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GUIDETO

Anti-Trafficking Law in the USA

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GUIDE TO

Anti-Trafficking Law in the USA



In partnership with the Dominicans for Justice and Peace
and the Marist Brothers Bureau of International Solidarity

FORWARD

Americans would prefer to believe that slavery was abolished in the United States in 1865 by the Thirteenth Amendment to the Constitution, but sadly, this is not the case. Though prohibited by law and punishable by the courts, a contemporary form of slavery continues both in the United States and around the world, made possible through a tragic practice known as human trafficking. Through this practice, men, women, and children are brought from their homes through falsehood, or even by force, into strange new cities or countries whose language and culture may be unfamiliar. They are then held captive and forced to work for the traffickers under terrible conditions. In cases of trafficking in women and girls, many are forced into sexual slavery, enduring rape by the traffickers and “clients” many times a day. Trafficking victims suffer beatings, humiliations, and degradations, and many live and work in dangerous conditions. Studies have found that they suffer post-traumatic stress similar to that of a victim of torture.¹

Franciscans International, Dominicans for Justice and Peace and the Bureau of International Solidarity of the Marist Brothers incorporate two aspects into their approach to human trafficking. First, though sexual exploitation is characteristic of the largest proportion of trafficking cases, it is important that this concern not entirely overshadow that for the prevention of labor exploitation. Second, the most fundamental concern of any of Franciscans International, Dominicans for Justice and Peace and the Bureau of International Solidarity of the Marist Brothers’ actions against trafficking centers on the protection of trafficking victims. To this end, Franciscans International, Dominicans for Justice and Peace and the Bureau of International Solidarity of the Marist Brothers do not distinguish between regular immigrants (those who have arrived in the country with legal and valid documents of immigration) and irregular migrants (those who have arrived in with invalid or no documentation). Nor do the organizations draw a distinction between those who aid law enforcement and those who do not.²

There are steps you can take to help combat this human rights violation which, in addition to the damage done to the victims, insults the dignity of humanity as a whole. This paper will first provide an introduction to human trafficking. Section II will discuss the international law on human trafficking. Section III focuses on the law in the United States as it relates to this crime, and the fourth section will compare the law in the United States to that in other regions around the world. Finally, opportunities for action will be identified and the paper will conclude with an explanation of the next steps that may be taken in fighting this scourge upon humanity.

¹ Cnn.com, Trafficked women’s symptoms akin to torture victims (28 Jun. 2006) *available at* <http://www.cnn.com/2006/HEALTH/06/28/trafficked.women.reut/index.html> (visited 18 Jul. 2006).

² Yao Agbetse, HANDBOOK ON HUMAN TRAFFICKING (2004). Franciscans International disregards the unwillingness to work with the police or investigators because in many circumstances victims would be willing to cooperate were it not for fear, confusion, or other traumatic elements relating to the investigation of a trafficking case.

O N E • Introduction

In this brief overview of human trafficking, the reader may become familiar with trafficking as it is defined by the international community. The second section will discuss victims and identify particular segments of society, which are especially vulnerable to trafficking. The third section will describe the process of trafficking. Finally, particular aspects of the trafficking problem will be identified that create unique challenges to reaching a solution for this issue.

A | Definition

Human trafficking (also known as “trafficking in persons,” to be referred to in this paper as “trafficking”) is defined by the United Nations as

“the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”³

The United States calls it “the largest manifestation of slavery today.”⁴ The definitions focus on the end result of exploitation with no relevance placed on a lack of, or presence of, victim consent.

B | Victims

Because the institution is by nature secretive, statistics on human trafficking are hard to come by. It is estimated that, at any point in time, approximately 2.5 million persons are victims of trafficking, at least one third of whom are trafficked for economic purposes other than sexual exploitation⁵ and that about 20 000 people are trafficked into the United States.⁶ Victims are approached in their home states (or “source state”) by the traffickers or agents of the traffickers. They typically come from rural areas, where they have received relatively little education, and are in dire economic straits. Women and girls are frequently victimized, but it is important to realize that men and boys may also become trafficking victims. Young boys, for example, are frequently trafficked from Bangladesh, Pakistan or Sudan into the Gulf countries to serve as jockeys in camel races. They are valued for their small size and kept on strict diets so that they are as light as possible. Men are valued for tasks requiring grueling physical labor. Men and boys are also occasionally sexually exploited, although it is much more common for women and girls to be victimized in this way. Again, though the sexual exploitation of victims is a serious issue, it should not detract attention from labor exploitation that befalls other victims, as either type of exploitation is a violation of human rights, an offense against human dignity, and an unacceptable infringement on personal liberty.

³ Article 3 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Crime available at www.december18.net

⁴ 22 U.S.C. § 7101(b)(1). U.S.C. stands for “United States Code.” This is the governing law of the United States of America.

⁵ 2005 ILO Global Report, An Alliance Against Forced Labor.

⁶ Office of the Spokesman, United States Becomes Party to Anti-Trafficking Protocol: Marks Slavery Abolition Day (1 Dec. 2005), *available at* <http://www.state.gov/r/pa/prs/ps/2005/57532.htm>

C | Process

Traffickers gain the trust of their victims through myriad means. Some victims are enticed with promises of well-paying jobs or financially secure marriages in other countries. Parents may arrange for the traffickers to take their children, thinking that they are going to a great educational opportunity in the United States. Young women are told they will receive modeling or acting contracts when they arrive. Even if victims are aware of the dangers of trusting outsiders who propose to help them reach a land of greater opportunity, their situations at home are usually so desperate that the option to go with these agents seems like a viable one in comparison. They arrange to travel with the help of the trafficker, and rely on his help in obtaining either legitimate or fraudulent documentation or other travel expenses. One can see that this voluntary arrangement gives the appearance of consent, which sometimes causes problems with law enforcement, which confuse trafficking with smuggling, and also for the victims themselves, who get the impression that they have no right to remedy since they have consented to enter this situation. **One cannot consent to be trafficked.**⁷

Once the victims have “agreed”, they are transported from the source country to the destination country, sometimes passing through “transition countries” on their way. Frequently the travel conditions are dangerous or uncomfortable. It is when they arrive in the destination country, however, that it becomes most clear that their hopes for this arrangement will not come to fruition. The trafficker turns from pitchman to collections agent, telling the travelers that they must now repay their debts with labor, frequently with prostitution. Exorbitant interest rates keep them in bondage for much longer than is necessary to repay their original debt, and they are forced to work long hours in terrible conditions. The trafficker may take the victim’s papers and ransom them to make the victim submit to his demands, and many of those forced into prostitution are also raped by their captors, who resort to physical violence and threats to turn the victim over to the police or to immigration. Some girls are forced to sacrifice their virginity to the trafficker’s greed and depravity. Many victims are passed around, sold like property from the trafficker to others who can benefit from their labor. Victims working as prostitutes are frequently shipped around from one brothel to another, which serves to keep them from establishing a relationship with any clients who could help them in their plight and also keeps them from becoming too familiar with the area in which they are staying.

D | Challenges

There are challenges at the prevention level of anti-trafficking work that involve data collection and awareness campaigns. As previously mentioned, reliable data is difficult to find. It is hard to enumerate a population whose members are not aware of or will not acknowledge their own membership. Therefore, human rights defenders lack a valuable tool in developing strategies to fight human trafficking. Prevention also faces the challenge of ineffective awareness campaigns. Those at risk of being trafficked have, in some cases, been informed of the dangers but ignored them. Sometimes, their current situations are so dire as to outweigh trafficking fears. The worst problem for awareness campaigns is the possibility of a backlash. Communities are taught that if individuals are trafficked, they will inevitably be forced into prostitution, so when repatriated victims return home, they are assumed to have become prostitutes and shunned.

The problem has unique difficulties at the rescue and rehabilitation level as well. The victim is usually aware that she has entered the country irregularly or that her identity documents have been

⁷ *Integration of the Human Rights of Women and a Gender Perspective: Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda*, U.N. Commission on Human Rights, 62nd Sess., Agenda Item 12, U.N. Doc. E/CN.4/2006/62 (2006), available at <http://daccessdds.un.org/doc/UNDOC/GEN/G06/109/64/PDF/G0610964.pdf?OpenElement>.

confiscated and her trafficker may use this information against her, threatening to hand her over to law enforcement to be deported if she does not do as she is told. The victim may also fear law enforcement in countries in which prostitution is illegal because misunderstanding of the problem by law enforcement causes police to treat them as criminals rather than victims if they are discovered. Thus the victim learns to fear those who have the power to help her, and it is for this reason that others who have access to these victims, such as lawyers and health workers, need to be able to recognize signs of exploitation and abuse. Even then, identification of victims is complicated. Many do not understand that they are victims, believing that since they entered into agreement with the traffickers “voluntarily”, they are not entitled to protection from the abuses they suffer. Some are paid substandard wages but ignorance of the value of their labor leads them to believe that they are in a legitimate work situation. A straightforward question such as “Have you been forced into labor?” often will be met with a negative answer, especially if the victim has not been subject to physical force.

Once the victim is identified appropriately, one becomes aware of other facets of the problem. Victim rehabilitation is complicated and there are many obstacles to helping the survivor. The problem historically has been addressed through an immigration and law enforcement approach, leading to the repatriation of the victim. The victim returns home ashamed, usually with nothing to show for her troubles abroad and no earnings to bring her family. Upon return, all victims face the bitter realization that though they have endured great hardship and worked themselves to the bone, their families remain in the same economic position as always. Many fear retribution from the traffickers and organized criminal gangs, especially if they assisted the police before deportation, for prosecutions for trafficking still meet with disappointing levels of success.⁸ Some will re-enter the trafficking world and begin the whole process anew. Thus a trafficking cycle develops and thrives until both international and domestic laws appropriately address the problem and are vigorously enforced. The new legislation recognizes that the law enforcement and migration approaches sometimes create greater trauma, adapting an approach that recognizes trafficking as an assault on human rights.

As the reader may already begin to notice, the unique challenges of human trafficking intertwine and overlap, so that problems feed other problems symbiotically. Awareness that backfires creates less willingness to repatriate and more willingness to cooperate with one’s exploiters by sinking deeper into the system, which hides the victim from data collection and prevents the identification of survivors who can create more effective awareness campaigns. The relationships between these sub-issues highlight the complexity of the human trafficking problem as a whole.

⁸ 10,606 convictions worldwide since 2003, versus 21,495 prosecutions. U.S. DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 36 (June 2006) [hereinafter TIP Report].

T W O • International Law

The United Nations provides the fundamental international law on the topic of human trafficking. For a convention to become international law, it must first be approved by the General Assembly, a body of representatives from all member States to the United Nations. Once approved, an article within the document itself will specify when it comes into force, usually within a set time period after ratification⁹ of the document by a specific number of States. At that point, the convention is in force as binding international law *to all parties who have ratified it*. Subsequently, States may continue to ratify the convention and the convention will specify when it will enter into force for the ratifying State. States that come into existence after the coming into force of a convention may accede to the convention and new political authority over a territory whose previous authority had ratified the convention may succeed to the convention, indicating their intention to remain bound.

Several documents reach the subject of trafficking through different means. This section will first look at the historical documents and outline the other conventions that may possibly be used to reach the problem. An explanation of the shift from the law enforcement approach to the human rights approach will follow, and the section will conclude with analysis of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (also known as the Palermo Protocol).

A | History

The first document to explicitly address trafficking was the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (CSTP). The Convention was approved by the General Assembly of the United Nations on December 2, 1949 and entered into force on July 25, 1951. The United States, however, neither signed nor ratified the document. As the title suggests, this convention focuses specifically on prostitution's effect on trafficking. It adopts a law enforcement approach to the problem, focusing on the punishment of traffickers rather than the protection and rehabilitation of victims. The convention treats trafficking as a consequence of prostitution and reaches suppression of trafficking through the prosecution of pimps and brothel owners.¹⁰ Prohibitions against participation in banned acts create the possibility that the victims themselves could be punished.¹¹ There is no discussion of non-sexual exploitation. The convention simply does not offer sufficient aid for trafficking victims.

B | Human Rights Approach

Tackling the trafficking issue from a law enforcement approach as described above, or from a migration approach which focuses on the repatriation of the victims does not address all facets of the problem, and is especially inadequate for serving the needs of the victims. For this reason, it is preferable to address the problem through a human rights approach, reaching trafficking through certain acts within select United Nations human rights conventions. This is also in keeping with Franciscans International, Dominicans for Justice and Peace and the Bureau of International

⁹ Ratification is the acceptance of the document by the legislative body of a State. It is through ratification that the treaty actually may be enforced within the State. Signing of a treaty indicates the acceptance of the document by the executive of the State, but this does not cause the document to enter into force domestically, since the executive does not have the power to make domestic law.

¹⁰ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 U.N.T.S. 271, arts. 1 and 2, *entered into force* July 25, 1951, *available at* <http://www1.umn.edu/humanrts/instree/traffickingperson.htm> (visited 18 Jul. 2006).

¹¹ *Id.* at art. 4.

Solidarity of the Marist Brothers' position on the topic, as it focuses on protection of the trafficked persons. There are four such documents that provide legal support to the fight against trafficking, three of which are in force as part of the UN treaty system and the other being the UN Protocol on Trafficking.

The first applicable human rights convention is the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW). This document outlines the rights that are to be protected for all women and seeks to induce Member states to pass legislation to bring about gender equality within their own societies. The relevant article in this convention is Article Six, which requires States "to suppress all forms of traffic in women and exploitation or prostitution of women."¹² However, the provision lacks any guidelines as to how States are supposed to pursue the suppression of trafficking. While signed by President Carter in 1980, the convention has not yet been ratified by the US Congress. To make use of this convention, activists would first have to lobby Congress to ratify the Convention, and then to pass laws in keeping with the text of the statute.

The Convention on the Rights of the Child (CRC) provides similar rights for children as CEDAW does for trafficked women, and suffers similar limitations as well. Article 35 specifically prohibits trafficking in children, Article 32 outlines a right for children to be "protected from economic exploitation," and Article 34 seeks to protect children from "sexual exploitation and sexual abuse."¹³ Another article of interest is Article 31, which protects a child's right to "rest and leisure," seeming to suggest a right to play. Like CEDAW, the CRC was signed by the U.S. (February 16, 1995) but never ratified; however, the United States *has* ratified a second document attached to the convention: the Optional Protocol on the sale of children, child prostitution and child pornography.¹⁴ States party are obliged to ban all the actions mentioned in the title of the protocol. Through this document, it is possible to reach trafficking in the United States through international human rights documents, though only when children are involved.

The International Convention on the Rights of All Migrant Workers and Members of Their Families (CMW) is especially useful to combat human trafficking because it protects *all* migrant workers, even those who are irregular, against slavery or compulsory labor.¹⁵ Article 25 of the Convention guarantees the extension of State labor regulations, such as minimum wage and overtime laws, to migrant workers in equal measure.¹⁶ This Convention, unfortunately, faces the most severe limitations on its application in the U.S. out of all the documents mentioned in this section as it has not even been signed by the U.S.

¹² Convention on the Elimination of All Forms of Discrimination Against Women (*adopted* 18 Dec. 1979), G.A. Res. 34/180 U.N. GAOR, 34th Sess., Supp. no. 46 at 193, U.N. Doc. A/34/46 (1979), *entered into force* Sept. 3, 1981, *available at* <http://www1.umn.edu/humanrts/instree/e1cedaw.htm> [hereinafter CEDAW].

¹³ Convention on the Rights of the Child (*adopted* 20 Nov. 1989), G.A. Res. 44/25 annex U.N. GAOR, 44th Sess., Supp. no. 49 at 167, U.N. Doc. A/44/49 (1989), *entered into force* 2 Sept. 1990, *available at* <http://www1.umn.edu/humanrts/instree/k2crc.htm> [hereinafter CRC].

¹⁴ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (*adopted* 25 May 2000), G.A. Res. 54/263, Annex II, U.N. GAOR, 54th Sess., Supp. No. 49 at 6, U.N. Doc. A/54/49, Vol. III (2000), *entered into force* January 18, 2002, *available at* <http://www.ohchr.org/english/law/crc-sale.htm>

¹⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (*adopted* 18 Dec. 1990), G.A. Res. 45/158 Annex U.N. GAOR, 45th Sess., Supp. No. 49A at 262, U.N. Doc. A/45/49, art. 11 (1990), *entered into force* Jul. 1, 2003, *available at* <http://www.ohchr.org/english/law/cmw.htm> [hereinafter CMW].

¹⁶ *Id.* at art. 25.

C | The UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children¹⁷

It is fortunate, therefore, that the United States has both signed and ratified the most direct and comprehensive international law document to criminalize human trafficking. The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children is part of a trio of protocols that supplement the Convention on Transnational Organized Crime, which was adopted by the General Assembly on November 15, 2000, and entered into force on September 29, 2003 (the Protocol against the Smuggling of Migrants by Land, Sea, and Air, and the Protocol against the Fabrication and Illicit Traffic of Small Arms make up the remainder of the trio). The Protocol went into force on December 25, 2003, and the United States became an official party on December 3, 2005.¹⁸ This section will discuss the elements of the crime of trafficking as defined by the Palermo Protocol, and then highlight the protection for victims outlined in this instrument.

1 Elements of Trafficking

There are several reasons why this Protocol is very important and useful to citizens in the United States and in other countries. It is helpful to begin again at the definition of trafficking, mentioned earlier in this document:

“the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”¹⁹

The reader will notice a careful specificity in the elements that lead to trafficking:

- ∞ recruitment
- ∞ transportation
- ∞ transfer
- ∞ harboring
- ∞ receipt

This allows prosecutors to win trafficking convictions even for those who contribute to the exploitation yet may not have had anything to do with the physical crossing of national borders. The act also has a secondary component, which describes the means by which the victim is induced to consent to the arrangement:

- ∞ threat of force
- ∞ use of force
- ∞ other means of coercion (captures psychological coercion)

¹⁷ Because the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children was signed in Palermo, Italy, it is sometimes known as the “Palermo Protocol.” This may create confusion in discussion of the Convention on Transnational Organized Crime as a whole, since three protocols are contained within this instrument. For the purposes of this paper, a reference to the “Palermo Protocol” or the “Protocol” refers specifically to the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.

¹⁸ U.S. Dept. of State, United States Joins Anti-Trafficking Protocol (1 Dec. 2005), *available at* <http://usinfo.state.gov/gi/Archive/2005/Dec/02-14621.html>

¹⁹ Protocol, *supra* note 3, art. 3(a).

- ∞ abduction
- ∞ fraud
- ∞ deception
- ∞ abuse of power
- ∞ abuse of position of vulnerability

The last descriptions of acts reach again to the “buyers” of persons at destination:

- ∞ Giving of payments or benefits to achieve the consent of a person having control over another person
- ∞ Receiving of payments or benefits to achieve the consent of a person having control over another person

Thus the definition has an expansive collection of criminal acts that may constitute trafficking. The criminal intent is described in the last clause, “for the purpose of exploitation.” This more inclusive description of intent is an improvement on the CSTP, which focused wholly on sexual exploitation. The Palermo Protocol makes no distinction between sexual and labor exploitation. At a minimum, forced sexual labor, forced labor, slavery, and the removal of organs should be considered exploitation.²⁰ The Protocol is explicit in its intention to make the victim’s consent to exploitation irrelevant when any of the means included in the second list above are used to obtain the consent. When children (persons under the age of eighteen) are exploited, the means used to secure the exploitation become irrelevant.²¹ States party to the Palermo Protocol are required to draft domestic legislation that criminalizes trafficking, aiding and abetting a trafficker, and conspiracy or solicitation to commit trafficking.²²

2 Protections for Victims

In addition to punishing the traffickers, States party have obligations to the victims. They must protect the privacy of the victims and keep them informed of the judicial proceedings, and they must allow the victims to bring civil claims in their courts.²³ They are encouraged to assist survivors with all aspects of their recovery, including psychological and social recovery.²⁴ Destination countries are requested to be compassionate in their treatment of victims, especially when deciding what status of immigration the victim will enjoy in the country, if any.²⁵ In comparison, source countries are **required** to allow the repatriation of victims with all due haste.²⁶ States party agree to try to prevent trafficking and revictimization through means that include the manipulation of social and cultural channels in order to reduce the supply of and demand for trafficked persons.

Finally, the Palermo Protocol is especially helpful because it repeatedly emphasizes the importance of adopting a human rights approach both in the document itself and in supplemental texts. It gives equal status to each of its three goals:

- ∞ To prevent and combat trafficking in persons, paying particular attention to women and children
- ∞ To protect and assist the victims of such trafficking, *with full respect for their human rights*

²⁰ Protocol, *supra* note 3, art. 3(a)..

²¹ *Id.* at art. 3(b)-(d).

²² *Id.* at art. 5.

²³ *Id.* at art. 6 §§ 2 and 6.

²⁴ *Id.* at art. 6 § 3.

²⁵ *Id.* at art. 7.

²⁶ *Id.* at art 8.

∞ To promote cooperation among states in order to meet those objectives.²⁷

Two years after the Protocol was adopted, the High Commissioner for Human Rights published a set of guidelines on human trafficking that explicitly stated that countries should adopt the human rights approach to prevention, suppression, and punishment of trafficking.²⁸ These guidelines provide a helpful reminder to States of their continuing obligation to protect the rights of the victims as they fight this crime.

3 Special Rapporteur on Human Trafficking

In April 2004, the UN Commission on Human Rights appointed a Special Rapporteur on trafficking in persons, especially women and children. The Special Rapporteur²⁹ receives individual complaints, issues urgent appeals as necessary, and submits annually a global report of her activities. She also visits countries to observe the trafficking situations for herself, although these visits are only available after an invitation is issued (or a standing invitation is granted). If the Special Rapporteur deems it to be necessary, she includes the communications with the individual, with the governments, and the information gleaned from the country visits into her annual report. Before the submission of this report, governments, NGOs, regional organizations, UN agencies and programmes, regional experts, and national human rights institutions are invited to supplement her information.³⁰ Thus there are three ways in which a human rights defender may use this specific UN mechanism: assist in the preparation of an individual complaint, meet with the Special Rapporteur during her country visit, and assist in the preparation of supplemental information for the Special Rapporteur's annual report.

Individual complaints receive action from the Special Rapporteur when the victims' rights are not sufficiently protected by the State concerned. After a complaint is filed and the Rapporteur finds that persons are suffering harm at the hands of the State, or that harm is imminent, she sends an urgent appeal to the government. If the human rights offenses are committed in the past, she sends this information to the State as well, with a request for clarification. The questionnaire to fill out for individual complaints is available on the Office of the High Commissioner's web site,³¹ and requests for urgent action can be emailed to the address urgent-action@ohchr.org (one should write "Special Rapporteur on Trafficking in Persons" in the subject line). The Special Rapporteur exercises her own discretion in making country visits and accepting input from NGOs to file in her report.

²⁷ Protocol, *supra* note 3, art. 2 (italics added).

²⁸ *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council*, U.N. Economic and Social Council, Substantive Sess. 2002, Agenda Item 14(g), U.N. Doc. E/2002/68/Add.1. at § 1, available at [http://www.unhcr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/caf3deb2b05d4f35c1256bf30051a003/\\$FILE/N0240168.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/caf3deb2b05d4f35c1256bf30051a003/$FILE/N0240168.pdf)

²⁹ Currently, the Special Rapporteur on Trafficking is Ms. Sigma Huda, the Founder of the Bangladesh Women Lawyers Association, Secretary General for the Bangladesh Society for the Enforcement of Human Rights, and Board Member of the Asia Pacific branch of the Coalition Against Trafficking in Women.

³⁰ Special Rapporteur on trafficking in persons, especially women and children, Annual reports, available at <http://www.ohchr.org/english/issues/trafficking/annual.htm>

³¹ Individual complaint questionnaires can be printed out from this site: <http://www.ohchr.org/english/issues/trafficking/questionnaire.htm>

THREE • United States

This chapter will begin with an explanation of the ways in which the United States historically has responded to human trafficking cases. A second section will explain the law on trafficking in effect today. Third, gaps in U.S. policy will be identified and discussed. Finally, the reader will learn what can be done to help a victim of trafficking in the United States.

A | History

As in the international system, the United States initially responded to trafficking cases through a law enforcement/migration approach. Thus trafficking offenses were tried under anti-slavery and involuntary servitude laws in the United States, although the legal definition of involuntary servitude was too narrow to serve for some cases.³² In cases of organized trafficking networks, prosecutors could push for conviction under the 1970 RICO Act (Racketeer Influenced and Corrupt Organizations Law).³³ Immigration law was sometimes useful for securing convictions in the case of fraudulent visas and travel documentation, but this remedy would treat the trafficking victim as part of the problem, deporting her once she had been rescued from captivity. The Mann Act of 1910, which prohibited the transport of a person across state lines for the purpose of prostitution or any criminal sexual activity, proved useful in some cases, but its scope was limited to sexual exploitation.³⁴ Finally, the Alien Tort Claims Act of 1789 provides an avenue for victims to bring civil claims against their traffickers, but offers no other protection.³⁵

B | Contemporary Trafficking Law

The United States passed legislation addressing human trafficking in 2000, which was called the Victims of Trafficking and Violence Protection Act (henceforth VTVPA).³⁶ This Act was adopted on the basis of Congress's power to prohibit all forms of "slavery [or] involuntary servitude"³⁷ and also to regulate interstate commerce.³⁸ The Act criminalizes human trafficking in the United States and outlines the means by which prevention efforts and prosecution efforts may be expanded both domestically and abroad. The law reserves its protection for victims of "severe forms of trafficking," which it defines as:

- ∞ "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or"³⁹
- ∞ "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."⁴⁰

³² *US v. Kominski*, 487 U.S. 931, 952 (1988). "[T]he term 'involuntary servitude' necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process."

³³ 18 USC § 1961 (1970).

³⁴ 18 USC § 2421 (1948).

³⁵ 28 USC § 1350 (1948).

³⁶ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 [hereinafter VTVPA].

³⁷ U.S. Const. Amend. XIII.

³⁸ U.S. Const. Art. I § 8.

³⁹ VTVPA, *supra* note 35, § 103(9) defines "sex trafficking" as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act."

⁴⁰ *Id.* at § 103(8).

The reader will notice that the criminal acts are very similar to those described in the Palermo Protocol.⁴¹ As in international law, those in the destination country who benefit from the exploitation of others but play no role in the physical transport from one State to another may still be convicted of a trafficking crime. Any trafficking for the purpose of involuntary sexual or physical labor fits into this category, and yet, the U.S. law is flawed in that it seems to suggest that there are forms of trafficking that one may consent to, which are legally tolerable, or for which it is acceptable that protection not be granted to victims. However, it should be noted that in the United States, the definition of involuntary servitude has been expanded to include that which coerced through legal and psychological means.⁴²

The Act also doubles the maximum sentence for a trafficking crime from ten years to twenty years, and all convictions are accompanied by mandatory restitution of all of the victim's losses, and forfeiture of assets to the government.⁴³ The number of trafficking prosecutions has grown steadily, as has the number of convictions, and as of fiscal year 2004, 213 defendants had been charged, and 168 convictions had been won.⁴⁴ The largest trafficking case to date brought a conviction of a garment factory in American Samoa in 2003. The traffickers had recruited workers from China and Vietnam then kept them imprisoned within the factory compound, beating them, depriving them of food, and threatening them with arrest or deportation. Kil Soo Lee, the owner of the factory, the manager he hired, and another employee who obeyed his instructions in relation to the workers were all convicted of trafficking-related charges.⁴⁵

Those who are forced into sexual labor and those who are forced into physical labor are protected in several ways by this Act. Federal grants are available to fund services for victims.⁴⁶ Law enforcement officials are to be trained to recognize trafficking victims, and to treat them with respect accordingly. They are not to be detained as criminals, and their health and safety are to be protected.⁴⁷ Perhaps the most fundamental form of protection is that from deportation, which is granted to victims of severe forms of trafficking who cooperate with law enforcement, or are under the age of 15.⁴⁸ The determination of who is necessary to the investigation, whether they have sufficiently assisted law enforcement, and how long they may stay in the country is left to the Attorney General. If the person is found to fit these requirements, they may apply for a T visa,

⁴¹ "Transfer" is omitted in the VTVPA and "receipt" is replaced with "provision" or "obtaining."

⁴² *United States v. Bradley* 390 F.3d 145, 150 (1st Cir. 2004).

⁴³ VTVPA, *supra* note 35, § 112. A life sentence is possible for forced sexual exploitation or for the exploitation of a child under the age of fourteen. Anyone who destroys, alters, or comes into the possession of documents in order to aid or abet an act of trafficking may receive a five-year prison sentence. Attempts at acts of trafficking may be punished under the same sentencing guidelines as would a successful act. For the full extent of the impact of the VTVPA on the criminal code, see 18 U.S.C. §§1581, 1583, 1584, 1589-1594.

⁴⁴ Assessment of U.S. Government Activities to Combat Trafficking in Persons 15 (Sept. 2005) available at <http://www.usdoj.gov/ag/annualreports/tr2005/assessmentofustipactivities.pdf>

⁴⁵ Department of Justice, Garment Factory Owner Convicted in Largest Ever Human trafficking Case Prosecuted by the Department of Justice (21 Feb. 2003) available at http://www.usdoj.gov/opa/pr/2003/February/03_crt_108.htm (visited 20 Jul. 2006).

⁴⁶ VTVPA, *supra* note 35, § 107(b)(2).

⁴⁷ VTVPA, *supra* note 35, § 107(c)

⁴⁸ VTVPA, *supra* note § 107(e)(1). Spouses and children may join the victim if they accompanied him or her into the destination state, and the Attorney General deems their deportation likely to bring about extreme hardship. Contrarily, those who are suspected of trafficking may not enter the country. There also exists a U visa, created within the same Act, which protects those victims of crime who do not fit the category of being a victim of "severe" forms of trafficking, if they have suffered substantial physical or mental abuse as a result of criminal activity, possess information concerning criminal activity occurring in the United States, and are helpful or are likely to be helpful in the prosecution of that criminal activity. See Part B Title V § 1513(b). This ensures that immigrant victims of domestic violence receive similar protection against deportation as do the victims of severe forms of trafficking.

which was created specifically for victims of severe forms of trafficking.⁴⁹ The Act also allows the victim to be granted the status of refugee for the purpose of receiving benefits such as food stamps or Medicaid while she stays in the country.⁵⁰ After three years of holding a T-visa, cooperating with investigations, and demonstrating good moral character, survivors may receive permanent residency if they can show they that they would be in danger if they returned to their country of origin.⁵¹ This protection has some limitations, however, no more than 5,000 T or U visas may be issued in a year (though this number does not include visas issued to family members).⁵²

Another part of the Act creates protection for those who have been seduced by traffickers' promises of a better life with an American husband or wife. Historically, the only way for such aliens to gain legal permanent immigration classification in the United States was for the U.S. citizen spouse to file a petition with the Attorney General on their behalf. Thus, the citizen spouse could use this power to control his or her family members. The victims find themselves at the mercy of their new spouses, for it is only through the citizen spouse that the other spouse may legally stay in the country. Or, in situations in which children to the marriage were not born in the country, even the children are vulnerable for deportation if they do not submit to their citizen parent's will.

Division B of the Act includes the "Battered Immigrant Women Protection Act of 2000." Through this act, alien spouses and children of U.S. citizens, having shown evidence of entering the marriage in good faith and having suffered abuse at the hands of the citizen, may file for permanent status on their own.⁵³ This power to self-petition continues even if the U.S. citizen has lost citizenship within two years for incidents of domestic violence, and also if the alien spouse has divorced the U.S. citizen on domestic violence grounds. Alien spouses who self-petition may also petition on behalf of any of their children, even those who were not abused.⁵⁴

The Act also includes sections designed to extend American impact on trafficking beyond the borders of the United States. Section 104 outlines new requirements for countries receiving economic or security assistance from the United States. From now on, to remain eligible for aid, the countries must provide a report on their domestic trafficking situation, which is compiled by the State Department into a yearly Trafficking in Persons Report. The Act attempts to impact international human trafficking through its creation of a minimum standard of response to the trafficking issue, which requires:

- ∞ Prohibiting and punishing severe forms of trafficking
- ∞ Allocating grave punishments for severe forms of trafficking for the purpose of sexual exploitation, or that involve the rape, kidnapping, or death of the victim
- ∞ "Stringent" and deterrent punishments for other severe forms of trafficking
- ∞ "Serious and sustained efforts" to eradicate severe forms of trafficking.⁵⁵

Countries are placed on one of three "tiers": Tier 1 is for those countries who comply with the minimum standards, Tier 2 is a "watch list" for countries who do not comply with the minimum standards but are making significant efforts to do so, and Tier 3 is for countries who neither meet the minimum standards nor make a significant effort to do so.⁵⁶ After 2003, countries that were placed in Tier 3 ran the risk of having sanctions placed on their non-

⁴⁹ VTVPA, *supra* note 35, §107(b)(1)(E).

⁵⁰ VTVPA, *supra* note 35, §107(b)(1)(B).

⁵¹ VTVPA, *supra* note 35, § 107(f)

⁵² VTVPA, *supra* note 35, § 107(e)(2).

⁵³ VTVPA, *supra* note 35, at Division B, Title V, § 1503.

⁵⁴ VTVPA, *supra* note 35, at Division B, Title V, § 1503(b).

⁵⁵ VTVPA, § 108.

⁵⁶ TIP Report, *supra* note 7, at 5.

humanitarian, non-trade assistance from the United States, at the discretion of the President.⁵⁷ The Secretary of State and USAID⁵⁸ are also authorized to establish aid programs in other States geared towards assistance with the repatriation and recovery of trafficking victims,⁵⁹ and the President may authorize funding for countries to aid them in meeting the minimum standards for the elimination of trafficking.⁶⁰ Foreign individuals who are known to play a “significant role” in human trafficking may have their assets frozen by order of the President.⁶¹

In addition, the United States has created penalties for American citizens who reap the benefits of trafficking by traveling to hotspots and sexually exploiting children there. The PROTECT Act of 2003 defines sex tourism (“travel with intent to engage in illicit sexual conduct”) as “travel[ing] in interstate commerce or travel[ing] into the United States . . . [or] travel[ing] in foreign commerce for the purpose of engaging in any illicit sexual activity.”⁶² “Illicit sexual conduct” includes sex acts with minors that would be illegal had they occurred in U.S. territory and any commercial sex act with a minor.⁶³ With this law, those who engage in sex tourism or who attempt to engage in sex tourism, and those who aid, abet or conspire with others to engage in sex tourism may be punished with fines and/or up to 30 years in prison.⁶⁴ Within a year of the passage of this Act, an operation led by the U.S. Customs and Immigration Department (ICE) had resulted in 4,400 arrests of U.S. citizens and 2,100 deportations of foreign nationals engaged in sex tourism.⁶⁵

C | Gaps in U.S. Policy

The United States does not include itself in its annual Trafficking in Persons Report. This is unfortunate, as this would possibly shed light on two major gaps in U.S. trafficking policy today. Perhaps the largest gap in United States policy is that it only provides protection for those who are cooperating in investigations. This flaw reflects a lack of understanding about the mindset of a victim of trafficking, and contravenes art. 6 § 3 of the Palermo Protocol. As discussed before, trafficking victims are frequently confused about what is happening when they are offered help. They may not understand what is being asked of them. They may see the inquiring party as a threat, someone who will make them return to their country of origin. They are also terrified of the repercussions should the traffickers discover that they have communicated with outsiders. Even if their own safety is guaranteed, traffickers’ threats against friends and family at home may act as a silencer. It is terrible to imagine that a human being could be taken from their home, enslaved, and then sent back with nothing to bring their family and show for the ordeal besides scars, bruises, and stigma, while her trafficker walks the streets freely because her testimony was not available to convict him. It is therefore imperative that the law be changed to allow the victim to stay in a secure setting for as long as is necessary to create a sense of safety and protection.

⁵⁷ Theresa Barone, *The Trafficking Victims Protection Act of 2000: Defining the Problem and Creating a Solution*, 17 Temp. Intl. & Comp. L.J. 579, 584 (2003).

⁵⁸ The United States Agency for International Development. This agency provides financial support to States in order to support development, health, and democracy and peace initiatives. For more information, see <http://www.usaid.gov/>.

⁵⁹ VTVPA, *supra* note 35, at § 107(a).

⁶⁰ VTVPA, *supra* note 35, at § 134.

⁶¹ § 111

⁶² Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, Pub. L. No.108-21, § 105 (b) and (c)(2003) [hereinafter PROTECT Act]. The penalties extend to permanent alien residents as well, and also for those who did not travel with the intent of engaging in illicit sexual conduct but did engage in such conduct once they arrived.

⁶³ PROTECT Act, *supra* note 61, at §105(f).

⁶⁴ PROTECT Act, *supra* note 61, at § 105.

⁶⁵ U.S. Department of State, United States Getting Tougher on Child Sex Tourism (23 Nov. 2004), available at <http://usinfo.state.gov/gi/Archive/2004/Nov/24-569238.html>

Another major flaw in the U.S. approach to the trafficking issue is that there are not shelters specifically designed to respond to the needs of trafficking victims. An organization called the Coalition to Abolish Slavery and Trafficking (CAST) currently runs the only shelter that focuses on trafficking survivors. It can house between seven and nine people, and it is based in Los Angeles.⁶⁶ This may be considered incompatible with the instruction found in Palermo Protocol art 6 §(a) that States provide “appropriate housing.” In any case, the need for more shelters like the one organized by CAST is clear, as there are specific aspects of human trafficking that make recovery and rehabilitation more complicated than that with which a standard women’s shelter may be prepared to deal.

Finally, there have been complaints about the U.S.’s global response to trafficking. The Country Report has been criticized as biased. The only Latin American countries who have been sanctioned for failing to meet minimum standards have been Cuba and Venezuela, while other Tier 3 countries have seen no punitive action. Some critics believe that sanctions are only applied to countries that are already under sanction for other reasons. Also, some suspect that the U.S. sends more funding to, and works more closely with, countries in which it already has significant interests unrelated to trafficking.⁶⁷

D | Helping the Victims

To put the law to best use, organizations and individuals should work with guidelines provided by Health and Human Services (HHS), who handle the certification of victims of trafficking, at www.acfr.hhs.gov/trafficking. The first step is identification. The HHS suggests looking for the following indicators (though this is of course not an exhaustive list):

- ∞ Evidence of being controlled
- ∞ Evidence of an inability to move or leave job
- ∞ Bruises or other signs of battering
- ∞ Fear or depression
- ∞ Non-English speaking
- ∞ Recently brought to this country from Eastern Europe, Asia, Latin America, Canada, Africa, or India
- ∞ Lack of passport, immigration, or identification documentation⁶⁸

It is important to understand the mindset of a trafficking victim in order to communicate with her in an effective manner. Remember that she might not be willing or able to recognize that she is a victim of human trafficking. Also be aware that the trafficker has probably told the victim

⁶⁶ Coalition to Abolish Slavery and Trafficking, *About Us: Social Services (2005)*, available at <http://www.castla.org/programs/social.htm>

⁶⁷ CLARE RIBANDO, CRS REPORT FOR CONGRESS: TRAFFICKING IN PERSONS IN LATIN AMERICA AND THE CARIBBEAN 18 (2005), available at <http://www.oas.org/atip/Latin%20America/CRS%20Dec%202005.pdf> This paper cannot possibly provide full discussion of all the possible political implications of the reporting and sanctions element of the VTVPA, but it should be noted that a State’s unrelated sanctions cannot be the sole reason that the U.S. decides to impose or withhold sanctions for failure to comply with minimum standards. Ecuador and Bolivia, for example, have suffered sanctions for refusing to sign agreements immunizing U.S. troops against International Criminal Court jurisdiction, and both states have been placed in Tier 3 in the past, but neither has suffered sanctions for failing to comply with minimum standards. The current Trafficking in Persons Report includes Belize, Burma, Cuba, Iran, Laos, North Korea, Saudi Arabia, Sudan, Syria, Uzbekistan, Venezuela, and Zimbabwe on Tier 3. TIP Report, *supra* note 7, at 46.

⁶⁸ The Campaign to Rescue and Restore Victims of Human Trafficking, *Identifying and Interacting with Victims of Human Trafficking (25 Nov. 2005)*, available at http://www.acf.hhs.gov/trafficking/campaign_kits/tool_kit_social/identify_victims.html

that he will turn her over to law enforcement if she does not do as she is told, so in her eyes law enforcement and government agencies are a threat. She may even try to protect her trafficker from charges because she has learned to see law enforcement as “the enemy.” Finally, many victims of trafficking fear not just for their own safety but for that of their families back home, especially if the trafficker is working as part of an organized crime ring. Therefore, confidentiality is a top priority for those victims who wish to talk to someone about their situation. You must be very careful to limit the contact that people in your office have with the victim to only that which is necessary for such purposes as interpretation.⁶⁹ Before you begin to ask the victim questions, you should get her alone, separate from anyone who may have accompanied her (since that person, even while posing as a spouse or family member, may actually be the trafficker). Assure the victim that you want to help, that she is safe, and that she may be able to get a visa so that she and her children can stay in the country. As was previously mentioned, straightforward questions such as “Are you being forced into labor?” may not elicit a completely truthful response. Questions must be phrased in a way to encourage the victim to gradually open up to you. The HHS offers some recommendations of questions you can ask the person you suspect of being a victim of trafficking:

- ∞ Can you leave your job or situation if you want?
- ∞ Can you come and go as you please?
- ∞ Have you been threatened if you try to leave?
- ∞ Has anyone threatened your family?
- ∞ Have you been physically harmed in any way?
- ∞ What are your working or living conditions like?
- ∞ Where do you sleep and eat?
- ∞ Do you sleep in a bed, on a cot or on the floor?
- ∞ Have you ever been deprived of food, water, sleep or medical care?
- ∞ Do you have to ask permission to eat, sleep or go to the bathroom?
- ∞ Are there locks on your doors and windows so you cannot get out?
- ∞ Has your identification or documentation been taken from you?
- ∞ Is anyone forcing you to do anything you do not want to do?

If you feel that the person you have encountered has been a victim of trafficking, the next step is to call the Trafficking Information and Referral Hotline at 1-888-373-7888. Through this resource you will receive help in finding local protection and aid for the victim. For immigrant spouses of abusive U.S. citizens, the number to call is the National Domestic Violence Hotline at 1-800-799-SAFE. It is advised that immigrants call this number before calling the police, so that they can be given the number for a local domestic violence organization, who will be able to help the victim be sure that the police will not turn them over to immigration when they call.⁷⁰

⁶⁹ The Campaign to Rescue and Restore Victims of Human Trafficking, *The Mindset of a Human Trafficking Victim* (25 Nov. 2005), *available at* http://www.acf.hhs.gov/trafficking/campaign_kits/tool_kit_social/mindset_victim.html

⁷⁰ <http://www.womenslaw.org/immigrantsBasicQs.htm#police>. Victims of domestic violence are also advised that they do not need to be a citizen of the United States to get a restraining order against their abuser, nor do they need citizenship to get a court order for the payment of child support. Children who have U.S. citizenship may apply for social benefits regardless of the parents' status. In no way should the victim's immigration status interfere with her opportunity to find security for herself and her children.

FOUR • Comparative Analysis by Region

This section will briefly examine the State anti-trafficking action in five regions of the world: The Western States, Eastern Europe, Africa, Latin America and the Caribbean States, and Asia. The discussion will also compare regional anti-trafficking action to that in the U.S.

A | Western States

In 2005, the Council of Europe, composed of 46 European States, adopted a Convention on Action Against Trafficking in Human Beings that mirrors the Palermo Protocol in some sections.⁷¹ The Convention explicitly affirms that a human rights approach should be adopted to combat trafficking within Member States⁷² and, to that effect, offers a list of benefits to victims which, in contrast to the United States law, are to be the bare minimum of the support victims receive while in the country.⁷³ Once victims are first discovered, they are to be allowed a thirty-day “recovery and reflection” period before they may be deported, to give them time to begin to heal their wounds, come to understand their options, and make decisions about how to proceed in terms of cooperation with the investigation.⁷⁴ From that point on, victims are to be issued renewable residency permits if they cooperate with the investigation or if they would be in danger upon repatriation.⁷⁵ Victims who participate in the prosecution of their traffickers are to be guaranteed protection for themselves and endangered family members “in particular during and after investigation,” and states are encouraged to work together to maintain protection across border.⁷⁶

In addition, the Convention lays down very clear guidelines for how child victims are to be treated, that they must be provided representation, the State must try to determine the child’s nationality and identity, and, if it is in the best interest of the child, his family should be located.⁷⁷ The best benefit afforded these victims is the specific direction that, if in doubt, States should assume that the victim *is* a child and thus provide him with the greater protection.⁷⁸ Another way in which European law differs from that in the U.S. is that it extends specific instruction to States to promote gender equality through all of their anti-trafficking measures.⁷⁹ By far the greatest contrast between European law and United States law is the Council of Europe’s direction to States that none of the benefits provided in the Convention may be conditional on the victim’s willingness to testify in court.⁸⁰ This particular sensitivity is sorely lacking in U.S. anti-trafficking legislation.

⁷¹ See Council of Europe Convention Art. 4. The Council of Europe is a political organization aimed at standardizing social and legal practices among its forty-six member states. *See* http://www.coe.int/T/e/Com/about_coe/.

⁷² CEC art. 4.

⁷³ *See* VTVPA § 107(b)(1)(B) *and also* CEC art. 12(1). The text of the VTVPA says that victims “shall be eligible” for certain benefits, while the CEC instructs states to provide a list of certain benefits which must be provided “at least.” These benefits include accommodation, emergency medical care, legal and psychological counseling, and education for the children.

⁷⁴ CEC art. 13(1).

⁷⁵ CEC 14(1).

⁷⁶ CEC art. 28.

⁷⁷ CEC art 10.4.

⁷⁸ CEC art 10.3.

⁷⁹ CEC art. 17.

⁸⁰ CEC art 12.6.

Canadian law bears more similarities to U.S. law. Trafficking has been criminalized.⁸¹ Canadian citizens or regular immigrants who are victims of trafficking have access to social services. Non-citizens have more limited access to benefits and may stay only for the duration of their case, though some observers have asserted that the process is too complicated for many survivors. Similar to outreach programs created by the VTVPA in the United States, Canada helps fund Canadian organizations that do awareness campaigns abroad, and immigration officers are stationed in certain source countries in the hopes of suppressing the traffic of persons there. The United States has recommended that Canada review their visa policy, which does not require a visa for certain nationalities, as this allows traffickers to seek victims of that nationality, bring them into Canada with relative ease, and then smuggle them into the United States.⁸²

B | Eastern Europe

A regional agreement between Eastern European States provided the foundation on which to create collaborative anti-trafficking measures throughout the region. The Stability Pact Task Force was established to “streamline and accelerate existing efforts to combat human trafficking in the region.”⁸³ Through this task force, much research has been done on the human trafficking situation in Southeastern Europe. The task force identifies a need for short-term shelters in countries of destination, transit *and* origin, effective repatriation assistance programs, communication and referral mechanisms between the states, and criminal law and law enforcement reform.⁸⁴

Critics of Eastern-European trafficking efforts say that implementation in the individual States still does not adhere effectively to a human rights approach, with victims frequently being targeted by law enforcement and migration officials.⁸⁵ Limanowska found that in Southeastern Europe, awareness campaigns were failing because they were suspected by the citizenry to be veiled anti-migration campaigns, and even those who understood what trafficking was would not let that awareness impact their migration decisions because they thought the government and NGOs were simply trying to scare them into remaining in the country.⁸⁶ Another study by the same author focused on the approaches adopted by the International Organization for Migration (IOM) and the South Eastern European Cooperative Initiative and found that they neither protect the survivors of trafficking, decrease the number of trafficking victims, nor effectively apprehend and punish the traffickers,⁸⁷ Mostly because the IOM focused its efforts in the region almost entirely on repatriation of victims, looking upon trafficking primarily as a problem of unregulated migration.⁸⁸ Police in some countries continue to have trouble identifying trafficking victims, and at times their response to victims remains inappropriately unsympathetic.⁸⁹ Many times their lack of understanding of the relationship between violence

⁸¹ C- 49, 2004-2005. http://www.parl.gc.ca/38/1/parlbus/chambus/house/bills/government/C-49/C-49_3/C-49-3E.html

⁸² <http://www.state.gov/g/tip/rls/tiprpt/2004/33198.htm>

⁸³ <http://www.stabilitypact.org/trafficking/info.asp>

⁸⁴ Special Coordinator, 7.

⁸⁵ Limanowska. Anti-Trafficking Action, 3.

⁸⁶ Limanowska. Trafficking in Human Beings, 21. <http://www.unicef.org/ceecis/Trafficking.Report.2005.pdf>.

⁸⁷ Limanowska. Anti-Trafficking Action, 10.

⁸⁸ Limanowska. Anti-trafficking Action, 3. The focus on repatriation is one of the most significant differences between the anti-trafficking efforts in Eastern Europe and those in the United States. There is almost no discussion of the possibility of naturalization in the destination country, whereas in the United States, permanent U.S. residency seems to be assumed to be the ultimate wish of all victims of trafficking, and thus, is the goal of local victim rehabilitation organizations.

⁸⁹ Limanowska, 4. The author found that police tended to adopt an “everybody or nobody” approach, meaning that victims were either assumed to be illegal migrants, or, in raids tailored to counter trafficking, all immigrants were assumed to have been trafficked. This “all or none” mentality also

against women, prostitution, and human trafficking led to missed prevention opportunities, by helping women escape abusive home situations without having to rely on a trafficker, or led to botched raids, in which the lives of the victims are disrupted while the traffickers walk away free.⁹⁰

Currently, the Commonwealth of Independent States has no overarching cooperative effort in place to tackle trafficking. Individual States have amended their criminal codes and created plans of action, but tend to lack consideration for the needs of the victims.⁹¹ Much of the actual support for victims and survivors is provided through NGOs.⁹² This creates an unbalanced approach to the problem as services differ by organization and stand to be interrupted when money runs out for a particular group. Government support for victims' rights is necessary in order to ensure continuous, reliable, uniform assistance to victims of trafficking.⁹³

It is interesting to look at the legislation in the Russian Federation as an example of CIS anti-trafficking efforts. Here, labor exploitation is the most frequent motivation for traffickers. Prevention efforts miss a step in that they alert the public to the dangers of trafficking without offering any advice on how to avoid those dangers.⁹⁴ Counter-trafficking efforts also falter in the area of enforcement. Corruption of law enforcement makes even the initial apprehension of traffickers difficult.⁹⁵ Though trafficking was criminalized in 2004, to date only five trafficking convictions have been handed down. Prosecutors seem to have difficulty meeting the burden of persuasion on all elements of the trafficking law, and are meeting with more success (in terms of convictions) with charges of more "familiar" crimes.⁹⁶ They also experience trouble in motivating judges to hand down appropriately heavy sentences.⁹⁷ Like the United States, Russia is having problems providing victims with appropriate shelter.⁹⁸ The law in Russia did not speak to victims' interests at all until March of 2005, when legislation was adopted to give legal status and protection to victims testifying against their traffickers.⁹⁹ However, this is also similar to the U.S. law in that it provides protection to those who cooperate with law enforcement only, a rule especially harsh in a culture in which trust in the government remains low.¹⁰⁰

C | Africa

Due to the conflicts in many of the African States, enforcement of trafficking law faces significant hurdles in the region. It also contributes another motivation for traffickers; the money that can be won from selling children as soldiers in armed groups and militias. Africa also has the largest percentage of children in the work force (about 26,4 as of 2004),¹⁰¹ and traditional

created trouble for young women who were immigrating voluntarily and independently of a trafficker, who sometimes are met with suspicion at the border and may even be refused entry.

⁹⁰ Anti-Trafficking Action, 8.

⁹¹ http://www.angelcoalition.org/epjs/e_trafficking.html. Victims who endured threats and pressure by the traffickers in order to coerce them into labor or prostitution now find themselves enduring the same threats and pressure from law enforcement who wish them to testify in court.

⁹² http://www.angelcoalition.org/epjs/e_trafficking.html

⁹³ http://www.unicef.org/ceecis/Unicef_EnglishBook.pdf, 77. Government-operated support also sends a critical message of official validation of the survivors' rights.

⁹⁴ Russia, 71.

⁹⁵ http://www.unicef.org/ceecis/Unicef_EnglishBook.pdf, 83.

⁹⁶ Russia, 85. The new legislation has also had other unexpected and unfortunate consequences. When RF art. 127.1 was enacted, art. 152 on trafficking in children was repealed. Without its own law, by which convictions were easier for prosecutors to win, convictions for trafficking in children have plummeted.

⁹⁷ http://www.unicef.org/ceecis/Unicef_EnglishBook.pdf, 80.

⁹⁸ Russia, 64.

⁹⁹ Russia, 95.

¹⁰⁰ Russia, 93.

¹⁰¹ The end of child labor: within reach, ILO Global Report, 2006

apprenticeship arrangements called “placements,” in which children are sent away from their families to the home of a richer relative where they work in exchange for education, have now been corrupted by trafficking, blurring the distinction between voluntary labor and trafficked labor for both parents and law enforcement alike.¹⁰² In Nigeria, where women are often trafficked into Italy for prostitution, counter-trafficking is especially difficult because there are tribal rituals that the trafficked people undergo before leaving that create a sense of obligation to submit to the will of the trafficker, steeping the victims’ submission in their own spiritual duty and creating fears far beyond that of disappointing family members should the victim try to escape her situation.

The regional framework for the fight against trafficking in Africa was set by the African Charter on Human and Peoples’ Rights (1981) and the African Charter on the Rights and Welfare of the Child (1990). Both of these Charters were drawn up by the Organization of African Unity (now the African Union), a cooperative endeavor among African States for increased economic and political integration. The Charter on Human and Peoples’ Rights does not mention trafficking explicitly, but it does prohibit slavery and the slave trade.¹⁰³ It also establishes “the right to work under equitable and satisfactory conditions, and [to] receive equal pay for equal work.”¹⁰⁴ The right to education is protected,¹⁰⁵ which suggests that child labor to any extent past an after-school job might be illegal. Finally, the Charter establishes the African Commission on Human and Peoples’ Rights to oversee the protection of these rights by the Member States.¹⁰⁶ The African Charter on the Rights and Welfare of the Child specifies that the best interests of the child are to be taken into account in all actions taken on his behalf.¹⁰⁷ The child has the right to rest and leisure,¹⁰⁸ as well as protection from economic exploitation and dangerous work,¹⁰⁹ recruitment into armed conflicts,¹¹⁰ and sexual exploitation.¹¹¹ An African Committee on the Rights and Welfare of the Child was established to bring the articles of the Charter to fruition.¹¹²

Cooperative efforts among the sub-regions have varied. The Economic Community of West African States (ECOWAS) is a group of 15 States in Western Africa who share the goal of forming a West African Economic Union. This group has created a Declaration and Plan of Action Against Trafficking in Persons that takes a three-prong approach to anti-trafficking: establishing effective legal systems, fostering understanding amongst law enforcement of the appropriate treatment of trafficked people in keeping with their status as victims as opposed to criminals, and spreading awareness of the problem.¹¹³ States are invited to establish a National Task Force to oversee the national implementation of the three goals of the Plan of Action and to report on the progress within the State. A Secretariat was established to receive the reports from the Task Forces and to facilitate national implementation of the Plan of Action. Other sub-regions have been less active in their response to trafficking. In October 2002, the Southern African Development Community (SADC) collaborated with the IOM to host a workshop on

¹⁰² <http://www.iss.co.za/Pubs/ASR/12No1/EFitz.html>.

¹⁰³ Art. 5.

¹⁰⁴ Art. 15.

¹⁰⁵ Art. 17. This is also protected in Article 11 of the African Charter on the Rights and Welfare of the Child.

¹⁰⁶ Art. 30.

¹⁰⁷ Art. 4. This responsibility is shared by the parents and all those who act on the child’s behalf. Thus the law reaches parents who sell their children to traffickers.

¹⁰⁸ Art. 12.

¹⁰⁹ Art. 15.

¹¹⁰ Art. 22.

¹¹¹ Art. 27.

¹¹² Art. 32.

¹¹³ <http://www.unicef-icdc.org/publications/pdf/trafficking-gb2ed-2005.pdf>, 19. ECOWAS also has instruments facilitating cooperation of law enforcement and judiciaries from State to State. The 1994 Convention on Extradition creates a means of enforcing penalties against offenders who cross state borders.

trafficking in persons. Trafficking was also discussed at an IOM-hosted Conference for East Africa.¹¹⁴

Some countries have been very creative and active in their efforts to counter trafficking. Ethiopia, recognizing the violation of migrant workers' rights as a facet of trafficking, drew up the Private Employment Agency Action in 1998. This law seeks to apply a legal block against the means by which trafficking victims found their labor exploited. In order to be licensed to operate in Ethiopia, private employment agencies must now accept responsibility for the client's safety abroad, provide their clients with a written contract (the terms of which must also comply with Ethiopian labor laws), notify the embassy of their client's arrival, and maintain an office branch in the destination country.¹¹⁵ Nigeria has a particularly active National Agency for the Prohibition of Trafficking in Persons, which trains law enforcement, airport authorities, and others likely to come into contact with trafficking victims, as well as judges and magistrates with the power to convict the traffickers.¹¹⁶ The agency, with the help of the IOM, also opened a shelter in July 2004.¹¹⁷ Mali and Côte d'Ivoire have collaborated in the fight against trafficking in children. The Cooperation Agreement on Combating Transborder Trafficking of Children establishes joint responsibility and financial burden to combat trafficking between the two countries which are cooperating on prevention and protection, with an emphasis on the best interests of the child. Minimum standards include that of the origin country to assist with the re-integration of survivors and that of the destination country to ensure victims' rehabilitation and compensation, and the two States are welcome to go beyond these standards.¹¹⁸ While many countries have amended their penal codes to make human trafficking a criminal offense, there remains the need to protect and support survivors.

D | Latin America and Caribbean States

In both the 2004 and the 2005 Trafficking in Persons Report by the U.S. State Department, Latin America showed a higher percentage of countries with a third-tier ranking than any other region,¹¹⁹ and it experiences the highest rates of emigration in the world.¹²⁰ In Latin America, as in Africa, poverty and unemployment drive young people to migrate from rural to urban areas, and corruption and instability in the government create difficulties for those fighting trafficking. High-ranking civil servants have even been found to participate in trafficking themselves: a Congressman in the Dominican Republic was discovered to be a trafficker in 2003.¹²¹ Sex tourism, in which men travel from countries in which prostitution is either illegal or strictly enforced to countries in which the sex industry is not well-regulated in order to have sex, is a major contributor to trafficking demand. Children also may be trafficked to serve in militias.¹²²

The Organization of American States (OAS) collaborates with the Inter-American Commission of Women (CIM) to counter trafficking. The CIM took the initiative by submitting research and recommendations to the OAS, which then passed two resolutions and created an OAS Coordinator on the Issue of Trafficking in Persons and an Anti-Trafficking in Persons

¹¹⁴ <http://www.unicef-icdc.org/publications/pdf/trafficking-gb2ed-2005.pdf>, 26.

¹¹⁵ <http://www.unicef-icdc.org/publications/pdf/trafficking-gb2ed-2005.pdf>, page 21.

¹¹⁶ <http://www.state.gov/g/tip/rls/rpt/40255.htm>

¹¹⁷ <http://www.dol.gov/ilab/media/reports/iclp/tda2004/nigeria.htm>

¹¹⁸ <http://www.unicef-icdc.org/publications/pdf/trafficking-gb2ed-2005.pdf>, 29.

¹¹⁹ <http://www.oas.org/atip/Latin%20America/CRS%20Dec%202005.pdf>, Summary. The Tier 3 countries are those that both fail to meet the minimum standards to eliminate trafficking and fail to make significant efforts to meet these standards. See Trafficking in Persons Report June 2006 United States Department of State, page 4. Asia sees the most representation on the Tier 3 list in the 2006 Report. Page 46.

¹²⁰ <http://www.oas.org/atip/Latin%20America/CRS%20Dec%202005.pdf>, page 2.

¹²¹ http://www.iadb.org/Etica/Documentos/abs_sta_traff-i.htm

¹²² <http://www.oas.org/atip/Latin%20America/CRS%20Dec%202005.pdf>, page 5.

Section.¹²³ The Anti-Trafficking in Persons Section seeks to provide means of combating trafficking that would be unfeasible for one government on its own. They advance existing programs against trafficking, and develop new ones. Some of their activities focus on specific countries, in which they hold seminars on anti-trafficking or focus projects on developing the capacity of the authorities in the country to combat trafficking on their own. They train prosecutors and investigators who will be responsible for recognizing trafficking and bringing traffickers to justice. The Section is also responsible for seeking foreign funding to help the countries in their counter-trafficking efforts.

The unique challenges presented by trafficking in Latin America have been answered with creative responses in some instances. In Colombia, authorities try to identify trafficking victims at airports, catching them before they leave. Panama attacks the demand side of trafficking by requiring airports, travel agencies, and hotels to issue written warnings against sex tourism and the penalties that one may incur if caught.¹²⁴ While these practices are important steps in the right direction, on the whole, individual country legislation shows many gaps. Most Latin American countries have ratified the Palermo Protocol, but domestic legislation varies widely, even in the most basic aspects of definitions. For example, prosecution of child trafficking is made more difficult in Latin America because many countries recognize fourteen as the legal age of consent.¹²⁵ While varying degrees of effort have been applied to fight the trafficking of children, even less has been done to protect women.¹²⁶ In countries in which there is a great deal of internal trafficking,¹²⁷ there is also an inadequate legislative response.¹²⁸ A literature review of studies on the region's legislation concludes that the area in which there is the most room for improvement is that of concrete implementation mechanisms.¹²⁹ Implementation remains the major challenge because many governments lack the means to effectively combat trafficking on their own. The funding provided to the OAS from foreign sponsors is vital in the fight against trafficking in persons in Latin America.

The dependence on foreign funding means that the United States participates in many initiatives in the region on the matter of trafficking. The OAS and individual governments both maintain active partnerships with the U.S. Trafficking in Persons office and other U.S. groups. An example of this is the American Bar Association's Latin America and Caribbean Law Initiative Council's Project to Combat Trafficking in Persons in Ecuador.¹³⁰ The Project began with an in-depth, qualitative analysis of trafficking in the country. Next the Council initiated legislative reform and established an Advisory Committee. They built a toolkit for both officials and members of civil society, posted it for free download on the internet, and circulated 500 copies in areas without internet access. The Council has held training sessions for law

¹²³ <http://www.oas.org/atip/Latin%20America/CRS%20Dec%202005.pdf>, page 14. *See* AG/RES. 1948 (XXXIII-O/03) and AG/RES. 2019 (XXXIV-O/04)

¹²⁴ <http://www.state.gov/g/tip/rls/tiprpt/2004/33186.htm>

¹²⁵ <http://www.oas.org/atip/Latin%20America/CRS%20Dec%202005.pdf>, page 4.

¹²⁶

<http://www.oas.org/atip/Regional%20Reports/USAID%20LAC%20TIP%20Literature%20Review.pdf>, page 11. The report does not mention how protection for men compares, but it is safe to assume that they receive less protection from trafficking than women, which would put them in a very vulnerable position.

¹²⁷ Trafficking in persons that occurs within the borders of one state, for example, the trafficking of a person from their rural hometown to an urban setting.

¹²⁸ http://www.iadb.org/Etica/Documentos/abs_sta_traff-i.htm.

¹²⁹

<http://www.oas.org/atip/Regional%20Reports/USAID%20LAC%20TIP%20Literature%20Review.pdf>, page 12.

¹³⁰

http://www.law.ufl.edu/cgr/conference/06confmaterials/3_Panel/References/ABA_LALICEcuadorTIPProjectUpdatedENG.pdf

enforcement, led prevention campaigns, participated in conferences, and proposed a trafficking education module to be included in Ecuadorian curricula.

E | Asia

Like Africa and Latin America, Asia faces challenges to counter-trafficking that include low funding and compliance by governments. Certain regional groups have taken a stance against trafficking. The South Asian Association for Regional Cooperation, formed as a collaborative effort to increase economic and social development, has drafted a Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. The Convention covers both external and internal trafficking and explicitly states that consent of the victim is irrelevant.¹³¹ The Convention addresses the appearance of corruption or complicity in governments. An offender's status as a public official who committed the offense while serving in that capacity aggravates the crime. The location of the offense as a custodial, educational, or social institution for children is also an aggravating circumstance.¹³² Governments are supposed to cooperate for the purpose of criminal prosecution, assisting each other in the extradition of offenders, the taking of evidence, and the locating of witnesses.¹³³

The Convention still does not provide complete protection. As the name suggests, protection is only extended to **women** and **children** who have been trafficked, which it defines as "the moving, selling, or buying of women and children for **prostitution**."¹³⁴ This reveals a critical misunderstanding or lack of appreciation for the gravity of the forced labor aspect of trafficking, especially in this part of the world and ignores the damage that men and boys may endure. Also, like the Stability Pact Task Force in Southeastern Europe, the survivor services focus completely on repatriation, although in South Asia, States are required to establish shelters for survivors, so it may have been assumed by the drafters that some of the harm that survivors suffer after repatriation would be lessened by the availability of the shelters. Victims at least will benefit from seeing their problem being addressed by the state and finding validation from State action rather than suffering silence from the State while NGOs take care of their needs for as long as the funding lasts.¹³⁵ Also, the Association of Southeast Asian Nations (an economic collaboration which includes Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam) signed a Declaration Against Trafficking in Persons, Particularly Women and Children in 2004. This Declaration indicates an intention to form a regional counter-trafficking network.¹³⁶ It also states that the human rights of victims are to be protected.¹³⁷

A look into the actions of individual countries reveals a broad spectrum of governmental responses: from very actively engaged in counter-trafficking, to passively engaged, to mire in complicity with traffickers. Australia takes an active approach, emphasizing prevention and deterrence, criminalizing sex tourism and publicizing criminal cases related to trafficking and sex tourism.¹³⁸ Australia has also funded the Asia Regional Cooperation to Prevent People Trafficking, which focuses on trafficking in South East Asia.¹³⁹ This program is geared towards strengthening legal and social institutions in Thailand, Laos, Myanmar, and Cambodia so that they are capable of combating trafficking. Given the relative prosperity Japan enjoys in comparison with other countries in the region, the State's anti-trafficking efforts are remarkably

¹³¹ SAARC Convention, Art. 1 § 3.

¹³² SAARC Convention, Art. 4.

¹³³ SAARC Convention, Art. 6.

¹³⁴ SAARC Convention, Art. 1 § 3.

¹³⁵ SAARC Convention Art. 9.

¹³⁶ ASEAN Declaration § 1.

¹³⁷ ASEAN Declaration § 6.

¹³⁸ <http://www.state.gov/g/tip/rls/tiprpt/2004/33191.htm>

¹³⁹ <http://www.arcppt.org/eng/about.html>

underdeveloped.¹⁴⁰ In some States, labor exploitation is especially serious as the State itself compels the labor of its own people.¹⁴¹ The Myanmar military regularly exploits the labor of Myanmar citizens, and in North Korea, those who are repatriated, after leaving the country to escape economic stagnation, find themselves again exploited as they are punished for the emigration in brutal labor camps.¹⁴² Additionally, low labor standards in many countries lead to the abuse of rural citizens by foreign companies. Traffickers bring people from the rural areas into the cities, and foreign companies are attracted to establish themselves in the country in order to seize upon cheap labor. Governments are sometimes complicit because of the economic growth that comes from foreign investment.

¹⁴⁰ <http://www.state.gov/g/tip/rls/tiprpt/2004/33191.htm>

¹⁴¹ <http://www.state.gov/g/tip/rls/tiprpt/2004/33191.htm>. Myanmar provides a particularly well-known example. In 2004, an American company by the name of Unocal settled an alien tort suit filed by citizens of Myanmar who claimed that the company acquiesced in the use of forced labor. The plaintiffs said that the company had enlisted the help of the Myanmar military to find labor to complete a pipeline in the country. The military then coerced villagers to work on the pipeline, engaged in rape and torture, and killed some of those who resisted. Unocal was found to be liable for the human rights violations through their acquiescence. *See Doe v. Unocal*, 395 F.3d 932 (9th Cir. 2002). The case was appealed and later remanded, but the parties settled out of court before a final decision was made.

¹⁴² <http://www.state.gov/g/tip/rls/tiprpt/2004/33191.htm>

FIVE • Recommendations and Call for Action

The US Victims of Violence and Trafficking Protection Act is a good first step in the fight against human trafficking, and it compares favorably to law in other regions, but it cannot hope to blot out this scourge in its current state. There are aspects of the law which are not grounded in reality, which work counter to the goals of the legislation. Thus there is plenty to do for those who want to stop trafficking in the United States and abroad. This section will begin with the action that can be taken to increase protection for victims within the VTVPA, and then without, through the ratification of other applicable human rights conventions. Section C will discuss reforming laws to demonstrate recognition of the possibility that some of the law-breakers may be victims, and to create harsher penalties for those who exploit victims of trafficking. Finally, action is called for to increase research and data collection on trafficking.

A | Protection for Victims

The most glaring error in U.S. trafficking law is the dearth of options the law leaves for rescued or escaped victims. It is simply no help to someone who has just escaped a dangerous situation to tell them that they must testify against those who terrorized them or they will be sent home, where other dangers may await them. The law must be changed to allow victims to stay in the country they have worked so hard in and suffered so much to reach. At the very least, victims should be allowed a “recovery and reflection” period, as is done in Europe, so that they have the time to come to fully understand their options and may think clearly about what is, after all, a huge decision.

The second flaw in U.S. domestic policy in regards to trafficking is the lack of sufficient shelters that are supported by State sponsorship. Survivors of trafficking can not be treated the same as victims of domestic violence. Even though both groups face some of the same challenges, and certain parts of recovery are similar, there are unique challenges facing a person who has been trafficked with which a domestic violence social worker cannot be expected to have experience. More trafficking shelters must become available and able to accommodate a higher number of survivors. At the very least, there should be a shelter in each major trafficking “hot spot”: Los Angeles, New York, Miami, San Francisco, and Chicago.¹⁴³ Even if the need exceeds the available spots, the presence of such a shelter may create awareness for victims that they may escape their suffering and find help. The absence of such shelters sends the message that the government is not enough concerned about the plight of the trafficked. Though state-run shelters are preferable, as they convey a message that the government is no less concerned about trafficking than are private citizens, NGOs that specialize in trafficking should not be ruled out to run shelters if it is unfeasible to open a state-run shelter. What is most important is that a shelter is available to help the victims of trafficking.

The solution is revisions to the VTVPA, both changing the visa rules and creating more funding for shelters, both state-run and NGO-run. For this, one must contact one’s representatives in Congress. There is a webpage on the House of Representatives website in which one can enter one’s state and zip code (and look up the four-digit extension) to find out one’s representative in the House and get their contact information: <http://www.house.gov/writerep/>. On the U.S. Senate homepage (<http://www.senate.gov/>), one can find one’s state in a pull-down menu on the top-right side of the screen that is titled “Find Your Senators,” which will take the visitor to a page with both Senators’ contact information. One can call, write, or email these representatives and explain to them the danger in which victims, who have already suffered a great deal, are

¹⁴³ <http://www.ncjrs.gov/pdffiles1/nij/trafficking.pdf>, page. 3.

placed when they are given such narrow options for shelter and support within the country. One may choose to refer the representatives to the reflection periods available for victims in countries part of the Council of Europe as an example of the minimum standard of humanity. Remind your representatives that giving victims more time means they will come to feel more removed from danger, which may lead to a greater willingness to testify and thus more convictions.

B | Ratification of Other Relevant Treaties

While U.S. dedication to fighting trafficking is evident by the reach and scope of the VTVPA, one must remember that the fundamental problem with trafficking is the utter offense it causes against human rights and the dignity of all humanity. Therefore, though it may be said that the U.S. demonstrates concern for counter-trafficking through its domestic programs to fight trafficking and its funding of counter-trafficking efforts abroad, one wonders if its voice has much credibility while it remains silent on issues like the rights of children, women, and migrant workers, all groups especially vulnerable to become victims of human trafficking. Unfortunately, the U.S. has not ratified the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of All Migrant Workers and Members of Their Families (CMW).¹⁴⁴ One can write to one's Congressmen to call for the adoption of these core human rights treaties.

Failing ratification and national implementation, it may be worthwhile for individual communities to look into local implementation of the terms of applicable treaties. This experiment has been undertaken by some cities around the country, most notably San Francisco, and has met with varying degrees of success. Local implementation of a treaty occurs when a state or city chooses to adhere to the terms of a treaty by incorporating them into their laws. The treaty is not "ratified," as no governmental body other than the Senate may ratify a treaty, but the protections offered by the treaty are adopted into law. San Francisco adopted CEDAW in this fashion in 1998, incorporating the terms of the treaty in the city code, and establishing a Task Force to oversee the implementation of the terms. The Task Force studied certain departments in the city government for signs of gender discrimination. The first to be studied has undertaken improvements and submitted a report on its progress.¹⁴⁵ In this way, steps are taken so that at least if certain rights are not respected nationally, they will be endorsed in that city.

C | Legislation Reform

Another way in which we can improve the situation for trafficking victims is to reform prostitution legislation. Currently anti-prostitution laws do not leave room for the possibility that the "criminal" (the prostitute) may also be a victim, or if they do, law enforcement is not adequately trained to be sensitive to the difference. For this reason, in states in which prostitution is to be illegal, legislators should be careful to craft laws that bring the hardest penalties to those who purchase these services, if the prostitute does not consent, not those who offer them. One does not find instances of people contributing to the *demand* side of this "market" involuntarily; therefore, laws should bring the heaviest burden down on this side, and leave open the possibility that contributions to the supply side may have been coerced. "Johns,"

¹⁴⁴ For more information, the Office of the UN High Commission for Human Rights website has the text of all UN human rights conventions: <http://www.ohchr.org/english/law/index.htm>. CRC is opposed by groups in favor of home-schooling who fear that it may interfere with that right. See the Home School Legal Defense Association page at <http://www.hslda.org/docs/nche/000000/0000021.asp>. CEDAW is opposed by groups who fear that language in the convention that protects reproductive rights may create a right to contraception or abortion, or legalize prostitution. See the Concerned Women for America page at <http://www.cwfa.org/articledisplay.asp?id=1971&department=CWA&categoryid=nation>. The author has yet to find any organizations that put forth opposition arguments against CMW.

¹⁴⁵ http://www.sfgov.org/site/cosw_index.asp?id=10848

those who buy the services of a prostitute, contribute voluntarily to a practice that thrives on exploitation and may be punished as such. Prostitutes may also be penalized, but apprehension, detention, and punishment must be carried out by those who understand that their criminal acts may not have been voluntary and are able to recognize those who work against their own will.

If states choose to legalize prostitution (and Nevada is the only one which does currently), they should not turn a blind eye on the market. Regulation is necessary to ensure that prostitutes are in the country legally and have chosen that line of work voluntarily. Monitoring is also necessary to prevent abuse or unfair labor practices at the hands of pimps. Law enforcement should be able to recognize signs of abuse or coercion, and should be aware of the institutions to which prostitutes may be referred if it is discovered that they have been trafficked. Police must be aware that prostitution comes accompanied by very complicated issues and, as such, must not be dealt with in a simplistic manner.

Finally, those who want to indulge in sexual activities that exploit women and children and are prohibited in the United States should not be able to go to other countries to satisfy these abusive fantasies. The current efforts of the ICE to combat sex tourism are commendable, but penalties should be stiffer, perhaps with mandatory jail time, and the cases uncovered should be brought more into the limelight, for the sake of public awareness. Heavy publicity for cases of U.S. citizens convicted of sex tourism abroad may also serve as a deterrent to other Americans who may have entertained that idea. Strong laws on this subject may even serve as a deterrent against committing sex crimes against trafficked persons domestically, as those who would do so come to realize that a conviction could bar them from traveling to certain countries altogether.

Those interested in taking action on the domestic prostitution issue should contact their state representatives, as prostitution is handled at the state level. Congressmen may be contacted to request blocks against travel to sex tourism destinations for convicted sex offenders and stronger penalties for sex tourists.

D | Accurate Research and Data

The final problem to be discussed may prove to be the most difficult to solve. There simply must be a better record of who is being trafficked, where they are coming from, and where they are going. Without this, it is very hard to tell what progress is being made in counter-trafficking, if any. As law enforcement and other officials and agents become more able to identify victims of trafficking, the statistics should accordingly improve. Funding must be available from either private groups or the State Department that will allow for enough research to provide a comprehensive picture of the problem, at least as it presents itself in the United States. From there we can tell if our efforts are having an impact on this terrible practice, or if we need to try a different approach. Activists should contact both their federal and state representatives to bring this need for funding to their attention.

The areas in which work is needed to combat trafficking are many, and the amount of work needed is great. However, the potential good that may come of these efforts is also great, and can be measured in any number of lives lived to the fullest and happiest. Readers are urged to keep this in mind if they find themselves intimidated by tasks at hand. There are tools available. There are laws in place. They may not be perfect, but they are here for us to use, and the ways by which they may be improved are clear. There is work to be done, but there is human life at stake. While human trafficking continues, no one should be able to rest comfortably.

A P P E N D I X • Ratification Chart (as of June 2006)

RELEVANT INTERNATIONAL CONVENTIONS*

Country	Protocol to Prevent, Suppress & Punish Trafficking in Persons		ILO Convention 182, Elimination of Worst Forms of Child Labor	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography		Optional Protocol to the Convention on the Rights of the Child in Armed Conflict		ILO Convention 29, Forced Labour	ILO Convention 105, Abolition of Forced Labour
	Signature	Ratification, Accession (a)	Ratification	Signature	Ratification, Accession (a)	Signature	Ratification, Accession (a)	Ratification	Ratification
Afghanistan					X(a)		X(a)		X
Albania	X	X	X					X	X
Algeria	X	X	X					X	X
Angola			X		X(a)			X	X
Argentina	X	X	X	X	X	X	X	X	X
Armenia	X	X	X	X	X	X	X	X	X
Australia	X	X		X		X		X	X
Austria	X	X	X	X	X	X	X	X	X
Azerbaijan	X	X	X	X	X	X	X	X	X
Bahamas	X		X					X	X
Bahrain		X(a)	X		X(a)		X(a)	X	X
Bangladesh			X	X	X	X	X	X	X
Belarus	X	X	X		X(a)		X(a)	X	X
Belgium	X	X	X	X	X	X	X	X	X
Belize		X(a)	X	X	X	X	X	X	X
Benin	X	X	X	X	X	X	X	X	X
Bolivia	X		X	X	X		X(a)	X	X
Bosnia & Herzegovina	X	X	X	X	X	X	X	X	X
Brazil	X	X	X	X	X	X	X	X	X
Brunei									
Bulgaria		X	X	X	X	X	X	X	X
Burkina Faso	X	X	X	X		X		X	X
Burma		X(a)						X	
Burundi	X		X			X		X	X
Cambodia	X			X	X	X	X	X	X
Cameroon	X	X	X	X	X	X	X	X	X
Canada	X	X	X	X	X	X	X		X
Central African Rep.			X					X	X
Chad			X	X	X	X	X	X	X
Chile	X	X	X	X	X	X	X	X	X
China, People Rep.			X	X	X	X			
Colombia	X	X	X	X	X	X	X	X	X
Congo, Dem. Rep. of	X	X(a)	X		X(a)	X	X	X	X
Congo, Rep. of	X		X					X	X
Costa Rica	X	X	X	X	X	X	X	X	X
Cote D'Ivoire			X					X	X
Croatia	X	X	X	X	X	X	X	X	X
Cuba				X	X	X		X	X
Cyprus	X	X	X	X				X	X
Czech Republic	X		X	X		X	X	X	X

RELEVANT INTERNATIONAL CONVENTIONS

Country	Protocol to Prevent, Suppress & Punish Trafficking in Persons		ILO Convention 182, Elimination of Worst Forms of Child Labor	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography		Optional Protocol to the Convention on the Rights of the Child in Armed Conflict		ILO Convention 29, Forced Labour	ILO Convention 105, Abolition of Forced Labour
	Signature	Ratification, Accession (a)	Ratification	Signature	Ratification, Accession (a)	Signature	Ratification, Accession (a)	Ratification	Ratification
Denmark	X	X	X	X	X	X	X	X	X
Djibouti		X(a)	X					X	X
Dominican Republic	X		X			X		X	X
East Timor					X(a)		X(a)		
Ecuador	X	X	X	X	X	X	X	X	X
Egypt	X	X	X		X(a)			X	X
El Salvador	X	X	X	X	X	X	X	X	X
Equatorial Guinea	X	X	X		X(a)			X	X
Estonia	X	X	X	X	X	X		X	X
Ethiopia			X					X	X
Fiji			X	X		X		X	X
Finland	X		X	X		X	X	X	X
France	X	X	X	X	X	X	X	X	X
Gabon			X	X		X		X	X
Gambia, The	X	X	X	X		X		X	X
Georgia	X		X		X(a)			X	X
Germany	X		X	X		X	X	X	X
Ghana			X	X		X		X	X
Greece	X		X	X		X	X	X	X
Guatemala		X(a)	X	X	X	X	X	X	X
Guinea		X(a)	X					X	X
Guinea-Bissau	X			X		X		X	X
Guyana		X(a)	X					X	X
Haiti	X			X		X		X	X
Honduras			X		X(a)		X(a)	X	X
Hungary	X		X	X		X		X	X
India	X			X	X	X	X	X	X
Indonesia	X		X	X		X		X	X
Iran			X					X	X
Iraq			X					X	X
Ireland	X		X	X		X	X	X	X
Israel	X		X	X		X	X	X	X
Italy	X		X	X	X	X	X	X	X
Jamaica	X	X	X	X		X	X	X	X
Japan	X		X	X	X	X	X	X	
Jordan			X	X		X		X	X
Kazakhstan			X	X	X	X	X	X	X
Kenya		X(a)	X	X		X	X	X	X
Korea, Rep. Of	X		X	X	X	X	X		
Kuwait			X		X(a)		X(a)	X	X

RELEVANT INTERNATIONAL CONVENTIONS

Country	Protocol to Prevent, Suppress & Punish Trafficking in Persons		ILO Convention 182, Elimination of Worst Forms of Child Labor	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography		Optional Protocol to the Convention on the Rights of the Child in Armed Conflict		ILO Convention 29, Forced Labour	ILO Convention 105, Abolition of Forced Labour
	Signature	Ratification, Accession (a)	Ratification	Signature	Ratification, Accession (a)	Signature	Ratification, Accession (a)	Ratification	Ratification
Kyrgyz Republic	X	X	X		X(a)		X(a)	X	X
Laos		X(a)	X					X	
Latvia	X	X		X	X	X	X		X
Lebanon	X	X	X	X	X	X		X	X
Lesotho	X	X	X	X	X	X	X	X	X
Liberia		X(a)	X	X		X		X	X
Libya	X	X	X		X(a)		X(a)	X	X
Lithuania	X	X	X		X(a)	X	X	X	X
Luxembourg	X		X	X		X	X	X	X
Macedonia, Rep. of	X	X	X	X	X	X	X	X	X
Madagascar	X	X	X	X	X	X	X	X	
Malawi		X(a)	X	X		X		X	X
Malaysia			X					X	
Maldives	X	X	X		X(a)	X	X	X	X
Malta	X	X	X	X		X	X	X	X
Mauritania		X(a)	X					X	X
Mauritius		X(a)	X	X		X		X	X
Mexico	X	X	X	X	X	X	X	X	X
Moldova, Rep. Of	X	X	X	X		X	X	X	X
Mongolia			X	X	X	X	X	X	X
Morocco			X	X	X	X	X	X	X
Mozambique	X		X		X(a)		X(a)	X	X
Nepal			X	X	X	X		X	
Netherlands, The	X	X	X	X	X	X		X	X
New Zealand	X	X	X	X		X	X	X	X
Nicaragua		X(a)	X		X(a)		X(a)	X	X
Niger	X	X	X	X	X			X	X
Nigeria	X	X	X	X		X		X	X
North Korea									
Norway	X	X	X	X	X	X	X	X	X
Oman		X(a)	X		X(a)		X(a)	X	X
Pakistan			X	X		X		X	X
Panama	X	X	X	X	X	X	X	X	X
Paraguay	X	X	X	X	X	X	X	X	X
Peru	X	X	X	X	X	X	X	X	X
Philippines	X	X	X	X	X	X	X	X	X
Poland	X	X	X	X	X	X	X	X	X
Portugal	X	X	X	X	X	X	X	X	X
Qatar			X		X(a)		X(a)	X	

RELEVANT INTERNATIONAL CONVENTIONS

Country	Protocol to Prevent, Suppress & Punish Trafficking in Persons		ILO Convention 182, Elimination of Worst Forms of Child Labor	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography		Optional Protocol to the Convention on the Rights of the Child in Armed Conflict		ILO Convention 29, Forced Labour	ILO Convention 105, Abolition of Forced Labour
	Signature	Ratification, Accession (a)	Ratification	Signature	Ratification, Accession (a)	Signature	Ratification, Accession (a)	Ratification	Ratification
Romania	X	X	X	X	X	X	X	X	X
Russia	X	X	X			X		X	X
Rwanda	X	X	X		X(a)		X(a)	X	X
Saudi Arabia	X		X					X	X
Senegal	X	X	X	X	X	X	X	X	X
Serbia & Montenegro	X	X	X	X	X	X	X	X	X
Sierra Leone	X			X	X	X	X	X	X
Singapore			X			X		X	
Slovak Republic	X	X	X	X	X	X		X	X
Slovenia	X	X	X	X	X	X	X	X	X
Somalia						X		X	X
South Africa	X	X	X		X(a)	X		X	X
Spain	X	X	X	X	X	X	X	X	X
Sri Lanka	X		X	X		X	X	X	X
Sudan			X		X(a)	X	X	X	X
Suriname				X		X		X	X
Swaziland	X		X					X	X
Sweden	X	X	X	X		X	X	X	X
Switzerland	X		X	X		X	X	X	X
Syria	X		X		X(a)		X(a)	X	X
Tajikistan		X(a)	X		X(a)		X(a)	X	X
Tanzania	X		X		X(a)		X(a)	X	X
Thailand	X		X		X(a)		X(a)	X	X
Togo	X		X	X	X	X	X	X	X
Tunisia	X	X	X	X	X	X	X	X	X
Turkey	X	X	X	X	X	X	X	X	X
Turkmenistan		X(a)			X(a)		X(a)	X	X
Uganda	X		X		X(a)		X(a)	X	X
Ukraine	X	X	X	X	X	X	X	X	X
United Arab Emirates			X					X	X
United Kingdom	X	X	X	X		X	X	X	X
United States	X	X	X	X	X	X	X		X
Uruguay	X	X	X	X	X	X	X	X	X
Uzbekistan	X							X	X
Venezuela	X	X	X	X	X	X	X	X	X
Vietnam			X	X	X	X	X		
Yemen			X		X(a)			X	X
Zambia		X(a)	X					X	X
Zimbabwe			X					X	X

*Ratification determined when State deposits ratification instruments at the international organization.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime

Preamble

The States Parties to this Protocol,

Declaring that 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 such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

- (a) "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 of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences 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 offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall 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.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes

and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each 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 offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.