
Creating International Consensus on Combating Trafficking in Persons: U.S. Policy, the Role of the UN, and Global Responses and Challenges

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INTRODUCTION: CONDEMNATION OF TRAFFICKING IN PERSONS BY PRESIDENT BUSH AT THE UNITED NATIONS

On September 23, 2003, President George W. Bush spoke before the United Nations about the war in Iraq, terrorism, weapons of mass destruction, and HIV/AIDS. However, President Bush also devoted much of his speech to the humanitarian crisis of slavery, addressing specifically sex tourism and trafficking in persons for sexual exploitation as two examples of ongoing slavery in today's world. The President underlined the magnitude of the problem, explicitly stating:

[E]ach year, an estimated 800,000 to 900,000 human beings are bought, sold or forced across the world's borders. Among them are hundreds of thousands of teenage girls, and others as young as five, who fall victim to the sex trade. This commerce in human life generates billions of dollars each year—much of which is used to finance organized crime.¹

Drawing attention to the suffering of the victims of this appalling practice, the President called for punishing both the traffickers and the sex industry patrons, asserting:

[T]here's a special evil in the abuse and exploitation of the most innocent and vulnerable. The victims of sex trade see little of life before they see the very worst of life—an underground of brutality and lonely fear. Those who

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create these victims and profit from their suffering must be severely punished. Those who patronize this industry debase themselves and deepen the misery of others. And governments that tolerate this trade are tolerating a form of slavery.²

President Bush concluded by urging members of the UN to eliminate these and other forms of exploitation as practices of slavery, stating:

[W]e must show new energy in fighting back an old evil. Nearly two centuries after the abolition of the transatlantic slave trade, and more than a century after slavery was officially ended in its last strongholds, the trade in human beings for any purpose must not be allowed to thrive in our time.³

THE POLICY OF THE UNITED STATES TO COMBAT TRAFFICKING IN PERSONS

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Persons was established to implement United States policies per the Trafficking Victims Protection Act of 2000 [hereinafter "TVPA"]. On February 13, 2002, the President signed Executive Order 13257, establishing a Cabinet-level Interagency Task Force to Monitor and Combat Trafficking in Persons. Furthermore, in 2002, the U.S. government spent \$55 million in 50 countries on anti-trafficking programs to help indigenous non-

governmental organizations (NGOs), international organizations, law enforcement officials, and foreign governments prevent trafficking, improve their capacity to arrest and prosecute traffickers, and rehabilitate and restore victims to society.⁴

On February 25, 2003, the President signed a National Security Presidential Directive to advance the U.S. government's fight against trafficking in persons. The National Security Directive underscores the Administration's policy on prostitution, particularly in relation to trafficking in persons, by stating that "[p]rostitution and related activities, which are inherently harmful and dehumanizing, contribute to the phenomenon of trafficking in persons..."⁵ The United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 also addresses the phenomenon of prostitution and trafficking in persons, in the context of HIV/AIDS prevention. Section 2(23) of this Act states that

“[p]rostitution and other sexual victimization are degrading to women and children and it should be the policy of the United States to eradicate such practices. The sex industry, the trafficking of individuals into such industry, and sexual violence are additional factors in the spread of the HIV/AIDS epidemic.”⁶

On December 23, 2002, the United States ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children; Child Prostitution and Child Pornography; and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

THE ROLE OF THE UNITED NATIONS IN COMBATING TRAFFICKING IN PERSONS

The UN was the proper venue for President Bush to address trafficking in persons, since the UN has long been actively calling upon states to prevent, combat, and abolish slavery in all its forms, including trafficking in persons. The Universal Declaration of Human Rights states that “no one shall be held in slavery or servitude” and that “slavery and slave trade shall be prohibited in all their forms.”⁷ Likewise, the 1956 Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery outlaws slavery practices, such as debt bondage, serfdom, bride price, and exploitation of child labor. The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others mandates that “through their public and private educational, health, social, economic, and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution” should be taken by States Parties.⁸ Moreover, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women explicitly prohibits “exploitation of prostitution of women” and “all forms of traffic in women,”⁹ and the 1989 Convention on the Rights of the Child mandates that States Parties must take all appropriate measures to prevent “the abduction of, the sale of or traffic in children for any purpose or in any form.”¹⁰ The 1999 Convention to Eliminate the Worst Forms of Child Labour similarly prohibits “the use, procuring or offering of a child for prostitution...”¹¹ The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which went into effect on July 1, 2003, provides that “[n]o migrant worker or member of his or her family shall be held in slavery or servitude” and that “[n]o migrant worker or member of his or her family shall be required to perform forced or compulsory labour.”¹² The Rome Statue of the International Criminal Court, which became effective July 1, 2002, 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.”¹³

However, it was the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime [hereinafter "UN Protocol"], which provided the first international definition of trafficking in persons and stated that "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."¹⁴

SCOPE OF THE PROBLEM OF TRAFFICKING IN PERSONS

The expression of concern by President Bush and recent steps by the UN illustrate an awareness of a persistent, often furtive, problem afflicting millions across the globe.

An estimated 27 million people live in slavery today,¹⁵ and as President Bush pointed out in his speech, between 800,000 and 900,000 people are trafficked annually across international borders,¹⁶ with between 18,000 and 20,000 of these victims trafficked into the United States.¹⁷ The global nature of this crime is reflected in the cases of trafficking into the United States: women and children are

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trafficked from Honduras to Dallas and Ft. Worth, Texas; Latvia to Chicago, Illinois; Mexico to Florida; Korea to Michigan; Japan to Hawaii; Cameroon to Maryland; Taiwan to Seattle, Washington; India to California; and Vietnam to Atlanta, Georgia. Significantly, the numbers cited above do not take into account the hundreds of thousands of women and children trafficked within their own countries, a staggering problem

seen, in many countries of Latin America and the Caribbean. For instance, within the borders of Brazil alone, there are reports that 40,000 children are bought and sold every year for work in domestic service or in agriculture, and 100,000 women and children are sexually exploited annually.¹⁸ No country or region in the world is impervious to the problem, and each constitutes either a country or region of origin, transit, or destination, and in many cases any combination of the three.

For example, across the borders of the countries of West and Central Africa, according to UNICEF estimates, over 200,000 children are trafficked into conditions of slavery, some as young as eight years old, to work in domestic and other forms of labor.¹⁹ It is also reported that in Gabon alone, between 5,000 and 6,000 children are enslaved.²⁰ Many are beaten and receive no pay for their labor. Thousands of women and girls from South and Southeast Asia are trafficked to Saudi Arabia and forced into prostitution and domestic labor.²¹ In South Asia, the

problem of debt bondage has been particularly prevalent in the countries of India, Pakistan, Bangladesh, and Nepal. According to research estimates, between 15 and 20 million people are enslaved within the bonded labor systems of those four countries alone.²²

The expansion of sex industries in Southeast Asia is well known. UNICEF reports that between 244,000 and 325,000 women and children are victims of commercial sexual exploitation in Thailand.²³ In Cambodia, at least 55,000 women and children are working as sex slaves, 35 percent of whom are younger than 16 years of age.²⁴ However, sexual exploitation is not limited to the Southeast Asian region. Thousands of women and girls are trafficked from the countries of Eastern Europe to the United Arab Emirates for sexual exploitation.²⁵ In Western Europe, it is reported that hundreds of thousands of Eastern and Central European, African, Asian, and Latin American women are trafficked into prostitution to countries such as Germany, the Netherlands, Italy, and Austria.²⁶

Traffickers are able to operate at relatively low risk, maintain high profits, and feel utter contempt for the lives of those who are caught up in the trafficking web as victims. The global community has yet to reverse this trend and return to the victims of this modern form of slavery basic human rights that have been taken away from them.

AN INTERNATIONAL OBLIGATION TO PREVENT TRAFFICKING, PROTECT VICTIMS OF TRAFFICKING, AND PROSECUTE TRAFFICKERS

The UN Protocol binds states to take the necessary measures to combat trafficking in persons.

Measures Necessary to Prevent Trafficking

First, the UN Protocol establishes that a state has an international responsibility to prevent trafficking. The UN Protocol provides that "States Parties shall establish comprehensive policies, programmes and other measures: (a) to prevent and combat trafficking in persons..."²⁷ This should include measures "to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity."²⁸ The UN Protocol does not consider the criminalization of prostitution as a means of preventing trafficking. The 1949 Convention, on the other hand, explicitly provides for "measures for the prevention of prostitution,"²⁹ which the convention regarded as "incompatible with the dignity and worth of the human person..." The UN Protocol does, however, address the issue of demand, mandating states "to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking."³⁰

In addition to the prevention of the act of trafficking, the UN Protocol calls upon States Parties to take the necessary measures to prevent “revictimization” of trafficked persons,³¹ which, as cases of trafficking demonstrate, poses a significant problem. For example, in a case decided by the Cambodian Criminal Court in August 1999, a young girl had been discovered in a brothel where her mother worked as a cook. She was placed in the care of a child protective agency, but was later reunited with her mother who resold her to another brothel where workers from World Vision International discovered her. Although the family was relocated and reunited once more, the child was again trafficked by her mother who was only then arrested on charges of trafficking, found guilty, and sentenced to 15 years in prison under the Cambodian law on Suppression of the Kidnapping and Trafficking of Persons.³² Revictimization often occurs due to the lack of employment opportunities upon the victims’ return home, as well as to the difficulties faced by the victims in reintegrating into their communities. Such cases, and others similar to it, can only be addressed effectively, as the UN Protocol mandates, by adopting the necessary measures to counter the possibilities for the revictimization of victims rather than by simply prosecuting the traffickers.

The UN Protocol also requires that all States Parties take the necessary measures to prevent immigration for the purpose of engaging in trafficking in persons. The UN Protocol explicitly provides that “[e]ach State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offenses established in accordance with this UN Protocol.”³³ The UN Protocol also mandates that States Parties “strengthen to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.”³⁴

Measures Necessary to Protect Victims of Trafficking

The UN Protocol also provides adequate protection to victims of trafficking. The UN Protocol calls on States Parties to “consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases,”³⁵ giving “appropriate consideration to humanitarian and compassionate factors.”³⁶

Traditional immigration laws, however, consider alien victims of trafficking to be in violation of immigration statutes. For instance, under the Alien and Nationality Law of Liberia, “Aliens who are prostitutes or who have been engaged in prostitution, or aliens coming to Liberia solely, principally or incidentally to engage in prostitution...”³⁷ are considered “prohibited immigrants” and are subject to deportation. This deportation rule similarly applies in other countries such as Zambia, Uganda, Tanzania, Swaziland, Sri Lanka, Mauritius, Malta, Ethiopia, and Zimbabwe, and is the common approach in most countries today.³⁸

On the other hand, the status of victims of trafficking has recently changed in some of the destination countries, including the U.S., Austria, Belgium, Canada, Italy, the Netherlands, Spain, the Czech Republic, Hungary, Lithuania, and most recently, Australia, all of which grant a trafficked victim some form of residency status.³⁹ For instance, the TVPA grants up to 5,000 visas a year allowing residency to victims of severe forms of trafficking who may be potential witnesses to such trafficking,⁴⁰ and who would suffer "extreme hardship involving unusual and severe harm upon removal from the United States."⁴¹ The significance of this new visa status of a trafficked person is that it does not have to satisfy the strict conditions for asylum as set by the U.S. courts. It also signifies a shift in the immigration law policy, which traditionally treated a trafficked person as an illegal alien who is subject to deportation. The TVPA also prohibits the admission to the United States of an alien if "there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons"⁴² as defined by the TVPA.

In compliance with the UN Protocol, other countries should also consider granting victims of trafficking the appropriate residency status to enable them to testify against their traffickers and to protect them from retribution or other hardships that victims may encounter in cases of deportation. The UN Protocol also calls on States Parties to assist victims of trafficking in obtaining travel documents for the purpose of repatriation in the event that such victims do not have the proper documentation.⁴³ Unlike the UN Protocol, however, the TVPA does explicitly provide for the non-criminalization of the acts of victims of trafficking who may unlawfully enter into a country "if that conduct is caused by or incidental to that trafficking."⁴⁴ If a trafficker "destroys, conceals, removes, confiscates, or possesses any adult

or purported passport or other immigration document, or any other actual or purported government identification document of another person in furtherance of trafficking, the punishment is a fine or imprisonment for not more than 5 years, or both."⁴⁵ However, this punishment does not apply to victims of trafficking.⁴⁶

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Measures Necessary to Prosecute Traffickers

The key to the human rights approach of combating trafficking in persons is decriminalization, or protection, of the victim on the one hand, and the

criminalization, or prosecution, of the trafficker on the other, which restores the appropriate balance with respect to human rights. Such an approach successfully shifts the idea of criminalization away from the victims and toward the traffickers. Additionally, governments have the responsibility to enact legislation to recognize all forms of sexual exploitation as a crime, including trafficking for the purpose of pornography and trafficking for the purpose of mail-order brides, among others. Governments also have the responsibility to recognize trafficking in children for the purpose of illicit adoption as a form of trafficking in persons. Only by recognizing and criminalizing all forms of sexual and other types of exploitation will governments be able to effectively prosecute those responsible for the crimes of modern slavery. For example, the following areas should be addressed:

Acknowledging Child Pornography as a Form of Sexual Exploitation. Incidents of pornography, specifically child pornography, are largely cited in conjunction with prostitution or under the general guise of sex tourism, and are rarely addressed as a separate phenomenon in discussions of trafficking. This seems to arise out of the fact that pornography often accompanies other commercial sexual exploitation. Pornography is, however, a lucrative industry that has proliferated widely in some areas, such as countries in Latin America and the Caribbean, with the aid of the Internet and the growth of sex tourism in the region. Pornography also represents another layer of exploitation, which victims trapped in the sex industry are often forced to endure. In many cases, women and girls are videotaped without their consent and the profits from the sales of such videotapes are kept entirely by the pimps and brothel owners. Children as young as 13 years old were found in a pornography and prostitution ring in Antigua and Barbuda,⁴⁷ and in Mexico, 5,000 minors have been reportedly engaged in prostitution or in pornographic activities.⁴⁸ In Costa Rica, minors have reported being actively solicited for the purposes of production of pornographic material.⁴⁹ Coercive mechanisms such as deception, sales, and abductions are a common path to the procurement of minors for this purpose.

Recognizing Trafficking of Mail-Order Brides as a Form of Exploitation. While the TVPA narrowly defines sex trafficking as trafficking for the purpose of a commercial sex act, cases of non-commercial sex, if involving abuse, should also be considered a crime.⁵⁰ One type of trafficking for non-commercial sex is that of mail-order brides. The popularity of mail-order bride agencies has greatly increased in recent years, particularly with the increasing accessibility to the Internet. Growing numbers of women from Eastern Europe have arrived as mail-order brides to Western Europe, the United States, and other countries. The Council of Europe conducted an in-depth survey of 219 marriage agency websites during the summer of 2001, and found that close to 120,000 women from the former Soviet Union had been recruited as potential mail-order brides by these agencies.⁵¹ The Philippines is also widely recognized as a major country of origin for mail-order brides.

Studies concur that incidents of abuse may be higher in such marriages. Women are often less likely to report such abuse due to their dependence on the husband to provide valid immigration status. Section 652 of the United States Illegal Immigration Reform and Immigrant Responsibility Act of 1996 imposes upon the matchmaking organizations an obligation to inform the prospective bride "upon recruitment, such immigration and naturalization information as the Immigration and Naturalization Service deems appropriate, in the recruit's native language, including information regarding conditional permanent residence status and the battered spouse waiver under such status, permanent resident status, marriage fraud penalties, and the unregulated nature of the business engaged in by such organizations."⁵² However, this is merely a "disclosure law." Such a law does not address the issue of mail-order brides within the trafficking context, even though in some cases mail-order brides may be classified as trafficking for the purpose of labor or as a case of sex trafficking.

Preventing Trafficking in Children for Illicit Adoption. Studies also show that children are being trafficked from countries of the Americas for the purpose of illicit adoption, especially from Honduras, Ecuador, El Salvador, Venezuela, and Guatemala. Inter-country adoption is a big business in the country of Guatemala. Some estimates indicate that up to \$20 million enters the economy of Guatemala through inter-country adoption.⁵³ Poor, single mothers, unaware of their legal rights, are targeted by baby brokers and coerced into giving up their newborns. It has been reported that lawyers representing American couples also send out brokers to search for potential baby donors in the poorest neighborhoods in Guatemala. These brokers befriend the pregnant women and introduce the idea of giving up their babies, even offering to pay for medical bills. It has been reported that 98 percent of all adoptions in Guatemala are international, 62 percent of which go to families in the United States who pay between \$20,000 and USD \$24,000 for a child.⁵⁴ From 1995 to 1998, the number of visas for Guatemalan babies adopted by American couples totaled 879.⁵⁵ Statistics show that 12 percent of babies adopted from Guatemala are sent to France, six percent to Canada, five percent to Spain, and two percent to Italy.⁵⁶ In most countries, courts or government agencies oversee adoptions, but in Guatemala, mothers can directly relinquish their newborn babies to a lawyer who arranges adoptions.

Increasing demand for children has caused husbands to become baby brokers. In some cases, husbands have beaten their wives until they agree to give up their babies and have "pocket[ed] the price...for selling the newborns."⁵⁷ According to the Special Rapporteur to the UN on the Sale of Children, Child Prostitution, and Child Pornography, "the robbing and sale of babies in Guatemala within the international adoption process is a common practice."⁵⁸ The report states further that such illegal adoptions occur because of the involvement of a large number of parties, many of them high-ranking, including

lawyers, notaries, doctors, and judges who facilitate the legal adoption of stolen babies. Another reason cited for the high number of illegal adoptions is the fraud committed against young mothers who are tricked or drugged into signing or placing their thumbprints onto blank pieces of paper that are later filled in to read as papers consenting to the adoption. These adoptions are made easier because they are subject to minimal governmental interference.

PROGRESS MADE: GOVERNMENT RESPONSES TO THE PROBLEM OF TRAFFICKING IN PERSONS

Despite the continuing pervasiveness of the problem of trafficking, it is important to recognize that governments have been making progress. Through preventative measures, by prosecuting traffickers, and by protecting victims, governments have been making valuable strides—unilaterally and multilaterally—against the perpetrators of the crime of trafficking in persons.

Preventative Measures against the Acts of Trafficking

In our judgment, the prevention of trafficking is the most essential part of any comprehensive plan to combat trafficking. A number of countries have approved such comprehensive programs aimed at preventing trafficking in persons or some of its forms. For example, the Ministry of Interior of Belarus, in collaboration with other governmental and non-governmental organizations, has drafted a National Program of Comprehensive Measures Towards Combating Trade in Human Beings and the Spreading of Prostitution for 2002-2007. The Program contains preventive measures including conducting an information campaign aimed at preventing human trafficking and prostitution through publishing and distributing printed materials; creating and running TV and radio programs; analyzing cases of adoptions of Belarusian children by foreigners; and including special measures aimed at young women and graduates from educational institutions into programs on employment opportunities.⁵⁹

In Argentina, the Council for Minors and Family, in collaboration with the Attorney-General, the Ministry of Justice and Human Rights, the National Council of Women, and UNICEF, has developed an Action Plan to eliminate child prostitution.⁶⁰

In Bangladesh, the Ministry of Women and Children's Welfare is implementing a three-year pilot project entitled "Child Development: Coordinated Program to Combat Child Trafficking." The goals of this program include strengthening the capacity of district mechanisms in 25 districts where trafficking in children is rampant, and training law enforcement officers on all aspects of trafficking issues.⁶¹

In Colombia, the National Police run a prevention program entitled "Colombia Without Prostitution," which is designed to eliminate child prostitution through family and community educational activities.⁶²

In Cambodia, the Cambodian Ministry for Women's and Veteran's Affairs has recently launched an information campaign designed to prevent the trafficking of women and children in Cambodia. The campaign is part of a three-year trafficking prevention project conducted in conjunction with the International Organization for Migration. It will utilize theater and video materials to get women and children educated and to enhance their self-protection awareness. Another aim of the campaign is to encourage village groups to develop sustainable anti-trafficking mechanisms.⁶³

In response to the growing problem of trafficking in women for domestic service to the countries of the Middle East, a number of countries, both on the sending and on the receiving end, have undertaken certain preventive measures. For example, the government of Bangladesh, a country of origin for trafficking of women, in response to the increasing incidents of abuse of domestic servants in the countries of the Middle East, now prohibits single, unskilled females from traveling alone to most countries of the Middle East.⁶⁴ In the Dominican Republic, the Directorate for Migration of the Dominican Republic has established certain rules for women traveling out of the country, which require them, for instance, to demonstrate to the Dominican authorities before leaving the country that they are in possession of at least \$1,000.⁶⁵

Despite a severe lack of government resources, the government of Burkina Faso along with five other West African countries—Benin, Côte d'Ivoire, Mali, Niger, and Togo—announced the launch of a new common travel document aimed at fighting child trafficking in the region, which went into effect in July 2002. Schoolchildren were asked by the authorities to suspend possible travel to Côte d'Ivoire, a major point of destination, until the travel document went into effect. The new travel document is to contain the names of the adult accompanying the traveling child, as well as the adult who is to care for the child at his or her country of destination.⁶⁶

Some countries have taken steps to prevent sex tourism on their territory by targeting the general public, particularly the customers—the sex tourists. For example, at the end of 2001, the local authorities of the city of Rio de Janeiro, Brazil launched a campaign against child sex tourism. This campaign, conducted in Portuguese, Spanish, French, and English, warns tourists to stay away from child prostitution.⁶⁷ Another effective measure to combat the sex trade in Brazil was mentioned in the Department of State Trafficking in Persons Report of June 2003. The Report provides reference to the fact that "the Government of Brazil is fighting sex tourism by asking hotels to be active in discouraging child prostitution on their premises. Hotels participating in the program receive an extra

“star” in their quality rating. Brazil also distributes brochures to tourists to notify them of the penalties associated with exploiting minors.

Prosecution of Traffickers

Effective prevention must be accompanied by punishment of those who engage in acts of trafficking in persons. An example of effectively addressing the problem of child sex tourism, for example, is through the prosecution of sex tourists for criminal acts perpetrated outside of the country of the sex tourist's origin. Such an approach is illustrated by a recent ruling by an Australian court, which sentenced an Australian to six years of imprisonment for sexually assaulting a five-year-old girl in the Philippines. The court held that exploitation of the vulnerability of children in foreign countries must be punished under domestic law, thereby extending the extraterritorial application of Australian law.⁶⁸ Another example can be found in Austria, where a recent decision by the government of Austria eliminated double jeopardy with respect to engaging in sexual relationships with children.⁶⁹

Other countries are also expanding their efforts to prosecute traffickers and to impose more stringent punishments for acts of trafficking. For instance, in China in January 2003, five men operating on the Vietnam border were convicted for trafficking women and children. One man received a life sentence and the other four were sentenced to between two and 15 years in prison.⁷⁰

Protection of Victims of Trafficking

While engaging in actions aiming at the prevention and prosecution of the acts of trafficking, governments must not lose sight of the importance of providing measures of protection to victims of trafficking. Among the most effective means of protecting victims of trafficking have been actions by governments (by NGOs and by governments in cooperation with NGOs), in providing health care, education, and temporary residency status to victims of trafficking. In Australia, for instance, the government has recently decided to grant victims of sex trafficking temporary protection visas if they are willing to provide evidence against sex traders. The Immigration Department will issue bridging visas for 30 days and temporary protection visas for three years, allowing trafficked women to stay in Australia until it is safe for them to return to their country. The government is also considering longer-term protection visas for those who require them.⁷¹ The government of Sri Lanka has implemented a program through which welfare officers are sent to embassies in countries of the Middle East to provide assistance to Sri Lankan victims of trafficking in those countries.⁷²

It is also essential to mention the significance of providing health care to victims of trafficking in light of the continuing tragedy of the global HIV/AIDS

crisis. Trafficked women and children are forced into commercial sexual exploitation, exposing them to serious health risks, including HIV/AIDS. Trafficked women and children who are forced into prostitution are forced to service multiple clients a day, and are subject to rape and physical abuse from their traffickers. For example, at the height of the HIV/AIDS epidemic, 80 percent of HIV/AIDS cases in Thailand were found in women working in the sex industry and their clients. Many of the women were victims of trafficking from within Thailand and Burma.⁷³ Human Rights Watch has reported that 34 percent of the HIV cases in Japan throughout the 1990s were found among the non-Japanese (mostly Thai) women in Japan, many of whom are thought to have been trafficked into Japan for the sex industry.⁷⁴ Finally, according to the Special Rapporteur on the sale of children, child prostitution, and child pornography of the UN Commission on Human Rights, "there are reports that young children are being targeted as sexual partners in order to reduce the risk of contracting HIV/AIDS. It is also reported that instances of child rape are being committed by individuals who believe that sex with a virgin will cure them from HIV/AIDS."⁷⁵ This link between HIV/AIDS, prostitution, and trafficking needs further research.

INTERGOVERNMENTAL COOPERATION TO COMBAT TRAFFICKING IN PERSONS

Finally, intergovernmental cooperation is essential to mobilizing resources, exchanging information, and coordinating policies in ways that enable governments to combat trafficking on a regional level. The strengthening of regional intergovernmental cooperation has been an important recent development in the region of Southeastern Europe, where a successful recent joint investigative operation was conducted by 12 Southeast European countries and countries from neighboring regions. The operation targeted as many as 20,629 potential sites of trafficking in persons across the region, including border crossings, bars, and nightclubs, and identified a total of 696 victims of sex trafficking and 831 suspected traffickers. The operation was undertaken throughout September of 2003 by the Southeast European Cooperative Initiative headquartered in Romania, and was assisted by the United States. The countries participating included Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Greece, Hungary, Moldova, Romania, Serbia and Montenegro, Slovenia, and Ukraine.⁷⁶

Challenges in Combating Trafficking in Persons

Despite the positive developments, serious obstacles remain to stopping the traffickers and restoring dignity to all victims of trafficking. Many states still

fail to view trafficking as a serious crime. In other states, law enforcement and prosecutions remain limited. Differing attitudes toward prostitution preclude a common approach to cracking down on traffickers. Other legal obstacles, as well as corruption, further block serious efforts to pursue traffickers. Overcoming these obstacles should be the primary objective of the international community if it is serious about facing the problem of trafficking and preserving the human dignity it espoused among the United Nations' founding principles.

Lack of Recognition of Trafficking as a Serious Crime

The United Nations Convention against Transnational Organized Crime, which became effective on September 26, 2003, provides that "serious crime shall mean conduct constituting an offense punishable by a maximum deprivation of liberty of at least four years or a more serious penalty."⁷⁷ However, some countries still provide for a light sentence in cases of trafficking in persons. For instance, in Turkey, transporting a person under the age of 21 for the purpose of prostitution is punishable only by one to three years of imprisonment.⁷⁸ Similarly, in Qatar, where the punishment for trafficking in persons, as an activity related to prostitution, is light, the Criminal Code states: "A

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person who leads a female or attempts to lead her to practice sex with another person or to entice her to reside in, or frequently go to, a prostitution establishment with the purpose of practicing prostitution, whether inside the country or outside, shall be subject to imprisonment for a period not to exceed three years, or a fine not to exceed three thousand Riyals, or both."⁷⁹ In Egypt, the punishment for bringing a person into Egypt for the purpose of prostitution, or for the facilitation of entry of a person into

Egypt for such a purpose, is between no less than one year and no more than five years in prison and a fine from one to five hundred pounds.⁸⁰

Many countries, while recognizing trafficking in drugs as a serious crime that warrants serious punishment, provide for a much lesser sentence for the crime of trafficking in persons. For instance, in Poland, while selling drugs to minors is punished by five to 15 years of imprisonment, an individual who induces a person under 18 years of age into prostitution is punished only by one to 10 years of imprisonment.⁸²

Lack of Effective Law Enforcement and Low Rates of Prosecution

Enacting legislation that makes trafficking in persons a serious crime is not enough. Without effective law enforcement and prosecutions of traffickers, traffickers continue their criminal activities unhindered. In many parts of the world today the rates of prosecutions for trafficking in persons are relatively low.

In Moldova, according to the 2003 Trafficking in Persons Report, "during the reporting period, two people were convicted and sentenced to 15 and 10 years, respectively, for trafficking children to Russia for the purpose of begging. However, of the 42 other trafficking criminal cases initiated, eight were referred to court, 19 are pending, two were suspended, and 13 were dismissed."⁸² Considering the extent of the trafficking problem in Moldova, with estimates indicating that close to 1,000 girls from Moldova are trafficked into Western European brothels and sex bars alone every year, the numbers of prosecutions and convictions remain low. Similarly, as indicated by the Trafficking in Persons Report, in Thailand, which has a long-standing and significant problem of trafficking, the 2002 national statistics showed that out of 504 arrests, only 42 resulted in prosecutions, and 21 in prison sentences.⁸³ In the Philippines, the State Department reports 18 arrests, one conviction, and 29 establishments closed for the annual reporting period in 2003, with the Philippines also being a major country of origin for victims of trafficking.⁸⁴

Likewise, according to the Organization for Security and Cooperation in Europe (OSCE) and reported by UNICEF, while 150 trafficking-related arrests were made between March and November 2001 in Albania, charges were pressed against only 10 percent. Only three persons were charged with trafficking and received sentences of seven and nine years in prison.⁸⁵ The press in Indonesia has reported that local NGOs estimate that out of 286 cases of trafficking reported to the police between 1999 and 2001, only eight had gone to court and offenders were convicted in only three of these cases.⁸⁶

Moreover, it is not only developing countries or countries in transition that show such low instances of prosecutions of traffickers. Countries that have more resources to prosecute cases still produce low rates of successful prosecutions of traffickers. For example, in Japan, a significant country of destination and where the government acknowledges that trafficking is a problem, it has been reported that prosecutions of traffickers and facilitators remain rare, with offenders charged mainly on violations related to immigration and entertainment business laws.⁸⁷

Lack of Consensus on the Legislative Approach to Prostitution

Despite the suggested existence of a link between the extent of trafficking and the legalization or decriminalization of prostitution, some countries consider

legalizing prostitution or certain aspects of prostitution as a means of combating trafficking in persons. Although the demand for sexual services tends to be highest in the areas of legalized or decriminalized prostitution, there is still a significant amount of debate as to what the best legislative approach to prostitution should be to minimize trafficking in persons.

Some legal systems do not contain provisions targeting the demand for commercial sex or for prosecuting the purchaser of sexual services. The act of prostitution in many countries is legal, and sex in return for money is acceptable. Only prostitution-related activities constitute a crime, and in those countries where the act of prostitution does not constitute a crime, no provisions exist to punish the customer, since he or she is obtaining a service that is legal in nature. Such countries include the majority of countries in Western Europe and Latin America.

In Thailand, where the problem of exploitation of women for the purposes of prostitution is widespread, the government is currently considering the legalization of the sex industry. According to the authors of the proposed legislation, any modification of the existing laws should be done through the repeal of up to four key articles. One of these articles makes it illegal for a woman to "behave" like a prostitute, which is considered by government experts to be exploitative and to provide opportunities for police to take advantage of sex workers. At the same time, the Thai Prime Minister, while generally supportive of the idea of the legalization of prostitution in the country, has urged the condemnation of brothels engaged in bonded prostitution, where women are virtually enslaved. Representatives of Thai NGOs, however, believe that the proposed registration of the country's estimated 200,000 sex workers would do nothing to address the problems of bribery, unfair profit-sharing, and repressive regulations, which plague the industry.⁸⁸

The Islamic law countries of Saudi Arabia, Iran, Pakistan, Yemen, Mauritania, Jordan, Bahrain, Sudan, Tunisia, Malaysia, Brunei, and the United Arab Emirates, however, take a different approach. These countries penalize both the women in prostitution and the customer as the customer who buys sexual service from a woman in prostitution is considered to be committing adultery, which is a crime under Islamic law that punishes the adulterer and the adulteress.

In Sweden, the law "On Prohibiting Purchase of Sexual Services" as of January 1, 1999, provides that "a person who obtains casual sexual relations in exchange for payment shall be sentenced unless the act is punishable under the Swedish Penal Code—for the purchase of sexual services to a fine or imprisonment for at most six months."⁸⁹ Hence, buying sex is a crime but selling sex is not. The number of investigations and convictions under the law, however, has been low. In 1999, 94 cases were reported, 10 of which resulted in convictions; in 2000, 92 cases were investigated, 29 of which resulted in convictions; and in 2001, 86 cases were prosecuted, 38 of which resulted in convictions.

In some legal systems, knowledge of trafficking incurs customer liability. This approach is adopted by the Criminal Code of Macedonia which provides that "[t]he one that uses or enables another person's usage of sexual service from the person for whom he knows are victims of human trafficking will be punished with imprisonment from six months up to five years."⁹⁰ The new legislation of Croatia of May 2003 follows the Macedonian model of criminalizing the act to the customer if he or she has knowledge that the person in prostitution has been trafficked.

Lack of Accountability among International Peacekeeping Forces

Regrettably, substantial research has documented that international peacekeepers contribute to the growth of the problem of trafficking in persons. In the case of Bosnia, for example, the demand for prostitution has risen significantly with the arrival of UN peacekeepers. Until the mid-1990s, the sex-slave industry barely existed in Bosnia, but after the signing of the Dayton Accord in 1995, and with the arrival of approximately 50,000 male peacekeepers, a sex-trade market has been created and is flourishing. Women from Belarus, Moldova, Ukraine, Romania, Hungary and Albania have been lured to Bosnia by offers of legal work, only to end up enslaved in brothels.⁹¹

When the customer is a military officer performing his duty as a member of a UN peacekeeping mission, the law must be enforced on an extraterritorial basis to apply to those who engage in illicit sexual activities. There are currently 15 UN peacekeeping missions operating around the world. Rule 4 of the UN General Assembly Code of Conduct of 1993 says that UN peacekeepers should "not indulge in immoral acts of sexual, physical, or psychological abuse or exploitation of the local population or United Nations staff, especially women and children."⁹² At the same time, UN peacekeepers fall under the exclusive criminal jurisdiction of their own national authorities and have immunity from local prosecution. It is up to the UN Board of Inquiry to find reasonable grounds for a charge of serious misconduct with a recommendation that the peacekeeper be repatriated for subsequent disciplinary action in his native country. However, of only 24 officers repatriated to their countries for misconduct, none have been prosecuted for violating Rule 4 of the UN General Assembly Code of Conduct.⁹³

Obstacles to Observing the Law:

The Law and the Functional Equivalent of the Law

What is often most overlooked in regard to successful enforcement of even the best pieces of legislation is that not only must the law itself be changed to impose liability on customers of sexual services and on patrons of places where trafficked women may be forced into prostitution; but, more importantly, to reform

the functional equivalent of the law, that is, the customs, the traditions, and acceptable behavior. Countries that tolerate, accommodate, or normalize prostitution should review their policies and inquire into whether such tolerance, accommodation, and normalization contribute to the rising numbers of trafficking victims.

It is also relevant to recognize the significance of addressing traditional systems that may play a part in the trafficking infrastructure, for sexual exploitation as well as for labor. Systems of bonded labor, or debt bondage, are prevalent particularly in many of the traditional societies of South Asia and in Africa. Under such systems, a person becomes a security against a debt or a small loan and must repay the debt through provision of personal services, often for his or her entire life. While many adults are exploited through such practices, child slavery appears to be more common, and some children are born into hereditary debt bondage. It is estimated that in India, approximately five million children are enslaved in

Countries that tolerate, accommodate, or normalize prostitution should review their policies and inquire into whether such tolerance, accommodation, and normalization contribute to the rising numbers of trafficking victims.

bonded labor,⁹⁴ even though India has a number of laws prohibiting slavery, debt bondage, and child labor, including the Constitution and the 1976 Bonded Labor System Abolition Act. These laws, however, are poorly enforced, and traditional systems remain a powerful influence.

In the African nations of Ghana, Benin, Nigeria, and Togo, young girls may be given to priests as atonement for the sins of their male relatives, as part of the Trokosi (translated as "slaves of gods") traditional religious practice. These girls are often exploited sexually by the priests, forced into

domestic work, and work in the field and local markets. Such servitude lasts anywhere from three to five years. Although the government of Ghana has condemned the practice of Trokosi and outlawed it in 1998, many women remain enslaved and the law has been difficult to enforce.⁹⁵

Obstacles to Targeting Government Complicity: Corruption

Articles 8 and 9 of the UN Convention against Transnational Organized Crime address and require the States Parties to "adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials."⁹⁶ Although there have been some cases of prosecution of public officials for their involvement in trafficking, many states are still unwilling to expose and punish corrupt public officials. In many countries, corruption is rampant and continues to remain a major contributor to the trafficking infrastructure.

This is evidenced for example in Bolivia, where it has been reported that Bolivian police forces are complicit with those known to exploit children.⁹⁷ Reports further indicate that Dominican border officials are being bribed in exchange for allowing traffickers to bring Haitian children into the Dominican Republic.⁹⁸ In a recent scandal, allegations were brought in 2002 against the Dominican Consul in Argentina, as well as the Dominican Ambassador to Argentina regarding their involvement in the trafficking of Dominican women to Argentina for commercial sexual exploitation on the pretext of domestic work offers.⁹⁹

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In a June 2003 high-profile trafficking case in Montenegro, the prosecutor's office in Podgorica, the capital of Montenegro, decided to stop criminal proceedings against the deputy state prosecutor of Montenegro and others for their involvement in trafficking of a Moldovan woman, who alleged that she and other victims of trafficking for sexual exploitation in Montenegro had been patronized by members of the Montenegrin political elite and civil servants. Allegedly, the women were also repeatedly sold back to the brothels by members of the Montenegrin police force when trying to escape. Following international outrage over the Montenegrin government's alleged attempt to cover up the scandal, the international community called for reopening the criminal proceedings and sent an independent committee to investigate the case, represented by the OSCE. The committee released its findings to the Montenegrin government on September 29, 2003, but the report has not yet been made public, and the future of the case is of now still unknown.¹⁰⁰

CONCLUSION

Facing these challenges and overcoming these obstacles will certainly take time and tremendous continued effort. However, as discussed, we have also been witness to remarkable changes. One notable expression of these changes has been the recent upward movement of 10 countries from the Tier 3 category to Tier 2 in the U.S. Department of State's 2003 Trafficking in Persons Report, commemorating a significant increase in their efforts to combat trafficking in persons. Belize, Bosnia and Herzegovina, Dominican Republic, Georgia, Greece, Haiti, Kazakhstan, Suriname, Turkey, and Uzbekistan all took quick action to address the problems noted of their countries in the June 2003 report. The key areas in which they made progress included "the drafting or passing of new anti-trafficking legislation and procedures; conducting high profile public awareness campaigns on national press and television, developing new anti-trafficking training

programs for police, immigration and judicial officials; creating national task forces and action plans; establishing confidential hotlines to fight corruption and trafficking in persons; and building referral systems for victims.”¹⁰¹

However, Burma, Cuba, and North Korea were cited for having made no significant efforts to comply with the minimum standards for the elimination of trafficking under the TVPA, and President Bush has determined that these countries do not fall into the group (with Liberia and Sudan) where further multilateral assistance would promote the purposes of the Act or is otherwise in the national interest of the United States.¹⁰² These countries now face sanctions by the U.S. government.¹⁰³

It is our hope that all countries will take the necessary preventive, protective, and legislative measures to fight trafficking in persons, especially as the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, enters into force in December 2003. Only through a serious, sustained effort by governments acting on their own, and as a part of the international community can we ensure that acts of trafficking will be prevented, that traffickers will be punished, and most importantly, that victims of trafficking will be protected and granted the fundamental human right of freedom from slavery that states are bound by international law to provide. ■

NOTES

The concepts discussed in this article are based upon testimonies given by the authors before Congress. See Statement of The Honorable Linda Smith, Hearing before the Committee on International Relations, House of Representatives, 107th Congress, Second Session, June 19, 2002; Statement of Mohamed Y. Mattar, S.J.D., Hearing before the Committee on International Relations Subcommittee on International Terrorism, Nonproliferation and Human Rights, House of Representatives, 108th Congress, First Session, June 25, 2003; and Statement of Mohamed Y. Mattar, S.J.D., Hearing before the Committee on Government Reform, Subcommittee on Human Rights and Wellness, House of Representatives, First Session, October 29, 2003.

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