

SEX TRAFFICKING AND FORCED PROSTITUTION: COMPREHENSIVE NEW LEGAL APPROACHES

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I. INTRODUCTION

At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders Many of these persons are trafficked into the international sex trade, often by

force, fraud, or coercion Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin.¹

“Every night I was forced to work; it was like a dream All the time I went around crying. The customers didn’t like it He told me, ‘You know how many girls that have tried to quit this job have died?’”²

“They used chains. I cannot describe the horrible things they did.”³

“I never thought this was possible. These people are animals.”⁴

“Suddenly, one of the men brought out a butcher’s knife. It was so sharp it would cut you if you just touched the blade. He cut me on both arms. The blood went everywhere.”⁵

“Girls did run away but when they got caught, then they really got it.”⁶

“My soul is stained.”⁷

In response to the growing problem of human trafficking, the U.S. Congress enacted the Victims of Trafficking and Violence Protection Act of 2000 (“Trafficking Act”).⁸ Prior to this

1. Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101(b)(1)-(b)(2), (b)(4) (2000).

2. Raf Casert & Paul Shepard, *Bid for Better Life Leads to Sexual Enslavement Society: Women End Up Far from Home as Trafficking Remains a Global Growth Industry*, L.A. TIMES, Nov. 25, 2001, at A1.

3. Christine Dolan, *Sex-Slave Trade Has Become a Crisis of Global Proportions*, INSIGHT ON NEWS, Jan. 14, 2002, available at 2002 WL 8338066.

4. Andrew Purvis & Jan Stojaspal, *Human Slavery: Eastern Europe Has Become the Fastest-Growing Point of Origin for the Trafficking of Females for Sex*, TIME EUROPE, Feb. 19, 2001, available at <http://www.time.com/time/europe/eu/magazine/0,9868,99034,00.html>.

5. Stefan Wagstyl, *Mariana and the Scars that Won’t Heal*, FIN. TIMES, Jan. 12, 2002, available at 2002 WL 3313125.

6. Carlotta Gall, *Macedonia Village Is Center of Europe Web in Sex Trade*, N.Y. TIMES, July 28, 2001, at A1.

7. Purvis & Stojaspal, *supra* note 4.

8. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-

enactment, international sex trade traffickers were prosecuted in the United States under scattered pieces of legislation.⁹ The international community has responded to this increasingly frequent crime as well. In 1999, the U.N. General Assembly adopted an Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (“Optional Protocol”).¹⁰ The following year, the U.N. General Assembly adopted the United Nations Convention Against Transnational Organized Crime,¹¹ supplemented by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Trafficking Protocol”).¹²

This comment will examine these recent developments in domestic and international trafficking law, arguing that international treaties cannot be effective without parallel domestic efforts to fight trafficking. Part II of this comment focuses on the problem of trafficking in persons, particularly in women. Part III examines the development of international trafficking law and considers the impact of the Optional Protocol and the Trafficking Protocol. Part IV focuses on trafficking law in the United States, before and after the passage of the Trafficking Act. Part V offers recommendations and conclusions.

II. FORCED PROSTITUTION AND INTERNATIONAL TRAFFICKING

Sexual trafficking has been defined as a “situation[] where women or girls cannot change the immediate conditions of their existence; where, regardless of how they got into those

286, 114 Stat. 1464 (codified as amended at 22 U.S.C. §§ 7101-7110 (2000)).

9. See, e.g., *United States v. Morales*, 107 F.3d 5, 1997 WL 32969 **1 (2d Cir. 1997) (unpublished table decision) (affirming convictions of conspiracy to violate civil rights under 18 U.S.C. § 241, subjecting persons to involuntary servitude under 18 U.S.C. §§ 1584 and 2, and importing and harboring illegal aliens for the purpose of prostitution under 8 U.S.C. § 1328 and 18 U.S.C. § 2).

10. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 54/4, U.N. GAOR, 54th Sess., U.N. Doc. A/RES/54/4 (1999) [hereinafter *Optional Protocol*].

11. United Nations Convention Against Transnational Organized Crime, G.A. Res 55/25, U.N. GAOR, 55th Sess., at 2–3, U.N. Doc. A/55/25 (2000).

12. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Annex II, U.N. Doc. A/55/25 (2000) [hereinafter *Trafficking Protocol*].

conditions, they cannot get out; and where they are subject to sexual violence and exploitation.”¹³ At least 300,000 women are trafficked into the European Union and Central Europe each year.¹⁴ Approximately 45,000 to 50,000 women and children are smuggled into the United States annually.¹⁵ About 30,000 women and children are trafficked each year from Southeast Asia, 10,000 from Latin America, and 4,000 from Eastern Europe.¹⁶

In countries where jobs are scarce, recruiters approach women with employment offers as models, dancers, or waitresses abroad.¹⁷ Traffickers use a variety of false promises to capture the women who will soon serve as prostitutes.¹⁸ A nineteen year old Ukrainian woman named Leona came to the Czech Republic believing she would work as a gardener.¹⁹ Women from the former Yugoslavia were lured to Great Britain by advertisements listing employment as au pairs, secretaries, and waitresses.²⁰ Russian and Ukrainian women have arrived in Israel expecting to pick oranges or work as dancers or waitresses.²¹ Other women “know that they will work as sex workers, but have no idea that they will be bought and sold as

13. Susan Jeanne Toepfer & Bryan Stuart Wells, *The Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women*, 2 MICH. J. GENDER & L. 83, 86 (1994).

14. F. T. McCarthy, *In the Shadows: Trafficking in Women for the Sex Trade*, ECONOMIST, Aug. 26, 2000, available at 2000 WL 8143339.

15. AMY O'NEILL RICHARD, U.S. DEP'T OF STATE, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME ch. II (2000), available at <http://usinfo.state.gov/topical/global/traffic/report/homepage.htm> [hereinafter TRAFFICKING REPORT].

16. *Id.*

17. See Christopher L. Pilkerton, *Traffic Jam: Recommendations for Civil and Criminal Penalties to Curb the Recent Trafficking of Women from Post-Cold War Russia*, 6 MICH. J. GENDER & L. 221, 228 (1999).

18. See, e.g., Roger Cohen, *The Oldest Profession Seeks New Market in West Europe*, N.Y. TIMES, Sept. 19, 2000, at A1.

19. *Id.*

20. *Prostitution Scam Reported in Britain*, SAN DIEGO UNION-TRIB., June 5, 2000, available at 2000 WL 13968619.

21. Michael Specter, *Contraband Women—A Special Report; Traffickers' New Cargo: Naive Slavic Women*, N.Y. TIMES, Jan. 11, 1998, at A1.

chattel and forced to work essentially as slaves.”²²

The traffickers arrange for the women’s travel, passports, and visas.²³ Upon arrival to the foreign country, their documents are confiscated by the traffickers.²⁴ Stranded and lacking proper documentation, the women are held captive and are forced to work off their debt by engaging in prostitution.²⁵ If the women refuse to participate, they may be beaten and raped.²⁶ Twenty-one year old Irina, a Ukrainian, arrived in Israel and was taken to a brothel where her smuggler burned her passport.²⁷ He then instructed her: “You are my property and you will work until you earn your way out. Don’t try to leave. . . . You will be arrested and deported. Then we will get you and bring you back.”²⁸

The victims of forced prostitution work under inhumane conditions.²⁹ Most must work ten to eighteen hours a day, for at least twenty-five days each month.³⁰ They cannot leave the brothels, or even their rooms; often they are chained to their beds.³¹ Women are forced to service about ten customers per day, without the privilege of negotiating which clients they will take and which acts they will perform.³² In a busy bordello in Tel Aviv, twenty Russian women work shifts in twelve cubicles.³³ The owner of the club does not inquire into whether the women

22. Colum Lynch, *U.N. Halted Probe of Officers’ Alleged Role in Sex Trafficking; Lack of Support Above, in Field Impeded Investigators*, WASH. POST, Dec. 27, 2001, at A17.

23. Cohen, *supra* note 18, at A1.

24. *See id.*

25. *See id.* In the Czech Republic, the average rate in brothels is \$75 per half hour, a tenth of which the women may receive. *Id.*

26. McCarthy, *supra* note 14.

27. Specter, *supra* note 21, at A1.

28. *Id.*

29. *See, e.g.*, Symposium, *The Universal Declaration of Human Rights at 50 and the Challenge of Global Markets*, 25 BROOK. J. INT’L L. 141 (1999).

30. *Id.* at 151.

31. Penny Venetis, *International Sexual Slavery*, 18 WOMEN’S RTS. L. REP. 263, 269 (1997).

32. Maya Raghu, Note, *Sex Trafficking of Thai Women and the United States Asylum Law Response*, 12 GEO. IMMIGR. L.J. 145, 162-63 (1997).

33. Specter, *supra* note 21.

work voluntarily.³⁴ He maintains that the arrangements between the women and the men who bring them are not his “problem.”³⁵

Trafficking in women for forced prostitution is a lucrative business for the pimps and procurers.³⁶ One estimate puts the total earned by international traffickers at \$9 billion per year.³⁷ It is one of the fastest growing international crimes today.³⁸ Even a small bordello can gross over \$200,000 in just a month.³⁹ Unlike drug dealers, who sell their commodities only once, brothel owners can reap a continuous return on their investment.⁴⁰ One investigator quipped that the investment in trafficked women was “better than mutual funds.”⁴¹

The women who perform the work receive only a small fraction of the money they bring in.⁴² Furthermore, they are not permitted to leave the brothel without paying off their debt in sexual services.⁴³ The women begin already in debt, for they must reimburse their captors for the smuggling costs.⁴⁴ With their meager earnings, they also must pay for room and board, clothing, toiletries, birth control, and doctor visits.⁴⁵ Most receive only 20% of the client's payment for services, in addition to tips.⁴⁶ Other women may receive only tips, working off the

34. *Id.*

35. *Id.*

36. *See id.*

37. Axel Bugge, *U.N. Conference Targets Human Trafficking Growth*, HOUS. CHRON., Nov. 29, 2000, at A29.

38. Sally Armstrong, *Inhuman Bondage (International Sex Trade in Women)*, CHATELAINE, Dec. 1, 2000, available at 2000 WL 14253320. The victim's “purchase price” can be recovered in a single day. *See* Amelia Hill, *Child Sex for Sale*, OBSERVER, Dec. 24, 2000, available at 2000 WL 26996708.

39. *See* Specter, *supra* note 21.

40. Armstrong, *supra* note 38. A Ukrainian woman was sold and resold to different owners at least a dozen times for up to \$2,000. Dave Montgomery, *Dreams of Better Life End in a Nightmare of Sexual Slavery*, CHI. TRIB., Jan. 3, 2001, available at 2001 WL 4025776.

41. Purvis & Stojaspal, *supra* note 4.

42. Raghu, *supra* note 32, at 162.

43. *Id.*

44. *See id.* at 161-62; *see also* Specter, *supra* note 21.

45. Raghu, *supra* note 32, at 162.

46. *Id.*

smuggling debt by having sex with men.⁴⁷ In a now closed brothel in New York's Chinatown, women paid off their debt in "quotas."⁴⁸ For example, one woman owed \$27,000, to be paid with 270 quotas, or sex with 270 men.⁴⁹ Each of the women in the brothel was also charged \$300 per week for room and board, payable by sex with three men.⁵⁰

Other women sold into prostitution are simply slaves, without the illusion of working their way out.⁵¹ They may be branded with tattoos to protect against being stolen.⁵² Others stay for fear of reprisal against themselves or their families.⁵³ A twenty-four year old Romanian woman named Gabriella was sold for about \$1,300 to a Moldavian man by a family doctor, who told her she could find work in Greece in "agriculture."⁵⁴ Later, a man who promised her freedom bought her from her captor, then sold her again to two young Albanian men.⁵⁵

III. INTERNATIONAL LAW

A. *Early Treaties*

The first international treaty regarding the trafficking of women was drafted around the turn of the Twentieth Century in response to the sale of women into prostitution in European cities.⁵⁶ The 1904 International Agreement for the Suppression of the White Slave Traffic ("1904 Agreement") set up mechanisms to collect and coordinate information on the

47. Carey Goldberg, *Sex Slavery, Thailand to New York; Thousands of Indentured Asian Prostitutes May Be in U.S.*, N.Y. TIMES, Sept. 11, 1995, at B1.

48. *Id.*

49. *Id.*

50. *Id.*

51. See Purvis & Stojaspal, *supra* note 4.

52. *Id.*

53. See Leonel Sanchez, *Sex Slave, 16, Tells Her Story; 650 Students Hear About Border Area's Trafficking in Humans*, SAN DIEGO UNION-TRIB., Jan. 10, 2002, at B1; Gall, *supra* note 6.

54. Dolan, *supra* note 3.

55. *Id.*

56. See Nora V. Demleitner, *Forced Prostitution: Naming an International Offense*, 18 FORDHAM INT'L L.J. 163, 167 (1994).

international procurement of women for prostitution.⁵⁷ Parties to the 1904 Agreement promised to supervise train stations and ports and to provide shelter to trafficking victims, eventually returning them to their home countries.⁵⁸ Rather than punishing the procurers, the 1904 Agreement focused on protecting the victims of trafficking for prostitution.⁵⁹

In 1910, the International Convention for the Suppression of the White Slave Traffic ("1910 Convention") strengthened anti-trafficking efforts by criminalizing the procurement of women for prostitution.⁶⁰ The 1910 Convention bound the parties to punish any person who "hired, abducted, or enticed for immoral purposes any woman under the age of twenty-one, or used violence, threats, fraud or any compulsion on a woman over twenty-one, notwithstanding that the acts which constituted the offense were committed in different countries."⁶¹ However, the 1910 Convention still only addressed the trafficking aspect of forced prostitution and did not cover the holding of women in brothels, which at the time was considered a domestic issue.⁶²

The 1921 Convention for the Suppression of the Traffic in Women and Children ("1921 Convention") extended the protections of the 1904 Agreement and the 1910 Convention to minors of either sex and raised the relevant age limit from twenty to twenty-one in the case of non-forcible recruitment for prostitution.⁶³ The 1921 Convention also changed the prevalent terminology to include all young women and children, not just whites.⁶⁴ The 1921 Convention encouraged states to fight trafficking by taking legislative and administrative measures, specifically by the licensing and supervising of employment

57. International Agreement for the Suppression of the White Slave Traffic, Mar. 18, 1904, art. 1, 11 L.N.T.S. 83, 85-86 [hereinafter 1904 Agreement].

58. *Id.* at 86.

59. Demleitner, *supra* note 56, at 167.

60. *Id.* at 168.

61. A. Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT'L L. 303, 337 (1999).

62. Demleitner, *supra* note 56, at 169.

63. International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921, arts. 2, 5, 53 U.N.T.S. 39, 42 [hereinafter 1921 Convention].

64. Demleitner, *supra* note 56, at 170.

agencies to protect emigrating and immigrating women and children.⁶⁵ However, the focus was still on trafficking and not on the crimes committed against the women once they arrived in their destinations.⁶⁶

Finally, in 1933, the International Convention for the Suppression of the Traffic of Women of Full Age declared punishable the acts of procuring, enticing, or leading away of an adult woman for “immoral purposes” in another country.⁶⁷ It also removed consent as a defense to procurement.⁶⁸ Still, no treaty attempted to coordinate efforts among nations regarding trafficking.

B. The United Nations

1. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

In 1949, the U.N. General Assembly adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (“1949 Convention”).⁶⁹ The 1949 Convention supersedes the 1904 Agreement and the Conventions of 1910, 1921, and 1933.⁷⁰ Signatories are charged with three obligations under the 1949 Convention: prohibition of trafficking, specific administrative and enforcement measures, and social measures aimed at trafficked persons.⁷¹ The 1949 Convention presents two shifts in perspective of the trafficking problem.⁷² First, it views prostitutes as victims of the procurers.⁷³ Second, it eschews the terms “white slave traffic”

65. 1921 Convention, *supra* note 63, at 42-44.

66. Demleitner, *supra* note 56, at 170.

67. International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, art. 1, 53 U.N.T.S. 49, 50 [hereinafter 1933 Convention].

68. *Id.*

69. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 29, 1949, 96 U.N.T.S. 271 [hereinafter 1949 Convention].

70. *Id.* at 288.

71. Toepfer & Wells, *supra* note 13, at 96.

72. *See id.* at 96-98.

73. *Id.* at 96.

and “women,” using for the first time race- and gender-neutral language.⁷⁴

Article 1 provides punishment for any person who “[p]rocur[es], entices or leads away, for purposes of prostitution, another person” or “[e]xploits the prostitution of another person, even with the consent of that person.”⁷⁵ To fall under the provisions of the 1949 Convention, the trafficking need not cross international lines.⁷⁶ Attempts or preparatory acts to the aforementioned offenses are punished as well.⁷⁷ Moreover, states are required to establish an authority to coordinate and facilitate the nation’s efforts to prevent and prosecute trafficking in persons.⁷⁸

The 1949 Convention does not outlaw prostitution per se; instead it targets aspects of the prostitution industry.⁷⁹ Article 2 flatly prohibits the operation of brothels.⁸⁰ States agree to punish any person who “[k]eeps or manages, or knowingly finances or takes part in the financing of a brothel” or “[k]nowingly lets or rents a building or other place . . . for the purpose of the prostitution of others.”⁸¹ In addition, under the 1949 Convention, state regulation of prostitution is prohibited.⁸²

The framers of the 1949 Convention felt that the regulatory approach to prostitution was merely an incentive to forced prostitution.⁸³ Studies conducted in the 1920’s and 1930’s indicated that the closing of licensed brothels in fact did not cause an increase in the incidence of venereal disease.⁸⁴ Some

74. 1949 Convention, *supra* note 69, at 272; Toepfer & Wells, *supra* note 13, at 98.

75. 1949 Convention, *supra* note 69, at 274.

76. Demleitner, *supra* note 56, at 172 (referring to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others as the “1950 Convention”).

77. 1949 Convention, *supra* note 69, at 274.

78. *Id.* at 280.

79. *See id.* at 274.

80. *Id.*

81. *Id.*

82. *See id.* at 276.

83. Demleitner, *supra* note 56, at 173-74.

84. *Id.* at 173 (citing U.N. DEP’T OF INT’L ECON. & SOC. AFFAIRS, STUDY ON TRAFFIC IN PERSONS AND PROSTITUTION at 8, U.N. Doc. ST/SOA/SD/8, U.N. Sales No.

felt that state regulation of brothels and prostitution implied toleration or even authorization of the industry, in which some workers actually might be forced to participate.⁸⁵ Furthermore, where prostitution is regulated by the state, the prostitutes may face criminal penalties if they do not abide by regulations of hygiene or public decency.⁸⁶ State regulation of prostitution further marginalizes prostitutes, who already work outside the mainstream of society.⁸⁷

Article 16 of the 1949 Convention is the social welfare provision.⁸⁸ States agree to take educational, health, social, and economic measures to prevent prostitution and to “rehabilitate” victims of prostitution.⁸⁹ Article 20 specifically requires supervision of employment agencies to protect job seekers from the “danger” of prostitution.⁹⁰ States must also protect emigrants and immigrants and warn them of the dangers of trafficking of persons.⁹¹ This attention to emigrants and immigrants includes supervising train stations, airports, and seaports to prevent the international trafficking of persons.⁹² Finally, states agree to repatriate persons who desire to be repatriated or persons “whose expulsion is ordered in conformity with the law.”⁹³

The 1949 Convention better addressed the problem of trafficking for prostitution than its predecessors.⁹⁴ For one, in mentioning “traffic” and “prostitution” in its title, the 1949 Convention focuses on both the international and domestic aspects of the international trafficking in persons for prostitution.⁹⁵ Second, the substantive terms of the 1949

59.IV.5 (1959)).

85. Demleitner, *supra* note 56, at 173.

86. *Id.*

87. *See id.*

88. *See* 1949 Convention, *supra* note 69, at 280.

89. *Id.*

90. *Id.* at 284.

91. *Id.* at 282.

92. *Id.*

93. *Id.* at 282.

94. *See* Toepfer & Wells, *supra* note 13, at 98-99.

95. 1949 Convention, *supra* note 69, at 272; Isabelle Talleyrand, Note, *Military Prostitution: How the Authorities Worldwide Aid and Abet International Trafficking in Women*, 27 SYRACUSE J. INT'L L. & COM. 151, 164 (2000).

Convention are, on the whole, explicit and clear, in contrast to the vague terms of subsequent conventions.⁹⁶ For example, the 1949 Convention explicitly enumerates as a punishable offense the enticement and deception that occurs when women are forced into prostitution.⁹⁷ The 1949 Convention also includes both preparatory acts and attempts and intentional acts as punishable offenses.⁹⁸ Article 5 even includes a limited procedural right for victims of trafficking: the victims may be parties in proceedings against traffickers if the victims are otherwise entitled to participate under national law.⁹⁹ Finally, for the first time, the 1949 Convention includes components of a comprehensive solution to the trafficking problem¹⁰⁰ by calling for the punishment of those involved in trafficking,¹⁰¹ requesting aid for the victims of trafficking through victim-assistance programs,¹⁰² and asking for cooperation and coordination of anti-trafficking efforts among nations.¹⁰³

The 1949 Convention has its share of problems as well.¹⁰⁴ Although it has been praised for its explicit provisions regarding procurement¹⁰⁵ and brothels,¹⁰⁶ some of its terms are ambiguous.¹⁰⁷ For example, the convention does not define the terms “exploits” or “prostitution” mentioned in article 1.¹⁰⁸

In addition, two pairs of substantive provisions appear to be

96. Toepfer & Wells, *supra* note 13, at 98; *see, e.g., infra* text accompanying note 135.

97. Talleyrand, *supra* note 95, at 164.

98. 1949 Convention, *supra* note 69, at 274; Toepfer & Wells, *supra* note 13, at 99.

99. 1949 Convention, *supra* note 69, at 274; Stephanie Farrior, *The International Law on Trafficking in Women and Children for Prostitution: Making It Live Up to Its Potential*, 10 HARV. HUM. RTS. J. 213, 219 (1997).

100. *See* Laurie Hauber, Note, *The Trafficking of Women for Prostitution: A Growing Problem Within the European Union*, 21 B.C. INT'L & COMP. L. REV. 183, 192 (1998).

101. 1949 Convention, *supra* note 69, at 274.

102. *Id.* at 280.

103. *Id.* at 280.

104. *See* Toepfer & Wells, *supra* note 13, at 99-100.

105. 1949 Convention, *supra* note 69, at 274.

106. *Id.* at 271.

107. *See* Toepfer & Wells, *supra* note 13, at 99.

108. *Id.*; *see* 1949 Convention, *supra* note 69, at 271.

in conflict.¹⁰⁹ Article 2 of the 1949 Convention, which criminalizes the operation or management of brothels,¹¹⁰ presents a conflict for those military officials who organize and categorize prostitutes for soldiers.¹¹¹ If those activities constitute “managing” a brothel, then the government officials should be punished under the 1949 Convention.¹¹² Furthermore, article 17(4) requires states to take measures to ensure that the appropriate authorities are informed of the arrival of persons who appear to be principals and accomplices of trafficking.¹¹³ If the government, the “authorities,” are themselves principals and accomplices, it is doubtful they will rat themselves out.¹¹⁴ Although the 1949 Convention requires states to establish investigative services to suppress trafficking, if government officials are the procurers, then little investigation is likely to occur.¹¹⁵

The 1949 Convention also presents a conflict between articles 1 and 12.¹¹⁶ Article 1 removes the defense of consent,¹¹⁷ yet article 12 declares that the offenses shall be defined, prosecuted, and punished in accordance with domestic law, which may allow the affirmative defense of consent.¹¹⁸

The most glaring defect of the 1949 Convention is its lack of adequate enforcement mechanisms.¹¹⁹ First, many states have

109. See Talleyrand, *supra* note 95, at 164; Farrior, *supra* note 99, at 219.

110. 1949 Convention, *supra* note 69, at 271.

111. Talleyrand, *supra* note 95, at 164. For example, Subic Naval Base and Clark Air Base in the Philippines created and sustained brothels in neighboring cities. *Id.* at 154–55. The “women and girls were given ‘rest and relaxation’ jobs to service American troops.” *Id.* at 155. Local health authorities conveyed information to U.S. base officials regarding which of the prostitutes had contracted sexually transmitted diseases. *Id.* Recently, the United Nations investigated claims that U.N. police were involved in trafficking in women for prostitution in Bosnian brothels. Lynch, *supra* note 22, at A17. The investigation ceased amid threats of physical violence. *Id.*

112. See Talleyrand, *supra* note 95, at 164.

113. 1949 Convention, *supra* note 69, at 282.

114. See Talleyrand, *supra* note 95, at 164–65.

115. See *id.*

116. Farrior, *supra* note 99, at 219.

117. 1949 Convention, *supra* note 69, at 271.

118. See *id.* at 278.

119. See Hauber, *supra* note 100, at 192.

not yet ratified the convention.¹²⁰ Second, a victim of trafficking has no private remedy against her procurers and pimps; only signatory nations may bring claims against each other.¹²¹

Finally, the 1949 Convention provides little incentive for victims to come forward because, in doing so, they may be expelled from the country due to their immigration status.¹²² According to article 19, a victim of trafficking shall be repatriated if the victim desires repatriation or if “expulsion is ordered in conformity with the law.”¹²³ Persons without legal resident status presumably fall under this category,¹²⁴ and many victims of trafficking enter a foreign country illegally with forged documents.¹²⁵ Although repatriation is to occur without prejudice to prosecution,¹²⁶ few procurers will be prosecuted if the principal victims and witnesses are forced to leave the country because of their immigration status.¹²⁷

2. *Convention on the Elimination of All Forms of Discrimination Against Women*

In 1979, the U.N. General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women (“Women’s Convention”).¹²⁸ Where the 1949 Convention fails to take a rights-based approach to the trafficking problem, the Women’s Convention begins to recognize the rights of

120. *Id.* Australia, China, Colombia, El Salvador, Greece, Malaysia, the Netherlands, Saudi Arabia, the United Kingdom, and the United States are a few of the countries who have not yet ratified the 1949 Convention. See Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: Participants, available at <http://www.unhchr.ch/html/menu3/b/treaty11a.htm> (Feb. 5, 2002).

121. Hauber, *supra* note 100, at 192; see 1949 Convention, *supra* note 69, at 284.

122. See 1949 Convention, *supra* note 69, at 282.

123. *Id.*; Farrior, *supra* note 99, at 219.

124. Farrior, *supra* note 99, at 219.

125. See, e.g., David France, *Slavery’s New Face*, NEWSWEEK, Dec. 18, 2000, at 61, 63-64.

126. 1949 Convention, *supra* note 69, at 282.

127. See Farrior, *supra* note 99, at 219.

128. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., U.N. Doc. A/RES/34/180, 1249 U.N.T.S. 13 (1979) [hereinafter Women’s Convention].

victims of trafficking for prostitution.¹²⁹ It was the first international agreement recognizing that women's rights are human rights.¹³⁰ The framers of the Women's Convention state that discrimination against women "violates the principles of equality of rights and respect for human dignity."¹³¹ The Women's Convention also recognizes that discrimination is worsened in impoverished countries, where women have less access than men to food, health, education and training, and opportunities for employment.¹³² The risk of women being trafficked for prostitution is also greater in countries where employment opportunities are low.¹³³

The Women's Convention defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women . . . on a basis of equality of men and women, of human rights and fundamental freedoms . . ." ¹³⁴ Trafficking of women for forced prostitution arguably fits this definition, because trafficking impairs women's freedom on the basis of their sex. The Women's Convention specifically addresses this issue in article 6: "States Parties shall take all appropriate measures . . . to suppress all forms of traffic in women and exploitation of prostitution of women."¹³⁵

The primary enforcement mechanism in the Women's Convention is the Committee on the Elimination of Discrimination Against Women ("CEDAW").¹³⁶ CEDAW's primary purpose is to evaluate progress by States Parties in implementing legislation in compliance with the Women's

129. See Farrior, *supra* note 99, at 219; see also Women's Convention, *supra* note 128, pmbl.

130. Jennifer L. Ulrich, *Confronting Gender-Based Violence with International Instruments: Is a Solution to the Pandemic Within Reach?*, 7 *IND. J. GLOBAL LEGAL STUD.* 629, 640 (2000).

131. Women's Convention, *supra* note 128, pmbl.

132. *Id.*

133. See TRAFFICKING REPORT, *supra* note 15, ch. III.

134. Women's Convention, *supra* note 128, art. I.

135. *Id.* art. VI.

136. See *id.* art. XVII(1).

Convention.¹³⁷ Article 18 requires States Parties to submit reports to CEDAW on the legislative, judicial, administrative, or other measures they have adopted to give effect to the provisions of the Women's Convention.¹³⁸ The States Parties must submit these reports for consideration by CEDAW within one year after ratifying the Women's Convention and at least every four years thereafter.¹³⁹ CEDAW meets for two weeks each year to consider the reports and makes annual recommendations to the General Assembly based on its examination of the reports.¹⁴⁰ Some commentators believe that this is CEDAW's most significant power.¹⁴¹

Despite its potential, the Women's Convention has been largely ineffective.¹⁴² First, the language in article 6—"appropriate measures"—is not defined and is too vague to be readily enforceable.¹⁴³ Second, many industrialized nations, including the United States, have failed to sign the Women's Convention because it is legally binding.¹⁴⁴ Third, the Women's Convention has been subject to a large number of reservations, diminishing its effectiveness.¹⁴⁵ Finally, the Women's Convention gives the victims of trafficking no private remedy.¹⁴⁶ Only States Parties may bring claims, and only against each

137. *Id.*

138. *Id.* art. XVIII(1).

139. *Id.*

140. *Id.* art. XX.

141. Toepfer & Wells, *supra* note 13, at 109.

142. Ulrich, *supra* note 130, at 644.

143. Toepfer & Wells, *supra* note 13, at 101.

144. *Id.* at 106. As of February 8, 2002, 171 countries have ratified or acceded to the Women's Convention, including Brazil, Canada, China, Egypt, France, Germany, India, Israel, Mexico, Thailand, and the United Kingdom. Office of the U.N. High Comm'r for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, available at <http://www.unhchr.ch/pdf/report.pdf> (last modified Feb. 8, 2002) [hereinafter Status of Ratifications].

145. Ulrich, *supra* note 130, at 645–46. For example, many States Parties, including Brazil, China, and France, declared themselves not bound by article 29, which mandates arbitration to settle disputes between States Parties regarding the Women's Convention. United Nations Treaty Collection: Declarations and Reservations (Mar. 22, 2002), available at http://www.unhchr.ch/html/menu3/b/treaty9_asp.htm.

146. Toepfer & Wells, *supra* note 13, at 106-07.

other, in the International Court of Justice.¹⁴⁷

In addition, the enforcement measures established in CEDAW are hollow because the committee is given little real power.¹⁴⁸ CEDAW's primary function is to submit reports to the Secretary General and the General Assembly.¹⁴⁹ It may not ask States Parties directly for reports, nor may it remind States Parties that they are delinquent in submitting reports.¹⁵⁰ CEDAW is given the power to make recommendations based on the reports, but the Women's Convention does not indicate to whom the recommendations are to be made.¹⁵¹ CEDAW ultimately has little authority to mandate compliance of States Parties to the terms of the Women's Convention.¹⁵²

Another problem lies in the timetables.¹⁵³ Because CEDAW may not meet for more than two weeks each year,¹⁵⁴ there is a substantial backlog in evaluating the reports of countries who actually fulfill the self-reporting requirement.¹⁵⁵ If a State Party does not submit the report in time for consideration, whether purposely or not, CEDAW is powerless to issue sanctions.¹⁵⁶ In addition, no timetable or deadline is set regarding state actions to end trafficking.¹⁵⁷

The General Assembly addressed some of these concerns in the adoption of an Optional Protocol to the Women's Convention.¹⁵⁸ The Optional Protocol begins by reaffirming the authority of CEDAW to monitor compliance with the Women's Convention.¹⁵⁹ Then, the Optional Protocol finally gives CEDAW some muscle. Under articles 5 through 9, CEDAW is given the

147. *See id.* at 107.

148. *See id.* at 108–09.

149. *See Women's Convention, supra* note 128, art. XXI.

150. Toepfer & Wells, *supra* note 13, at 109.

151. *Id.* at 108.

152. Ulrich, *supra* note 130, at 645.

153. *See Toepfer & Wells, supra* note 13, at 110.

154. Women's Convention, *supra* note 128, art. XX.

155. Ulrich, *supra* note 130, at 644–45 (stating an additional hindrance is that some countries fail to submit the reports).

156. Toepfer & Wells, *supra* note 13, at 110.

157. *Id.*

158. *See Optional Protocol, supra* note 10.

159. *Id.* at 3.

power to communicate directly with States Parties.¹⁶⁰ For instance, after a State Party has submitted a report for consideration, but before a determination on the merits, CEDAW may request that the State Party take interim measures to prevent “irreparable damage” to the alleged victim.¹⁶¹ CEDAW may also submit comments and recommendations directly to the parties concerned, at the conclusion of the examination.¹⁶² Not only may CEDAW communicate directly with the states, but CEDAW may initiate an investigation to be conducted in the State Party’s territory.¹⁶³ CEDAW may ask the State Party to submit to voluntary observation if there is evidence of “grave or systematic violations” of the Women’s Convention.¹⁶⁴ CEDAW may also designate members to conduct an inquiry, with the State Party’s consent, within the State Party’s borders.¹⁶⁵ The Optional Protocol transforms CEDAW from a reviewing body with little power to an investigative committee. No longer required to rely on the States Parties’ own reports, CEDAW may initiate investigations of States Parties who fail to comply with the terms of the Women’s Convention.¹⁶⁶

In addition, the Optional Protocol provides victims of discrimination with a complaint mechanism.¹⁶⁷ CEDAW now may receive written communications from persons claiming a violation of the rights set forth in the Women’s Convention.¹⁶⁸ The written communication must be signed and must concern States Parties who are parties both to the Women’s Convention and the Optional Protocol.¹⁶⁹ In addition, all domestic remedies

160. *See id.* at 4–5. Article 6 requires CEDAW to give States Parties notice of complaints and an opportunity to respond. *Id.* at 4. Article 9 authorizes CEDAW to inquire of States Parties which remedial measures they have instituted. *Id.* at 5.

161. *Id.* at 4.

162. *Id.*

163. *See id.* at 5.

164. *Id.*

165. *Id.*

166. *See id.*

167. *Id.* at 3.

168. *Id.*

169. *See id.* As of February 8, 2002, only 30 states had ratified the Optional Protocol. Status of Ratifications, *supra* note 144. Forty-five other states have become

generally must have been exhausted by the alleged victim before CEDAW may review the complaint.¹⁷⁰

Although the new complaint mechanism appears to give power to victims of trafficking, it is laden with many obstacles. The complaining victim must first seek relief through local channels, if relief is even available in that country.¹⁷¹ Unfortunately, in the case of forced prostitution, the woman could be criminally prosecuted herself for prostitution if she seeks assistance from the local authorities.¹⁷² Before complaining to CEDAW, she must determine whether the right in question is addressed by the Women's Convention and whether the country is a party to both the Women's Convention and the Optional Protocol.¹⁷³ To meet these requirements, the woman will probably require the assistance of legal counsel. It is difficult to imagine that a victim of trafficking, stranded in a foreign country without money or proper immigration documents and frightened of adverse legal action if she makes her presence known, would seek to hire an attorney familiar with the remedy outlined in the Optional Protocol.

3. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*

In November 2000, the U.N. General Assembly adopted the Trafficking Protocol,¹⁷⁴ in part due to the ineffectiveness of the 1949 Convention.¹⁷⁵ The Trafficking Protocol aims to provide a "comprehensive international approach" to the trafficking problem by punishing the traffickers and aiding their victims.¹⁷⁶

signatories. *Id.* The United States has neither signed nor ratified the Optional Protocol. *Id.*

170. Optional Protocol, *supra* note 10, at 3.

171. *See id.*

172. Pilkerton, *supra* note 17, at 229.

173. Optional Protocol, *supra* note 10, at 3.

174. *See* Trafficking Protocol, *supra* note 12, at 2-3.

175. *See* Linda A. Malone, *Economic Hardship as Coercion Under the Protocol on International Trafficking in Persons by Organized Crime Elements*, 25 *FORDHAM INT'L L.J.* 54, 55 (2001).

176. Trafficking Protocol, *supra* note 12, at 31.

It is the first international agreement to do so.¹⁷⁷

Article 5 calls on States Parties to criminalize “trafficking in persons” and the organization or direction of others in this endeavor.¹⁷⁸ “Trafficking in persons” is defined as

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[.]¹⁷⁹

Article 6 of the Trafficking Protocol requires States Parties to assist victims of trafficking by keeping their identities confidential, providing them with information regarding legal proceedings and victims’ assistance programs, providing physical protection, and ensuring that domestic law allows recovery for trafficking victims.¹⁸⁰ Article 9 mandates that States Parties adopt prevention measures, including trafficking awareness campaigns and measures to “alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment, and lack of equal opportunity.”¹⁸¹

Under the Trafficking Protocol’s expansive definition of trafficking in persons, exploitation of a victim’s economic situation can be considered “coercion” or “abuse of power or of a position of vulnerability.”¹⁸² The requirement that States Parties adopt or strengthen measures to alleviate the economic and

177. See Kelly E. Hyland, *The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 8 HUM. RTS. BRIEF 30, 30 (2001).

178. Trafficking Protocol, *supra* note 12, at 33

179. *Id.* at 32.

180. *Id.* at 33-34.

181. *Id.* at 35.

182. See *id.* at 32; Malone, *supra* note 175, at 89-90.

social problems that contribute to trafficking also indicates that the Trafficking Protocol considers economic hardship as an important factor contributing to trafficking.¹⁸³ For the first time, the international community has recognized the prominence of poverty in the trafficking equation.¹⁸⁴

IV. UNITED STATES LAW

A. *Before the Trafficking Victims Protection Act*

Prior to 2000, the United States prosecuted traffickers of women under a patchwork of criminal statutes.¹⁸⁵ In *Morales*, a smuggler was convicted of, *inter alia*, three counts of importing and harboring illegal aliens for the purpose of prostitution under 8 U.S.C. § 1328 and 18 U.S.C. § 2.¹⁸⁶ Current immigration law prohibits procuring an alien for prostitution or any other “immoral purpose.”¹⁸⁷ Traffickers may also be charged with conspiring to interfere with an individual’s free exercise of constitutional or legal rights.¹⁸⁸ Offenders may be confined for up to ten years unless certain aggravating circumstances are present, in which case the punishment may be confinement for life or even a death sentence.¹⁸⁹

Congress’ power to regulate interstate and foreign commerce

183. See Trafficking Protocol, *supra* note 12, at 33-34; Malone, *supra* note 175, at 90.

184. The 1949 Convention provided that States Parties agree to take or to encourage measures to “rehabilitat[e] . . . victims of prostitution.” 1949 Convention, *supra* note 69, at 280.

185. See, e.g., *United States v. Morales*, 107 F.3d 5, 1997 WL 32969, at **1 (2d Cir. 1997) (unpublished table decision).

186. *Id.* at **1.

187. 8 U.S.C. § 1328 (2000).

Whoever shall, directly or indirectly, import or attempt to import into the United States any alien for the purpose of prostitution or for any other immoral purpose, or shall hold or attempt to hold any alien for any such purpose in pursuance of illegal importation . . . shall be fined . . . or imprisoned not more than 10 years, or both.

Id.

188. 18 U.S.C. § 241 (2000); see, e.g., *Morales*, 107 F.3d 5, 1997 WL 32969 at **1; *In re Wattanasiri*, 982 F. Supp. 955, 955 (S.D.N.Y. 1997).

189. 18 U.S.C. § 241.

provides another mechanism to prosecute traffickers.¹⁹⁰ First, a conviction for transportation of an individual in interstate or foreign commerce for the purpose of prostitution carries a sentence of ten years' confinement.¹⁹¹ Second, persuading, inducing, enticing, or coercing an individual to travel in interstate or foreign commerce for the purpose of prostitution is also prohibited.¹⁹² Third, transporting a minor in interstate commerce for the purpose of prostitution or traveling in interstate commerce for the purpose of engaging in sexual activity with a minor is also an offense.¹⁹³ Finally, persuasion and transportation of a minor each carry a higher penalty: up to fifteen years' confinement.¹⁹⁴

The defendant in *Morales* was also convicted of subjecting a person to involuntary servitude.¹⁹⁵ At that time, the offense was punishable by ten years' confinement.¹⁹⁶ Kidnapping a person to be sold into involuntary servitude or enticing a person to board a vessel with the intent that the person be made a slave was also prohibited and punishable by ten years' confinement.¹⁹⁷ Both of these statutes have been amended by the Trafficking Victims Protection Act of 2000, the subject of the next section.

B. Trafficking Victims Protection Act of 2000

Recognizing that existing legislation was inadequate to effectively address the growing problem of trafficking in persons, Congress enacted the Victims of Trafficking and Violence Protection Act of 2000.¹⁹⁸ The Trafficking Act employs a comprehensive approach to the problem of trafficking. In the first place, it establishes an agency to coordinate and monitor

190. See U.S. CONST. art. I, § 8, cl. 3.

191. § 2421.

192. § 2422. If the mail or any other means of interstate commerce is used in this endeavor, the punishment increases from ten years' to fifteen years' confinement. *Id.*

193. § 2423.

194. §§ 2422, 2423.

195. *Morales*, 107 F.3d at 5, 1997 WL 32969 at **1.

196. See 18 U.S.C. § 1584 (2000).

197. See § 1583.

198. Pub. L. No. 106-286, 114 Stat. 1464, 1469 (codified as amended at 22 U.S.C. § 7101(b)(14), (b)(17) (2000)).

implementation of measures against trafficking.¹⁹⁹ It also contains provisions for the prevention of trafficking²⁰⁰ and for the protection of and assistance for the victims of trafficking.²⁰¹ In addition, the Trafficking Act creates new offenses regarding sex trafficking or trafficking for involuntary servitude.²⁰²

The U.S. Congress defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”²⁰³ “Commercial sex act” refers to a sex act for which any person gives or receives anything of value.²⁰⁴ Congress defines severe forms of trafficking as (1) sex trafficking induced by force, fraud, or coercion, or in which the victim is under eighteen years of age, or (2) recruiting, harboring, or transporting a person for labor through the use of force or coercion for the purpose of subjection to involuntary servitude or debt bondage.²⁰⁵

Section 7103 of the Trafficking Act establishes the Interagency Task Force to Monitor and Combat Trafficking (“Task Force”).²⁰⁶ The President will appoint the Task Force members, to include, *inter alia*, the Secretary of State, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, and the Director of Central Intelligence.²⁰⁷ The Task Force is charged with many duties.²⁰⁸ The first is to coordinate implementation of the Trafficking Act.²⁰⁹ Other activities of the Task Force include measurement and evaluation of the United States’ and other countries’

199. § 7103(a), (d)(1).

200. § 7104.

201. § 7105.

202. 18 U.S.C. §§ 1589-1591 (2000).

203. 22 U.S.C. § 7102(9) (2000).

204. § 7102(3).

205. § 7102(8). Alien victims of severe forms of trafficking are eligible for the same governmental benefits and services as are refugees. § 7105(b)(1)(A). In addition, victims of severe forms of trafficking are entitled to medical care and special protection while in the custody of the federal government. § 7105(c)(1).

206. 22 U.S.C. § 7103 (2000).

207. § 7103(b).

208. *See* § 7103(d).

209. § 7103(d)(1).

progress regarding implementation of the Trafficking Act.²¹⁰ The Task Force must also work to expand data collection on trafficking and facilitate cooperation among countries of origin, transit, and destination.²¹¹ Creation of an agency to coordinate and monitor anti-trafficking efforts is necessary because sex trafficking is one of the fastest growing international crimes, behind only drug trafficking and illegal weapons sales.²¹²

Trafficking prevention measures set forth in the Trafficking Act include foreign economic initiatives.²¹³ The initiatives may include programs for skills training and job counseling, programs to keep girls in elementary and secondary schools, and programs to educate victims of sex trafficking.²¹⁴ The initiatives also include grants to nongovernmental organizations to advance women's political, economic, and educational roles in those countries.²¹⁵ The Trafficking Act requires the President, through members of the Task Force, to create programs to increase public awareness of sex trafficking in the United States, particularly among potential victims.²¹⁶

Unlike laws that only punish the pimps and procurers, the Trafficking Act provides assistance to victims of trafficking, regardless of their immigration status.²¹⁷ Victims of severe forms of trafficking in the United States who are aliens are granted the same eligibility as refugees under any federal or state program.²¹⁸ To receive assistance, the victim must be under eighteen years of age or be willing to assist the authorities in investigation and prosecution of severe forms of trafficking.²¹⁹ The victim may receive assistance for as long as is necessary to

210. § 7103(d)(2).

211. § 7103(d)(3)-(d)(4).

212. *See Armstrong, supra* note 38.

213. 22 U.S.C. § 7104(a) (2000).

214. § 7104(a)(1), (a)(3)-(a)(4).

215. § 7104(a)(5).

216. § 7104(b).

217. 22 U.S.C. § 7105(b)(1)(B) (2000). *See infra* notes 219-24 and accompanying text.

218. § 7105(b)(1)(A).

219. § 7105(b)(1)(C), (b)(1)(E).

effectuate the prosecution.²²⁰

The Trafficking Act also addresses issues of immigration.²²¹ Alien victims may be exempted from deportation if they have assisted the authorities as witnesses in the investigation and prosecution and would suffer extreme hardship upon removal.²²² In addition, the Attorney General may adjust the status of certain nonimmigrants, granting them permanent resident status.²²³ By removing the threat of deportation, the Trafficking Act eliminates one of the primary reasons trafficking victims are reluctant to come forward.²²⁴

Another reason why victims of trafficking do not report the crime to the police is the fear of reprisal or recapture.²²⁵ Under the Trafficking Act, victims of severe forms of trafficking now must be protected while in federal custody.²²⁶ They must be detained in facilities appropriate for crime victims and must be provided with necessary medical care.²²⁷ The victims must also receive government protection if their safety is at risk or if there is a danger of recapture.²²⁸ Furthermore, the protection extends to members of the victims' families.²²⁹ The protection of victims is an essential element of a successful trafficking prosecution because authorities are less likely to prosecute without any witnesses.²³⁰

The Trafficking Act also establishes minimum standards for the elimination of trafficking, which a foreign country must meet to receive foreign aid from the United States.²³¹ The minimum standards require a country to prohibit and swiftly

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220. § 7105(b)(1)(E)(ii).
221. 8 U.S.C. §§ 1101, 1182, 1184 (2000).
222. 22 U.S.C. § 7105(c)(3) (2000).
223. 8 U.S.C. § 1255(j) (2000).
224. See Goldberg, *supra* note 47, at B1.
225. See *id.*; Specter, *supra* note 21, at A1.
226. 22 U.S.C. § 7105(c)(1)(C) (2000).
227. § 7105(c)(1)(A)-(c)(1)(B).
228. § 7105(c)(1)(C).
229. § 7105(c)(1)(C).
230. See 22 U.S.C. § 7101(a) (2000).
231. § 7106.

prosecute severe acts of trafficking.²³² Foreign countries may be offered assistance to meet the prescribed minimum standards for the elimination of trafficking.²³³ The assistance may be used to draft laws, investigate and prosecute offenses, and create facilities to protect victims.²³⁴ Governments that do not comply or make significant efforts to comply with the minimum standards will not receive nonhumanitarian, nontrade-related assistance from the United States.²³⁵ The threat of losing foreign aid may compel some countries to enact or enforce stricter anti-trafficking laws.

Most important are the provisions of the Trafficking Act that amended and created sections of Title 18, United States Code.²³⁶ The Trafficking Act increases the punishments for offenses involving involuntary servitude to confinement of up to twenty years.²³⁷ The increased penalty better reflects the seriousness of the crime. Four new offenses are created, specifically aimed at traffickers in persons.²³⁸ The first provision criminalizes providing or obtaining labor or services from a person by threats of serious harm, physical restraint, or abuse or threatened abuse of the law.²³⁹ The second provision prohibits recruiting, harboring, transporting, providing, or obtaining by any means a person for involuntary servitude or forced labor.²⁴⁰ The foregoing offenses are punishable by up to twenty years' confinement, unless certain aggravating circumstances are present, in which case the term may be up to life.²⁴¹

The third offense concerns the sex trafficking of children or sex trafficking by force, fraud, or coercion.²⁴² The statute prohibits (1) recruiting, enticing, harboring, transporting,

232. See § 7106(a)(1), (a)(4), (b)(1).

233. 22 U.S.C. § 2152d(a) (2000).

234. § 2152d(a)(1)-(a)(3).

235. 22 U.S.C. § 7107(a)(1) (2000).

236. 18 U.S.C. §§ 1581(a), 1583, 1584, 1589, 1590, 1591 (2000).

237. §§ 1581(a), 1583, 1584, 1589. See *infra* text accompanying notes 240-42.

238. See 18 U.S.C. §§ 1589-1593 (2000).

239. § 1589.

240. § 1590.

241. §§ 1589, 1590.

242. 18 U.S.C. § 1591 (2000).

providing, or obtaining a person, or (2) benefiting from participation in the act described in (1), when the trafficker knows that force, fraud, or coercion will be used to cause the person to perform a commercial sex act or when the person is under eighteen years of age and is forced to perform a commercial sex act.²⁴³ This provision is properly designed to reach all of the links in the sex trafficking chain, from the recruiters to the captors, and even the customers.²⁴⁴ If the offense is effected by force, fraud, or coercion, or if the person is under fourteen years of age, the punishment is confinement for any term of years or for life.²⁴⁵ If the offense is not so effected and the person involved is over fourteen years of age, but under eighteen years of age, the punishment is up to twenty years' confinement.²⁴⁶ Prior to the enactment of the Trafficking Act, the highest penalty for an offense involving sex trafficking was only ten years' confinement, or fifteen years if the victim was a minor.²⁴⁷ The higher penalties of the newly created offenses appropriately reflect the seriousness of sex trafficking.

The fourth provision prohibits destroying, concealing, confiscating, or possessing any actual or purported passport or other immigration or identification document in the course of a violation or with intent to violate the sections concerning involuntary servitude, forced labor, trafficking for involuntary servitude or forced labor, or sex trafficking.²⁴⁸ Finally, the court must order mandatory restitution of the full amount of the victim's losses.²⁴⁹

V. CONCLUSION AND RECOMMENDATIONS

Although the Optional Protocol substantially fixes some of the defects of the Women's Convention, it cannot be effective without the passage of domestic laws similar to the Trafficking

243. § 1591(a)(1)-(a)(2), (c)(1). *See supra* text accompanying note 205 for the definition of "commercial sex act."

244. *See* 22 U.S.C. § 7101(a) (2000).

245. 18 U.S.C. § 1591(b)(1) (2000).

246. § 1591(b)(2).

247. *See supra* text accompanying notes 187-97.

248. 18 U.S.C. § 1592(a) (2000).

249. § 1593.

Act. Its terms are still too vague, its reservations too great, and its remedies too few. Where states have not criminalized every aspect of the trafficking business, victims may not be helped because the traffickers have done nothing wrong. To be effective, the Optional Protocol must be supported with strict foreign trafficking laws.

As a comprehensive approach, the Trafficking Act promises to seriously diminish sex trafficking. The creation of the Task Force will bring greater attention and more resources to the trafficking problem. If fulfilled, the foreign education and awareness initiatives designed to prevent trafficking may alert women in impoverished countries to the dangers of trafficking and provide them with the skills to find a real alternative. By providing aid and protection to alien victims of trafficking and by removing the threat of deportation, the Trafficking Act may cause more women to come forward, because they will not, in effect, be punished for their actions. Furthermore, foreign countries that have ignored the trafficking problem may no longer do so with impunity; they will lose foreign assistance from the United States. Most importantly, the new criminal statutes and increased penalties may deter some traffickers who believed they could escape the law.

The Trafficking Protocol finally adopts a comprehensive approach to the worldwide scourge of sex trafficking as well. By broadening the definition of trafficking and specifically addressing the economic issues in victim assistance and prevention, the Trafficking Protocol may have a greater effect on trafficking than did previous agreements. If combined with domestic and foreign measures such as the Trafficking Act, the Trafficking Protocol will have an even greater impact, and the world someday may see a decrease in trafficking in women for prostitution.

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