data collection on trafficking, and the relationship between trafficking and globalization.

Zhang, Sheldon, SMUGGLING AND TRAFFICKING IN HUMAN BEINGS: ALL ROADS LEAD TO AMERICA, (Praeger Publishers 2007).

This book examines how human smuggling and trafficking activities to the United States are conducted. The first chapter investigates population migrations noting that according to the United Nations International Migration Report of 2002, the United States had in 2000 the largest foreign born population in the world. It is the number one destination country for both legal and illegal migration. Zhang looks at human smuggling through legal channels such as immigration, marriage fraud, and the non-immigrant visa, before investigating smuggling through illegal channels over land, air, and sea. A chapter is devoted to smuggling from an organized criminal enterprise perspective and another to trafficking in women and children. Zhang concludes that human smuggling is a consequence of complex social factors such as the unmet demand created by legal migration regulations and the informal labor market.

