

INTERNATIONAL TRAFFICKING IN CHILDREN: WILL NEW U.S. LEGISLATION PROVIDE AN ENDING TO THE STORY?

I. THE TRAGEDY OF INTERNATIONAL CHILD SEX TRAFFICKING: NO COUNTRY IS IMMUNE FROM THE DRAMA.....	650
II. THE FIVE “WS” OF SEX TRAFFICKING: UNDERSTANDING THE STORY.....	655
A. <i>What is the plot in the drama of sex trafficking?</i>	655
B. <i>Where is the story taking place?</i>	658
C. <i>Who are the members of the cast?</i>	659
D. <i>Why is the trafficking production so successful?</i>	660
E. <i>When will the saga end?</i>	665
III. THE FIGHT AGAINST CHILD SEX TRAFFICKING UNDER THE DIRECTION OF THE INTERNATIONAL COMMUNITY	665
A. <i>The Convention on the Rights of the Child: The Most Dramatic of Them All</i>	666
B. <i>The Hague Convention: Serving Abducted Actors</i>	668
C. <i>Protocol on the Sale of Children, Child Pornography and Child Prostitution: An Attempt to Stop the Performance</i>	668
D. <i>U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: Linking the Producers to the Show</i>	670
IV. THE ROLE OF PREVIOUS U.S. EFFORTS: PREFACE TO A COMMANDING PERFORMANCE	671
A. <i>The Mann Act: The First Act on the U.S. Stage</i>	671
B. <i>An Anthology of Laws</i>	672
C. <i>Foreign Assistance Act: Performing Abroad</i>	672

V.	POWERFUL NEW LEGISLATION: THE CLIMAX OF THE STORY	674
A.	<i>Trafficking Victims Protection Act of 2000: A Comprehensive Theme</i>	675
	1. <i>Chapter One: Prevention</i>	677
	2. <i>Chapter Two: Protection</i>	684
	3. <i>Chapter Three: Prosecution</i>	687
B.	<i>The PROTECT ACT: An Encore to a Successful Performance</i>	690
	1. <i>Strengthening the Action through Tougher Laws</i>	691
	2. <i>Prosecutions under the PROTECT Act: Acting Out the Consequences</i>	694
	3. <i>Operation Predator: Summarizing Past Offenses</i>	695
VI.	SUGGESTIONS FOR REVISIONS TO INCREASE CURRENT EFFORTS: AN APPENDIX TO THE STORY.....	698
VII.	CURTAIN CALL: WILL NEW U.S. MEASURES RECEIVE A STANDING OVATION?	701

I. THE TRAGEDY OF INTERNATIONAL CHILD SEX TRAFFICKING:
NO COUNTRY IS IMMUNE FROM THE DRAMA

Ling was thirteen years old and living in Burma when her family sold her to a neighbor under the guise of becoming a domestic worker in another country.¹ The neighbor transported Ling to the Thailand border where she crossed into more than a new country—she walked into a terrifying new life.² Her captors

1. See Jonathan Todres, *Prosecuting Sex Tour Operators in U.S. Courts in an Effort to Reduce the Sexual Exploitation of Children Globally*, 9 B.U. PUB. INT. L.J. 1, 2 (1999); Margaret A. Healy, Note, *Prosecuting Child Sex Tourists at Home: Do Laws in Sweden, Australia, and the United States Safeguard the Rights of Children as Mandated by International Law?*, 18 FORDHAM INT'L L.J. 1852, 1862, 1869–70 (1995). The story of Ling is a composite developed from several sources.

2. See Healy, *supra* note 1, at 1862.

took her to a brothel and forced her to have sex up to ten times per day, primarily with clients traveling from wealthy countries where such activities are illegal.³ All the money she earned went to the brothel manager, who forced Ling to live with the most meager of possessions.⁴ After enduring a year of this life and being exposed to the AIDS virus, police arrested Ling in a raid on the brothel and charged her with prostitution.⁵ Upon completion of her sentence, officials deported Ling to Burma where there are no laws to protect victims of trafficking.⁶ Her perpetrators remain unpunished.⁷

In neighboring Cambodia, however, the police arrested sixty-nine year old Michael Clark, an American tourist, for participating in illicit sexual conduct with two boys under the age of fourteen.⁸ Clark has since become the first person in the United States to be indicted under the PROTECT Act—the U.S. legislation designed to curb sexual abuse of children.⁹ Due to this strong new legislation and Cambodia's willingness to

3. Susan Tiefenbrun, *The Saga of Susannah A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107, 117 (2002).

4. *See id.* Victims are stripped of their possessions, and only a fraction of the amount they "earn" for the traffickers goes toward their care. *See id.*

5. *See* Healy, *supra* note 1, at 1871–72; Maya Raghu, Note, *Sex Trafficking of Thai Women and the United States Asylum Law Response*, 12 GEO. IMMIGR. L.J. 145, 162 (1997). One problem associated with trafficking is that victims are frequently charged with a crime for their part in the trafficking. *See* Raghu, *supra* note 5, at 162.

6. *See* Tiefenbrun, *supra* note 3, at 112–13; Eric Thomas Berkman, *Responses to the International Child Sex Tourism Trade*, 19 B.C. INT'L & COMP. L. REV. 397, 402 n.48 (1996).

7. *See* Tiefenbrun, *supra* note 3, at 112–13. A recent undercover news story caught a Cambodian brothel on tape where "new girls" had just arrived from Vietnam. Richard Greenberg, *Desperation up Close*, at <http://www.msnbc.msn.com/id/4038263> (last updated Jan. 23, 2004) (describing his personal impressions from the trip to Cambodia). The youngest was a five year old who was sold by her parents for a few hundred dollars. *Id.* The children were required to pay off the debt of the money given to their families, which could take years. *Children for Sale*, DATELINE NBC, at <http://www.msnbc.msn.com/id/4038249/> (last updated Jan. 9, 2005) (highlighting portions from a Dateline NBC broadcast). The teenagers in the group were tricked into making the journey after being told waitress jobs awaited them in a large tourist city. Greenberg, *supra*.

8. *See* Blaine Harden, *Veteran Indicted on Sex Charges; Man Is First Charged Under Protect Law's Provision on Tourism*, WASH. POST, Sept. 25, 2003, at A5.

9. *See id.*

cooperate with U.S. law enforcement, the Cambodian victims may see punishment meted out, unlike the young girl in Burma.¹⁰

Sexual exploitation and trafficking in children is a growing affront on human dignity that has gained greater international attention in recent years.¹¹ Trafficking in persons is one of the most rapidly growing transnational criminal enterprises,¹² with child prostitution skyrocketing despite legislation designed to prevent and control the illegal activity.¹³ In response, countries must pool their efforts and unify in the fight against the international trafficking trade—both in those where children are forced into prostitution, as well as those providing a market for such trade.¹⁴ Much legislation has been passed in response to this problem.¹⁵ To date, this legislation has been “all bark and no

10. See Trafficking Victims Protection Reauthorization Act of 2003 (TVPA), 22 U.S.C.A. §§ 7101–7110 (2003); Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003, Pub. L. No. 108–121, 117 Stat. 650 (2003) [hereinafter PROTECT Act]; Harden, *supra* note 8.

11. See U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REPORT 1 (2003) [hereinafter TIP REPORT], available at <http://www.state.gov/documents/organization/21555.pdf> (last visited Apr. 10, 2005); Sally Gillen, *Safe Houses Win Support in Battle to Keep Pace with Child Traffickers*, CMTY. CARE, Aug. 7, 2003, at 16; see also, Tal Raviv, *International Trafficking in Persons: A Focus on Women and Children – The Current Situation and the Recent International Legal Response*, 9 CARDOZO WOMEN'S L.J. 659, 662–64 (2003) (discussing effects of trafficking in women and children); Healy, *supra* note 1, at 1872–73 (examining the impact of trafficking on victims). Sex trafficking in children has been the focus of several current news specials. DatelineNBC and CNN both recently aired programs illustrating the thriving trafficking industries in Cambodia and Romania. Dateline NBC Special Report: Children for Sale (NBC television broadcast, Jan. 23, 2004); CNN Presents: Easy Prey, Inside the Child Sex Trade (CNN television broadcast, Feb. 15, 2004).

12. LeRoy G. Potts, *Global Trafficking in Human Beings: Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons*, 35 GEO. WASH. INT'L L. REV. 227, 227 (2003); U.S. DEPT OF JUSTICE, ASSESSMENT OF U.S. ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 1 (2003) [hereinafter ASSESSMENT].

13. See Todres, *supra* note 1, at 4.

14. See Healy, *supra* note 1, at 1857 (advocating the implementation of comprehensive strategies to decrease trafficking); see also Daniel Edelson, Note, *The Prosecution of Persons Who Sexually Exploit Children in Countries Other than Their Own: A Model for Amending Existing Legislation*, 25 FORDHAM INT'L L.J. 483, 532–36 (2001) (discussing ways to amend legislation to increase global cooperation).

15. Treaties, human rights conventions, and international resolutions include the following: Universal Declaration of Human Rights; 1956 Supplementary Convention on

bite,” professing the importance of ending trafficking, but lacking the necessary force to impact this insidious crime.¹⁶ Despite slight efforts by the United States and the international community, the system has not worked to protect children.¹⁷ A multinational response with international coordination of law enforcement is required to thwart the enormous problem of trafficking.¹⁸

The United States is not immune to the atrocities of sex trafficking in children.¹⁹ Although the extent to which trafficking impacts the United States has been fairly unknown in the general U.S. population, recent news reports and lobbying efforts by nongovernmental organizations (NGOs)²⁰ indicate a growing increase in public awareness by Americans.²¹ In

the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; United Nations General Assembly Resolutions 50/167, 51/66, and 52/98; U.N. Convention on the Rights of the Child; International Labour Organization Convention 182; and the Second Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. *See* Raviv, *supra* note 11, at 666–67 (discussing various international laws that have been adopted to prohibit trafficking in persons); G.A. Res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984); G.A. Res. 50/167, U.N. GAOR, 50th Sess., 99th plen. Mtg., U.N. Doc. A/RES/50/167 (1995); G.A. Res. 51/66, U.N. GAOR, 51st Sess., Agenda Item 103, U.N. Doc. A/RES/51/66 (1997); G.A. Res. 52/98, U.N. GAOR, 52nd Sess., 70th mtg., U.N. Doc. A/RES/52/98 (1997).

16. *See* Healy, *supra* note 1, at 1884–88 (analyzing failures of previous laws).

17. *See* Shawronda Higgins-Thornton, Note, *Innocence Snatched: A Call for Multinational Response to Child Abduction that Facilitates Sexual Exploitation*, 31 GA. J. INT'L & COMP. L. 619, 622 (2003).

18. *Id.* at 629; *see* Katrin Corrigan, Note, *Putting the Brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to Stop the Flow of Traffic*, 25 FORDHAM INT'L L.J. 151, 214 (2001).

19. Tala Hartsough, Article, *Asylum for Trafficked Women: Escape Strategies Beyond the T Visa*, 13 HASTINGS WOMEN'S L.J. 77, 77 (2002); *see* TIP REPORT, *supra* note 11, at 7; Healy, *supra* note 1, at 1858.

20. NGOs are critical in fighting trafficking because they provide non-profit services to victims and coordinate efforts among government agencies. Raviv, *supra* note 11, at 664.

21. *See* Jennifer L. Enck, Note, *The United Nations Convention Against Transnational Organized Crime: Is It All that It Is Cracked Up To Be?*, 30 SYRACUSE J. INT'L L. & COM. 360, 376 (2003); *see, e.g.*, Peter Landesman, *The Girls Next Door*, N.Y. TIMES, Jan. 25, 2004, at § 6 (highlighting the practice of trafficking in America). This story is representative of the type of attention the media has focused on the issue of sex trafficking.

response to recent reports and statistics,²² President Bush signed the newest piece of legislation, the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (PROTECT Act),²³ into law in the United States and urged the international community to follow suit.²⁴ This act follows on the heels of the Trafficking Victims Protection Act of 2000 (TVPA) as a way to further strengthen the TVPA's prosecutorial objectives.²⁵

The Trafficking Victims Protection Act, in conjunction with the new PROTECT Act, offers promise. The PROTECT Act targets individuals—both U.S. citizens who commit sexual crimes against children abroad, and those who enter the United States to illegally traffic children. The TVPA approaches the issue from a more universal standpoint and provides measures for accountability of entire nations as opposed to individual perpetrators through bilateral and multilateral solutions.²⁶ The United States is making strides in the fight against trafficking but can only do so much without the assistance of other nations.

This Comment first addresses the scope of the problem of

22. See President's Address to the United Nations General Assembly in New York City, 39 WEEKLY COMP. PRES. DOC. 1260 (Sept. 29, 2003).

23. PROTECT Act, Pub. L. No. 108-21, 117 Stat. 650 (2003).

24. President's Statement on Signing the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, 39 WEEKLY COMP. PRES. DOC. 504 (May 5, 2003); President's Address, *supra* note 22 (encouraging other countries to take similar legislative actions).

25. 22 U.S.C.A. §§ 7101-7110; PROTECT Act, Pub. L. No. 108-121, 117 Stat. 650 (2003). TVPA is groundbreaking legislation in regard to prosecuting offenders in the U.S., protecting victims, and preventing trafficking through federally funded programs. See 22 U.S.C.A. §§ 7101(a), 7103(d)(4), 7104. However, the TVPA lacks an international enforcement arm. See Susan Tiefenbrun, *Copyright Infringement, Sex Trafficking, and Defamation in the Fictional Life of a Geisha*, 10 MICH. J. GENDER & L. 327, 366-67 (2004) [hereinafter Tiefenbrun, *Copyright Infringement*]. The PROTECT Act adds this necessary appendage, enabling the United States to broaden its ability to prosecute offenders who commit sex trafficking crimes abroad. See *id.* Further, the PROTECT Act increases penalties set out in the TVPA and adds the crime of sex tourism. See PROTECT Act § 105.

26. See Tiefenbrun, *Copyright Infringement*, *supra* note 25, at 366-67. For purposes of this paper, "bilateral" refers to activities affecting or obligating two nations or parties reciprocally, and "unilateral" means something that relates to or is undertaken by only one of two or more parties. BLACK'S LAW DICTIONARY 172, 1568 (8th ed. 2004).

sex trafficking in children. Next, it evaluates prior global legislation and analyzes why previous efforts failed to substantially curb trafficking. This Comment will then analyze the TVPA and PROTECT Act as a two-pronged legislative tool and compare how this legislation is different from past attempts to control trafficking. Finally, this Comment will offer a number of suggestions to help further increase the success of anti-trafficking efforts of the United States and the international community.

II. THE FIVE “WS” OF SEX TRAFFICKING: UNDERSTANDING THE STORY

It is almost inconceivable that sexual slavery, through the trafficking of women and children, exists today. Not only is it a reality, but trafficking also is one of the largest and fastest growing human rights challenges facing the international community.²⁷ The story of sex trafficking in children is played out on stages around the world. It affects producers, directors, and audiences alike, all of whom reap enormous profits and royalties from the victimization of the most innocent of actors: children.

A. *What is the plot in the drama of sex trafficking?*

In 2000, the U.S. Congress found that trafficking in persons had become a modern form of slavery, globally affecting at least 700,000 persons—primarily women and children—each year.²⁸ The 2003 Trafficking in Persons Report (TIP Report) published by the U.S. State Department estimates that the number of people trafficked annually across international borders has

27. TIP REPORT, *supra* note 11, at 5.

28. 22 U.S.C.A. § 7101(b)(1); Mohamed Y. Mattar, *Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses*, 26 FORDHAM INT'L L.J. 721, 721 (2003). The number of people trafficked around the world each year is greater than the entire populations of several U.S. states including, Alaska, North Dakota, Wyoming and Vermont. *Resident Population of the 50 States, the District of Columbia, and Puerto Rico: April 1, 2000 (Census 2000) and April 1, 1990 (Census 1990)*, U.S. CENSUS BUREAU, at <http://www.census.gov/population/cen2000/tab05.txt> (last visited Apr. 10, 2005).

increased to between 800,000 and 900,000.²⁹ The United Nations approximates that each year 1.2 million children are trafficked worldwide.³⁰ These numbers relate to victims who are trafficked from one country into another and do not include the number of people trafficked within their own countries.³¹

The ramifications of trafficking in children reach far beyond the mere deprivation of human rights.³² Trafficking contributes to the social breakdown of families and communities, interferes with the passing of cultural values, and thus weakens society as a whole.³³ This phenomenon divests countries of human capital, promotes crime, and undermines public health.³⁴ In some countries, the financial gain from trafficking has led to government corruption and organized crime, which overwhelms the resources of law enforcement, immigration, and the judiciary.³⁵ Further, lack of financial resources makes it impossible for some countries to effectively prosecute offenders or protect victims.³⁶

Profits from trafficking by “travel” agents, pimps, and criminal organizations are estimated at five to ten billion dollars per year.³⁷ The International Labour Organization (ILO)

29. TIP REPORT, *supra* note 11, at 7. The number of women and children trafficked into the United States by the international sex trade industry ranges anywhere from 18,000 to 20,000. *Id.* A European Union study released in 2001 estimates that 120,000 women and children are trafficked into Western Europe each year. Carla Power, *Preying on Children*, NEWSWEEK, Nov. 17, 2003, at 34. Reports indicate that annually, as many as 225,000 women and children are trafficked annually in South Asia. Raviv, *supra* note 11, at 660.

30. Power, *supra* note 29, at 34.

31. *See* Hartsough, *supra* note 19, at 78.

32. TIP REPORT, *supra* note 11, at 8–11.

33. *Id.* at 8.

34. *Id.* at 10–11. Children are at a greater risk than adults of contracting sexually transmitted diseases because their body tissues are more susceptible to damage. *Frequently Asked Questions About CSEC: What Are the Impacts on Children?*, ECPAT INT'L, at <http://www.ecpat.net/eng/CSEC/faq/faq10.asp> (last visited Apr. 10, 2005). According to a Cambodian NGO, as many as seventy percent of rescued girls are infected with HIV. *Id.*

35. *See* TIP REPORT, *supra* note 11, at 11.

36. *See id.* at 9.

37. *See* Kara C. Ryf, *The First Modern Anti-Slavery Law: The Trafficking Victims Protection Act of 2000*, 34 CASE W. RES. J. INT'L L. 45, 70 (2002); Todres, *supra* note 1, at 2. Boys as young as fifteen are entering the sex trade industry as pimps, approaching

describes trafficking as “the underside of globalization.”³⁸ Trafficking is linked to a myriad of other criminal activities such as money laundering and document fraud.³⁹ U.S. Attorney General John Ashcroft recognized that “[t]rafficking is a transnational criminal enterprise. It recognizes neither boundaries nor borders.”⁴⁰ Secretary of State Colin Powell emphasized that it is critical to the United States’ relationship with the international community to become involved on a global issue of such magnitude.⁴¹

The international community differs on what constitutes sex trafficking.⁴² For the purposes of this Comment, the definitions from the TVPA are used. The TVPA defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”⁴³ “Severe forms of trafficking in persons” is partially defined 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 an act has not attained eighteen years of age.”⁴⁴

tourists and directing them to brothels filled with children. *Children for Sale*, *supra* note 7.

38. TIP REPORT, *supra* note 11, at 5.

39. ASSESSMENT, *supra* note 12, at 1.

40. Attorney General John Ashcroft, Remarks to the International Conference on Pathbreaking Strategies in the Global Fight Against Sex Trafficking (Feb. 25, 2003), <http://www.state.gov/g/tip/rls/rm/17987.htm> [hereinafter Attorney General Remarks]; see ASSESSMENT, *supra* note 12, at 1.

41. See *Children for Sale*, *supra* note 7.

42. Becki Young, Note, *Trafficking of Humans Across United States Borders: How United States Laws Can Be Used To Punish Traffickers and Protect Victims*, 13 GEO IMMIGR. L.J. 73, 75–77 (1998); see Raghu, *supra* note 5, at 165–66; *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, U.N. ESCOR Commission on Human Rights, 53d Sess., Provisional Agenda Item 9(a), at IV, U.N. Doc. E/CN.4/1997/47 (1997) (defining trafficking) [hereinafter *Report*].

43. 22 U.S.C.A. § 7102(9) (2003).

44. *Id.* § 7102(8)(a). “Commercial sex act” is defined as “any sex act on account of which anything of value is given to or received by any person,” and “coercion” as “threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.” *Id.* § 7102(2)-(3); see *Report*, *supra* note 42; Amy O’Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*, CENTER FOR THE STUDY OF

The World Tourism Organisation defines sex tourism as “trips organized from within the tourism sector, or from outside this sector but using its structures and networks, with the primary purpose of effecting a commercial sexual relationship by the tourist with residents at the destination.”⁴⁵ Americans participate in “sex tours,” for which they receive an itinerary that includes stops at restaurants and bars that serve as a front for child prostitution brothels.⁴⁶

B. Where is the story taking place?

Sex trafficking in children is a problem that affects all nations, not merely those that are under-developed or lack adequate protection for victims.⁴⁷ “Sending countries,”⁴⁸ or “countries of origin,”⁴⁹ are those countries from which children are taken. In the case of sex tourism, “sending countries” are the countries from where the perpetrator came. “Destination countries” are those that receive trafficked children.⁵⁰ Thus, some countries are both sending and receiving countries.⁵¹ Regardless of how a country is characterized, none is immune

INTELLIGENCE, 43–46 (2000) (providing clarification on definitions of trafficking).

45. WTO Statement on the Prevention of Organized Sex Tourism, Adopted by the General Assembly of the World Tourism Organization, 11th Sess., Cairo (Egypt), Oct. 17–22, 1995 (Res. A/RES/338(XI)); Todres, *supra* note 1, at 2–3.

46. See *Children for Sale*, *supra* note 7. The travel agencies claim to provide “entertainment” through legal means. Todres, *supra* note 1, at 4.

47. See ASSESSMENT, *supra* note 12, at 4.

48. Todres, *supra* note 1, at 3.

49. Hartsough, *supra* note 19, at 19.

50. World Congress against Commercial Sexual Exploitation of Children, *Declaration and Agenda for Action* (1996), at <http://www.csecworldcongress.org/en/stockholm/Outcome/index.htm> (last visited Apr. 10, 2005) [hereinafter World Congress]; see ASSESSMENT, *supra* note 12, at 18.

51. Greenberg, *supra* note 7. The United States is an example of a country that is both a sending and receiving country. *Id.* The United States is a country of origin, or sending country, when U.S. citizens travel abroad as sex tourists to victimize children. See *id.* When children are trafficked into the United States to be exploited through the sex trade, the United States acts as a receiving nation. See Tiefenbrun, *supra* note 3, at 127–30. An example of a developing nation that acts as both a sending and receiving country is Cambodia. See Greenburg, *supra* note 7. Cambodia receives sex tourists from Western countries, and transports young child victims into its borders from neighboring Vietnam. *Id.*

from the vast criminal enterprise of sex trafficking.⁵²

C. Who are the members of the cast?

An assortment of actors participates in the transnational crime of trafficking in children. According to the U.S. Congress, perpetrators of the crimes of prostitution, pornography, and sex tourism primarily target victims who are disproportionately affected by poverty, who lack access to education or employment, or who lack economic opportunities in the countries of origin.⁵³ These marginalized groups of people carry little political authority, so they not only are unable to help themselves on an individual level, but they also lack the ability to effectively influence their leaders.⁵⁴

Child victims are often deceived by their perpetrators.⁵⁵ Some children are told they will be taken to a prosperous country to find work or to be educated.⁵⁶ These children are then forced into prostitution either as permanent sex slaves or until they have repaid their accrued traveling debt.⁵⁷ However, not all

52. See ASSESSMENT, *supra* note 12, at 227–28; Attorney General Remarks, *supra* note 40.

53. 22 U.S.C.A. § 7101(b)(4) (2003).

54. See *Trafficking in Women and Children in East Asia and Beyond: A Review of U.S. Policy: Hearing Before the Subcomm. on East Asian and Pacific Affairs of the Senate Comm. on Foreign Relations*, 108th Cong. 26–27 (2003) [hereinafter *Senate Hearing*] (statement of Gary Haugen, President & C.E.O., International Justice Mission). Even when victims do have access to the political process, the leaders are often corrupt and involved in the trafficking trade. See *id.* at 27.

55. Higgins-Thornton, *supra* note 17, at 626; see World Congress, *supra* note 50. A global cache of UN agencies, national governments, and NGOs formed to generate a comprehensive document explaining reasons for commercial sexual exploitation of children. See World Congress, *supra* note 50.

56. See Mohamed Y. Mattar, *Monitoring the Status of Severe Forms of Trafficking in Foreign Countries: Sanctions Mandated Under the U.S. Trafficking in Victims Protection Act*, X BROWN J. WORLD AFF. 159, 161 (2003), available at <http://www.watsoninstitute.org/bjwa/archive/10.1/SexTrafficking/Mattar.pdf> (last visited Apr. 10, 2005). A couple was convicted for luring a fourteen-year-old girl from Cameroon to the United States with promises of an American education. Attorney General Remarks, *supra* note 40. Once in America, the girl became enslaved in the house for three years as a servant and was exposed to physical beatings, sexual assault, and threats of deportation. *Id.*

57. See Mattar, *supra* note 56, at 162 (noting that after becoming entrapped in the underground trafficking industry, many children are stripped of their passports or

victims are promised a better life when entering the sex trade.⁵⁸ In some instances, family members sell children to the owners of brothels that are visited by sex tourists.⁵⁹ Others are kidnapped and transported to cities or countries where child prostitution flourishes.⁶⁰

D. Why is the trafficking production so successful?

A multitude of reasons are attributed to why children continue to be victims of trafficking, and these reasons vary from country to country.⁶¹ The common variable for all victims is that they are exploited, whether by a family member, their community, or even a corrupt government.⁶² How and why this exploitation permeates young lives is found in varying explanations in countries around the world.

First, scholars point to the fact that the lack of consensus over the definition of "child" has added to the problem of sex trafficking.⁶³ If the international community cannot even define who is a child, how can it possibly identify one who is being victimized? The United Nations Convention on the Rights of the Child defines "child" as a person under the age of eighteen.⁶⁴ Thus, child sex trafficking laws should protect those seventeen and younger. However, if a country considers the age a person can consent to sexual activity to be less than eighteen, the country's laws take precedence.⁶⁵ This problem is further

traveling documents, becoming illegal aliens).

58. See World Congress, *supra* note 50.

59. *Children for Sale*, *supra* note 7.

60. See *id.*; Raviv, *supra* note 11, at 660–61.

61. See Mattar, *supra* note 56, at 161–62 (explaining some of the diverse causes of trafficking).

62. See TIP REPORT, *supra* note 11, at 7; World Congress, *supra* note 50. See generally Shu-Ling Hwang, *Precursors and Pathways to Adolescent Prostitution in Taiwan*, 40 J. SEX RES. 201 (2003) (explaining socio-cultural factors that contribute to child prostitution in Taiwan and other countries).

63. Edelson, *supra* note 14, at 488–89.

64. G.A. Res. 44/25, Annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990.

65. See *id.* An example is Spain, where the Penal Code establishes the age of consent as twelve. See Edelson, *supra* note 14, at 519 n.202. Prosecution in one country can be hindered if the defendant claims that the victim consented to the act and meets

promulgated in countries where births are not formally recorded or where a false identification card is easily accessible.⁶⁶ If countries cannot agree upon who qualifies as a child, it is likely that a substantial number of victims are unidentified and unprotected.⁶⁷

Poverty is another root of trafficking.⁶⁸ Lack of resources generates vulnerability.⁶⁹ Victims are often unable to support themselves and have no means to escape their plight, thus making them easy prey for traffickers.⁷⁰ Although these victims become the property of brothel owners, their basic needs of survival are being met.⁷¹ On the flip side, patrons from wealthy nations have the ability to travel to countries where laws to protect children from sex crimes do not exist, or are not enforced.⁷² These perpetrators also can afford to change venues if a country begins to enact or exercise child sexual exploitation laws.⁷³ The widening gap between developed and developing countries enhances the problem of trafficking.⁷⁴ The financial

the age requirements of the country where the act took place. *Id.* at 489–90.

66. *Frequently Asked Questions About CSEC: Who is a Child?*, ECPAT INT'L, at <http://www.ecpat.net/eng/CSEC/faq/faq7.asp> (last visited Apr. 10, 2005).

67. World Congress, *supra* note 50. An interesting side note is that in some countries, laws only protect female children from sexual exploitation. *Id.*

68. Mattar, *supra* note 56, at 161.

69. *Id.* In Cambodia, where child prostitution thrives, the average income is less than \$300 a year. *Children for Sale*, *supra* note 7.

70. *See Children for Sale*, *supra* note 7 (describing the situation of a 14 year old girl who was tricked into working at a brothel and did not have the money or means to return home).

71. *See* Sabin Russell, *The Role of Prostitution in South Asia's Epidemic Push for Safe Sex in Red-light Districts*, S. F. CHRON., July 5, 2004, at A1. Child trafficking victims have food and shelter provided to them, albeit at the high price of their innocence. *See id.*

72. *See* Edelson, *supra* note 14, at 483–86 (explaining how tourists from wealthy nations, often Americans, are able to escape punishment for sexually exploiting children in poorer countries).

73. *Id.* at 485–86.

74. Mattar, *supra* note 56, at 161. There is no international consensus on the definition of “developing country,” but the United Nations has created a classification called Least Developed Country (LDC) status. *See* Canada Department of Foreign Affairs and International Trade, Least Developed Countries (LDCs) Market Access Initiative (noting that there are no WTO definitions of “developed” or “developing countries” and describing the UN criteria for Least Developed Country status), at <http://www.dfait->

disparity among countries leads to the victimization of children from poorer countries by perpetrators of wealthy nations.⁷⁵ Further, economically unstable countries victimize their own people to receive some of a prosperous nation's wealth.⁷⁶

While poverty contributes to the trafficking problem, it is only one factor.⁷⁷ Indeed, the governments of some impoverished countries fully comply with the TVPA's minimal standards for eliminating sex trafficking.⁷⁸ Trafficking prospers when local law enforcement condones it, whether implicitly or explicitly.⁷⁹ Traffickers cannot conduct their activities in private—customers must also know where to go to access victims.⁸⁰ It only stands to reason that if customers know where the brothels are, local

maeci.gc.ca/tha-nac/social-en.asp#development (last visited Apr. 10, 2005). Three criteria are used in determining a country's status: 1) a low-income criterion, based on a three-year average estimate of the gross domestic product per capita; 2) a human resource weakness criterion, based on indicators of nutrition, health, education, and adult literacy; and 3) an economic vulnerability criterion, based on indicators of the instability of agricultural production, the instability of exports of goods and services, the share of manufacturing and modern services in GDP, and the handicap of economic smallness. United Nations, Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, *The Criteria for the Identification of the LDCs*, at http://www.un.org/special-rep/ohrlls/ldc/ldc_criteria.htm (last visited Apr. 10, 2005). Examples of least developed countries are Cambodia, Rwanda, Somalia and Yemen. United Nations, Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, *List of Developed Countries*, at <http://www.un.org/special-rep/ohrlls/ldc/list.htm> (last visited Apr. 10, 2005).

75. See Raghu, *supra* note 5, at 147 (describing how developing countries implement policies that enable sexual exploitation of their female populations in order to attract foreign investment from industrial nations).

76. See *id.*

77. See TIP REPORT, *supra* note 11, at 7–9 (describing many other factors contributing to child trafficking, such as victims' ignorance of the dangers of trafficking; greed and widespread subjugation of women; political and economic instability; demand for cheap labor; and low risk of being punished).

78. *Id.* Examples of countries with high poverty levels whose governments have been found to comply with minimal standards for eliminating trafficking include Ghana, Morocco, and Taiwan. TIP REPORT, *supra* note 11, at 21.

79. See *infra* note 82 and accompanying text. Bribery of low-paid police officers is prevalent in developing countries. Healy, *supra* note 1, at 1871.

80. See *Children for Sale*, *supra* note 7 (noting how there are certain Cambodian contacts who know where to go to arrange brothel visits).

police must also know.⁸¹ The reason trafficking thrives in these locations is twofold: law enforcement is overwhelmed, and lacking in resources, and police corruption has led to involvement of officers in the sex ring.⁸² Trafficking is especially prevalent in countries involved in armed conflict or civil unrest due to instability because it displaces women, and children become victims under corrupt or powerless governments.⁸³

Additionally, organized crime plays a large role in many countries where trafficking occurs.⁸⁴ Sophisticated crime networks operate seamlessly throughout the various stages of the trafficking process.⁸⁵ The United Nations defines organized criminal groups as “associations of three or more people, existing for some time with the goal of committing a serious crime for financial or material gain.”⁸⁶ Since large amounts of money are involved in sex trafficking, it has become the third-largest source of income for organized crime groups.⁸⁷ Organized crime syndicates are found in origin and destination countries.⁸⁸

81. *See id.*

82. *See Children for Sale, supra* note 7. An undercover investigator posing as a sex tour guide in Cambodia was offered protection from arrest by a Cambodian police officer for \$150. *Id.* The bribe money is equivalent to five-months of legitimate pay for an average Cambodian police officer. *Id.* Some police who are paid for their “protection” alert pimps to impending raids. *Id.*

83. TIP REPORT, *supra* note 11, at 8; Mattar, *supra* note 56, at 162.

84. Tiefenbrun, *supra* note 3, at 136 (describing the involvement of organized crime groups in trafficking around the world). *See* Richard, *supra* note 44, at 27 (detailing the connection between organized crime and the trafficking of women); Fara Gold, Comment, *Redefining the Slave Trade: The Current Trends in the International Trafficking of Women*, 11 U. MIAMI INT’L & COMP. L. REV. 99, 112 (2003) (explaining how organized crime and sex trafficking are inextricably intertwined).

85. *See* Tiefenbrun, *supra* note 3, at 136 (describing the highly organized process involved in the international trafficking of women and children).

86. Hartsough, *supra* note 19, at 81 (explaining how organized crime operates in the United States).

87. John R. Miller, *Slavery in 2004*, THE WASH. POST, Jan. 1, 2004, at A25.

88. *See* Tiefenbrun, *supra* note 3, at 137–38 (describing various organized crime groups around the world that are involved in trafficking women). In Asia, where trafficking victims originate, organized crime groups permeate beyond their small family groups and use subcontractors. Hartsough, *supra* note 19, at 81. These subcontractors play a variety of roles such as enforcers, recruiters, document forgers, and employment agencies. *Id.* In contrast, the United States—which is primarily a destination country for trafficking—is characteristically run by small crime rings, sometimes made up of

Traffickers have been compared to drug cartels in their ability to smuggle their goods across borders and utilize advanced communications to their benefit.⁸⁹

Global trafficking in children has also grown in part due to porous borders and increasing technological capacities.⁹⁰ Billions of dollars are implicated in the trafficking industry⁹¹ in countries where there is a relatively low risk of being arrested.⁹² Even in countries that have laws against trafficking, the prosecution of traffickers is often non-existent due to corruption in law enforcement or the victims' fear of testifying.⁹³ Moreover, in some countries the victims are charged and prosecuted for illegal sex acts rather than being treated as victims of a crime.⁹⁴

Finally, although there is a high incidence of HIV/AIDS infection within the community of trafficked children,⁹⁵ misconception about the disease actually leads some people to feel safer sexually abusing young children.⁹⁶ Some tourists believe children are less likely to be infected with AIDS and are therefore safe sex partners.⁹⁷ A number of cultures believe a

extended family members. *Id.*; TIP REPORT, *supra* note 11, at 1. Some organized crime groups infiltrate both origin and destination countries. *See* Hartsough, *supra* note 19, at 81–83 (describing how Thai, Chinese, and Russian organized crime groups traffic women from origin countries into the United States). For example, four loosely connected crime groups work together to traffic women and children from Thailand into the United States. *Id.* at 81–82.

89. *See* Potts, *supra* note 12, at 231. The Executive Director of the Center for the Advancement of Human Rights described the difference between drug and sex trafficking as follows: “Unlike drugs, humans can be recycled. They can continue to be exploited, so it’s a better investment for the traffickers.” *‘Modern-day Slavery’ Booming in U.S.: Report*, ISLAM ONLINE, Feb. 25, 2004, at <http://www.islam-online.net/English/News/2004-02/25/articles05.shtml>.

90. *See* Edelson, *supra* note 14, at 487–88. Unlimited access to the Internet makes sex tourism easier for predators trying to arrange to meet children. *See id.* at 487. Policing by international border patrols has decreased in many areas, while the ease of travel has increased. *See* Higgins-Thornton, *supra* note 17, at 621–22.

91. Tiefenbrun, *supra* note 3, at 140.

92. Healy, *supra* note 1, at 1870–71.

93. *See id.* at 1870–71.

94. *See* Tiefenbrun, *supra* note 3, at 112.

95. TIP REPORT, *supra* note 11, at 11.

96. *See* Mattar, *supra* note 56, at 162.

97. *Id.* In Cambodia, it costs a sex tourist sixty dollars for two girls to perform oral sex. *Children for Sale*, *supra* note 7. Sex tourists pay a premium price of up to \$600 for a

myth that sex with a virgin will cure the disease and therefore seek young virgins through the trafficking industry.⁹⁸

E. When will the saga end?

The crime of trafficking in children is certainly not a new one,⁹⁹ nor is it a crime that will be eradicated in the near future.¹⁰⁰ The international community has acknowledged the horrific crimes associated with the exploitation of children and has made initial attempts to put an end to them.¹⁰¹ The United States in particular has fortified its resources and placed trafficking problems in the forefront of domestic and international priorities.¹⁰² However, affecting the enormity of the problem is only feasible if all nations take a strengthened stance and unite in the fight. Until that time, the story of sex trafficking in children will continue to evolve.

III. THE FIGHT AGAINST CHILD SEX TRAFFICKING UNDER THE
DIRECTION OF THE INTERNATIONAL COMMUNITY

Numerous international treaties, conventions, and resolutions have been drafted in an effort to combat sexual abuses against children.¹⁰³ The predominate strength in most international agreements is the emphasis placed on raising

virgin they can take to their hotel and keep for up to three days. *Id.*

98. See James Hall, *Health-Africa: Traditional Healers Denounce AIDS Superstition*, INTER PRESS SERV. (Jan. 24, 2002), available at LEXIS, Wire Service Stories.

99. Higgins-Thornton, *supra* note 17, at 626 (describing child prostitution as an "age-old global problem" often embedded in the historical cultures of certain countries).

100. See Healy, *supra* note 1, at 1923 (expressing skepticism that the trafficking problem is nearing a solution).

101. See *infra* Part III (analyzing previous attempts to reduce trafficking).

102. See President's Address to the United Nations General Assembly in New York City, 39 WEEKLY COMP. PRES. DOC. 1256, 1259-60 (Sept. 29, 2003) (describing U.S. legislation and resources aimed at eliminating the trafficking of women and children).

103. See Raviv, *supra* note 11, at 659 (noting the "[United Nations] Protocol to Prevent and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime"); see treaties, human rights conventions, and international resolutions cited *supra* note 15.

awareness.¹⁰⁴ While these documents are valuable in many ways,¹⁰⁵ they certainly have their limitations.¹⁰⁶ One significant weakness is that some countries will not be signatories, or will not ratify all, or part of, a treaty.¹⁰⁷ Further, while a duty is imposed on the countries that are parties to the convention, legal rights are not afforded to private individuals, so each country must regulate on its own.¹⁰⁸ The global problem of trafficking must be addressed both bilaterally and multilaterally.¹⁰⁹ The United Nations Charter requires member states to “respect human rights and fundamental freedoms” and to “take the necessary action, in cooperation with the United Nations, to achieve this purpose.”¹¹⁰ Analysis of a selection of legislation geared toward reducing child exploitation illustrates the intentions and shortcomings of previous international efforts.

A. *The Convention on the Rights of the Child: The Most Dramatic of Them All...*

One example of an effort made to protect child victims is the Convention on the Rights of the Child (hereinafter Convention).¹¹¹ Intended as a powerful protection measure for children, the Convention was signed by all U.N. member nations and ratified by all but the United States and Somalia.¹¹² The Convention enumerates specific rights guaranteed to children,

104. See Raviv, *supra* note 11, at 669–70.

105. See, e.g., Higgins-Thornton, *supra* note 17, at 646–48 (highlighting strengths of the Convention on the Rights of a Child and the Hague Convention).

106. Todres, *supra* note 1, at 18.

107. See *id.*

108. *Id.* at 668–69.

109. Mattar, *supra* note 56, at 173. Thus, countries must address trafficking through cooperation with other nations. See *id.*

110. *Id.* (citing art. 55 of the Charter of the United Nations).

111. *Convention on the Rights of the Child*, G.A. Res. 44/25, U.N. GAOR, 44th Sess., U.N. Doc. A/RES/44/25 (1989) [hereinafter *Convention*].

112. Higgins-Thornton, *supra* note 17, at 631. U.S. critics of the Convention argue that it would weaken parental rights and could infringe upon the rights of the individual states since a treaty has the force of federal law. See John Quigley, *U.S. Ratification of the Convention on the Rights of the Child*, 22 ST. LOUIS U. PUB. L. REV. 401, 402 (2003).

such as protection from torture and mistreatment.¹¹³ Moreover, the Convention explicitly distinguishes exploitive acts and instructs parties to pass laws to protect children from these practices.¹¹⁴ The Convention calls for a ban on the separation of a child and family to counter-act the influences that lead to child trafficking.¹¹⁵

On paper, the Convention looks promising, but in application it has limitations.¹¹⁶ The biggest shortcoming of the Convention is a lack of guidance on how to create and implement laws to protect children.¹¹⁷ Moreover, the Convention's expectations are vague.¹¹⁸ For example, it calls only for "appropriate" measures to be taken and for procedures to be outlined, but it does not mandate the implementation of such procedures.¹¹⁹

Commentators disagree on whether the Convention should be ratified by the United States.¹²⁰ One consequence of not ratifying is the loss of credibility to the United States regarding its commitment to human rights issues.¹²¹ The Convention is only one piece of legislation however, and strong support of other measures specifically geared to combat trafficking can

113. *Convention*, *supra* note 111, art. 37.

114. Higgins-Thornton, *supra* note 17, at 646–47.

115. *See id.* at 646.

116. *See* Berkman, *supra* note 6, at 417–18; Higgins-Thornton, *supra* note 17, at 647.

117. *See* Higgins-Thornton, *supra* note 17, at 647 (illuminating the lack of guidelines for solving the exploitation of children).

118. Berkman, *supra* note 6, at 417 (criticizing the inadequacies of the Convention).

119. *Id.*

120. *See* Quigley, *supra* note 112 (addressing critics' concerns and arguing for U.S. ratification of the Convention). *But see* Richard Wilkins et al., *United States and Its Participation in the Convention on the Rights of the Child: Why the United States Should Not Ratify the Convention on the Rights of the Child*, 22 ST. LOUIS U. PUB. L. REV. 411 (2003) (arguing against U.S. ratification and discussing the negative policy implications of the Convention). *See generally* Jaap Doek, *The Protection of Children's Rights and the United Nations Convention on the Rights of the Child: Achievements and Challenges*, 22 ST. LOUIS U. PUB. L. REV. 235 (2003) (providing an overview of the advantages and disadvantages of the Convention).

121. *See infra* notes 366–67 and accompanying text (explaining why the United States is viewed as being hypocritical in its attempts to eradicate trafficking in children).

demonstrate the United States' commitment to children worldwide.

B. The Hague Convention: Serving Abducted Actors

The Hague Convention is another international action taken in an attempt to combat human rights abuses.¹²² Much like those of the Convention on the Rights of the Child, its results are mixed. The Hague Convention is primarily a procedural device that provides support for parents whose child has been abducted.¹²³ It creates an agreement between state parties to cooperate in the return of abducted children to the custodial parent.¹²⁴ While the Hague Convention helps to alleviate and rectify familial abductions, it has had little to no impact on the crime of trafficking of children perpetrated by a non-family member.¹²⁵ Perhaps the most significant limitation of the Hague Convention is that it merely requires the abducted child to be returned to the custodial parent; meanwhile, the abductor remains in another country—free from criminal punishment.¹²⁶ The Convention is grounded solely in civil international law, with no criminal liability attached.¹²⁷

C. Protocol on the Sale of Children, Child Pornography and Child Prostitution: An Attempt to Stop the Performance

In an effort to strengthen the Convention on the Rights of the Child, the United Nations General Assembly adopted the Protocol on the Sale of Children, Child Pornography and Child Prostitution (Sale of Children Protocol) on May 25, 2000.¹²⁸ As

122. See Higgins-Thornton, *supra* note 17, at 632–33.

123. *Id.* at 633.

124. *Id.*

125. *Id.* at 633–34. The National Center for Missing and Exploited Children (NCMEC) maintains that most child abductions are perpetrated by the non-custodial parent or family member. *Id.* at 620, 621 n.18 (citing to the NCMEC website at <http://www.NCMEC.org>).

126. *Id.* at 640–41.

127. *Id.* at 634. Without the ability to prosecute offenders, deterrence of child abduction is severely weakened. See *id.* at 641.

128. Michael J. Dennis, *Newly Adopted Protocols to the Convention on the Rights of the Child*, 94 AM. J. INT'L L. 789, 789 (2000); Doek, *supra* note 120, at 242.

the first international instrument to define “sale of children,” “child pornography,” and “child prostitution,” the Sale of Children Protocol was intended to provide the means for greater punishment of offenders through the use of cooperative law enforcement mechanisms.¹²⁹ For example, the Sale of Children Protocol provides for broad jurisdiction, enabling the extradition of offenders to ensure prosecution regardless of where they are discovered.¹³⁰

The Sale of Children Protocol addresses problems of children being sold under the guise of adoption.¹³¹ One way this is accomplished is through adherence to the Hague Convention of Intercountry Adoption, which was enacted previously to standardize intercountry adoptions and prevent trafficking that resulted from non-monitored adoptions.¹³²

The Sale of Children Protocol also criminalizes any action relating to child prostitution.¹³³ Parties are required to strengthen existing laws or create new laws to protect child victims, particularly those who are most vulnerable to

129. Dennis, *supra* note 129, at 789. “Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.” *Optional Protocols to the Convention on the Rights of the Child in the Involvement of Children in armed conflict and on the sale of children, child prostitution, and child pornography*, G.A. Res. 54/263, 54th Sess., Annex I & II, at 8, U.N. Doc. A/54/49 (2000) [hereinafter *Sale of Children Protocol*]. Child prostitution is defined as, “the use of a child in sexual activities for remuneration or any other form of consideration.” *Sale of Children Protocol*, art. 2(b).

130. See Dennis, *supra* note 128, at 789.

131. *Id.* at 793.

132. Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption, May 29, 1993; 32 I.L.M. 1134; United States of America Multilateral Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, May 29, 1993, S. Treaty Doc. No. 105–51. Intercountry adoption measures are beyond the scope of this article. See generally Kelly M. Wittner, *Curbing Child-Trafficking in Intercountry Adoptions: Will International Treaties and Adoption Moratoriums Accomplish the Job in Cambodia?*, 12 PAC. RIM L. & POLY J. 595 (2003) (explaining why the Hague Convention on Intercountry Adoption is a good first step but lacks force in preventing adoption abuses); Nicole Bartner Graff, *Intercountry Adoption and the Convention on the Rights of the Child: Can Free Market in Children be Controlled?*, 27 SYRACUSE J. INT’L L. & COM. 405 (2000) (stressing the importance of the United States to ratify the Hague Convention on Intercountry Adoption to avoid its becoming an ineffective piece of international legislation).

133. Dennis, *supra* note 128, at 794.

trafficking.¹³⁴ The Sale of Children Protocol further encourages parties to take steps toward multilateral cooperation and to provide assistance to victims and their families.¹³⁵ Like other international agreements, however, the Sale of Children Protocol lacks the force to ensure adherence to its provisions.¹³⁶

D. U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: Linking the Producers to the Show

Finally, realizing the critical link between trafficking in persons and organized crime,¹³⁷ the United Nations drafted the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (U.N. Protocol).¹³⁸ This Protocol was intended to provide guidance to nations when dealing with the vast combinations of trafficking activities.¹³⁹ The U.N. Protocol's primary purpose is to support countries in measures beyond what they can do on their own.¹⁴⁰ It has been praised for presenting a holistic approach to the problem of trafficking.¹⁴¹ Similar to previous agreements, the U.N. Protocol lays out general descriptions of actions to be undertaken by countries but does not provide any suggestions or resources to the countries in implementing these actions.¹⁴²

134. *Sale of Children Protocol*, *supra* note 129, Annex II, art. 9.

135. *See id.* at arts. 8, 10.

136. *See Sale of Children Protocol*, *supra* note 129, art. 15 (permitting any party to denounce the Sale of Children Protocol at any time). The Protocol mandates that all State Parties shall submit a report on the measures it has taken but fails to place consequences upon those States that do not adhere to the Protocol. *Id.* at art. 12.

137. *See supra* notes 84–89 and accompanying text.

138. United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Supp. No. 49, Annex II at 31, art. 2(a), U.N. Doc. A/45/49 (Vol. I) (2001) [hereinafter G.A. Res. 55/25].

139. *Id.* at 31–33.

140. Tiefenbrun, *supra* note 3, at 149.

141. Raviv, *supra* note 11, at 668.

142. *See id.* at 669. A few examples of directives found in the UN Protocol are: each State Party shall adopt such legislative and other measures to make trafficking a crime when committed intentionally; each country shall make sure that trafficking victims

Provisions for the protection of victims are presented as optional measures and only limited requirements are placed on the scope of services to be provided.¹⁴³

International efforts demonstrate good intentions on behalf of the global community. Despite these efforts, trafficking in children is flourishing. The international community clearly lacks the ability to effectively put its intentions into action.

IV. THE ROLE OF PREVIOUS U.S. EFFORTS: PREFACE TO A COMMANDING PERFORMANCE

The United States passed a collection of domestic laws in response to trafficking in persons.¹⁴⁴ The problem with past legislation is its fragmented approach to such a broad problem. Each law enacted provides a necessary tool against trafficking in children, but when taken in isolation, the laws lose their potency. Global trafficking in children is a complex, sophisticated enterprise that must be battled through a comprehensive and multi-national approach.¹⁴⁵

A. *The Mann Act: The First Act on the U.S. Stage*

The fight against trafficking began with the outlawing of sexual slavery in the early 1900s through the passage of the White Slave Traffic Act (Mann Act), which has since been codified by the U.S. Congress.¹⁴⁶ The Mann Act attempted to police morality and often criminalized the behavior of the victim rather than the criminal.¹⁴⁷ Given the fact that trafficking takes place on an international level, this legislation falls short from a

receive information about legal proceedings; each State Party shall consider passing laws that permit victims of trafficking in persons to remain in its territory, temporarily or permanently. G.A. Res. 55/25, *supra* note 138, at 33–34.

143. See Raviv, *supra* note 11, at 668.

144. See Tiefenbrun, *supra* note 3, at 113.

145. Higgins-Thornton, *supra* note 17, at 622.

146. See 18 U.S.C. §§ 2421–2427 (2000); Young, *supra* note 42, at 85. The Mann Act prohibits, in general, transportation in interstate commerce for a prohibited purpose. Young, *supra* note 42, at 85; see 18 U.S.C. § 2421 (2000). In cases of sex trafficking, “the transportation is almost always for a prohibited purpose, such as forced prostitution or sexual servitude.” Young, *supra* note 42, at 85–86.

147. Todres, *supra* note 1, at 6.

global perspective since it does not provide for much protection of victims or prosecution of offenders outside of the United States.¹⁴⁸ The Mann Act does provide a starting point for addressing trafficking in persons within the United States, but lacks an extensive international scope.¹⁴⁹

B. An Anthology of Laws

As human rights laws evolved, certain U.S. statutes became available to address trafficking.¹⁵⁰ For example, under the U.S. Code, crimes such as involuntary servitude, slavery, and harboring minors for prostitution are codified and can be used individually when charging trafficking offenders.¹⁵¹ Until recently, the United States lacked a comprehensive law on trafficking, relying instead on a combination of laws from a variety of sources.¹⁵²

C. Foreign Assistance Act: Performing Abroad

The United States has traditionally monitored global issues and used a variety of measures to influence the political decision-making of foreign governments.¹⁵³ U.S. foreign policy focuses on a broad spectrum of issues—weapons of mass destruction, terrorism and drugs—and imposes sanctions on countries violating U.S. policy.¹⁵⁴ More recently, human rights

148. Young, *supra* note 42, at 86. The Act specifically uses the terms “interstate or foreign commerce,” but has been almost exclusively applied to illegal trafficking across U.S. state borders. *Id.* Becki Young attributes this to the fact that international trafficking has increased and use of the Mann Act in the United States has decreased. *Id.*

149. *See id.* at 86.

150. *See* Tiefenbrun, *supra* note 3, at 162–63.

151. *See id.*

152. *See id.* at 162; Corrigan, *supra* note 18, at 180–81. When dealing with trafficking, the United States combined offenses from immigration, criminal, and labor statutes. *Id.*

153. *See* Mattar, *supra* note 56, at 159–60.

154. *Id.* at 160. The United States imposes sanctions on foreign companies that invest in the Iranian or Libyan oil industries, prohibits imported goods from countries that condone forced labor, and denies credit to non-nuclear weapons States that test nuclear mechanisms. *Id.* at 160–61.

issues have become another focal point of the United States.¹⁵⁵ As a way of controlling the international community, the U.S. Congress in 1961 passed the Foreign Assistance Act (FAA), which “prohibits economic assistance to any government that engages in a ‘consistent pattern of gross violations of internationally recognized human rights.’”¹⁵⁶ The FAA attempts to promote and encourage respect for human rights and fundamental freedoms in countries around the world.¹⁵⁷

Neither previous legislation nor law enforcement measures have sufficiently deterred trafficking because the problem still persists and is on the rise.¹⁵⁸ Until the start of the twenty-first century, U.S. efforts mainly targeted the sexual exploitation of children domestically. Due to the lack of a comprehensive framework addressing the issue of global trafficking in children, the United States was limited in its impact on the issue beyond its own borders.¹⁵⁹

From an international perspective, many countries lack the resources to handle such a global problem.¹⁶⁰ Official indifference, political corruption and powerful organized crime organizations contribute to the handful of reasons previous measures were inadequate.¹⁶¹ Moreover, victims often are not protected under existing laws because they are in the destination country illegally or because they lack access to adequate health care, housing, and educational and legal

155. *Id.* at 161.

156. *Id.* (citing Foreign Assistance Act of 1961, Pub. L. No. 87–195, 22 U.S.C.).

157. *Id.*

158. *See* 22 U.S.C.A. § 7101(b)(1) (2003) (providing a brief quantitative assessment of the seriousness of the trafficking problem). While there has been work toward reducing the number of child trafficking victims, there has been little result, and no legislation has been able to break the cycle. *See, e.g.*, 22 U.S.C.S. § 7101 (2003) (“The purposes of this division are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”); *see* TIP REPORT, *supra* note 11, at 6 (“Human trafficking not only continues but appears to be on the rise worldwide.”).

159. *See* Tiefenbrun, *supra* note 3, at 162–63. U.S. laws have historically lacked a comprehensive approach for preventing trafficking, protecting victims, and penalizing the range of offenses involved in the act of trafficking. *See id.*

160. *See* Mattar, *supra* note 56, at 161.

161. *See* 22 U.S.C.A. § 7101(b)(8); TIP REPORT, *supra* note 11, at 5, 11.

facilities.¹⁶² Scholars emphasize that the situation never will improve unless developed nations across the globe join forces.¹⁶³ The newest two-pronged U.S. legislation aims to provide this support.¹⁶⁴

V. POWERFUL NEW LEGISLATION: THE CLIMAX OF THE STORY

Perhaps in response to mounting pressure about human rights policy, President Bush signed the newest and potentially strongest piece of U.S. legislation to date.¹⁶⁵ While speaking to the United Nations in September 2003, President Bush shifted his emphasis from the war on terrorism and U.S. efforts to establish a democracy in Iraq to the fight against the global sex trade.¹⁶⁶ He spoke of a humanitarian crisis that much of the world has yet to discover or address, challenging governments worldwide to put an end to their complacency and focus on abolishing this modern form of slavery.¹⁶⁷ He announced the implementation of the PROTECT Act and explained the force of the legislation, making it a crime for any person to enter the United States or for any citizen to travel abroad for the purpose of sex tourism involving children.¹⁶⁸ He emphasized that the TVPA already offers promise as potent legislation both through the prosecution of participants in the sex trade and through the

162. 22 U.S.C.A. §7101(b)(17) (2003).

163. See Mattar, *supra* note 56, at 159–61 (stating the proposition that trafficking will only end if developed nations commit their support); see Tiefenbrun, *supra* note 3, at 169–70 (advocating for developed countries to provide increased resources to developing nations); Raviv, *supra* note 11, at 670 (suggesting “poverty reduction schemes” as part of the solution for addressing the trafficking problem).

164. 22 U.S.C.A. §7105(a); see PROTECT Act, Pub. L. No. 108-21, 117 Stat. 650 (2003).

165. See President’s Statement on Signing the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, 39 WEEKLY COMP. PRES. DOC. 504 (May 5, 2003).

166. President’s Address to the United Nations General Assembly in New York City, 39 WEEKLY COMP. PRES. DOC. 125860 (Sept. 29, 2003).

167. *Id.* at 1259–60. President Bush called for help from the United Nations to set clear standards for punishment of traffickers. *Id.* at 1260. Bush noted that although some countries have laws prohibiting the sexual abuse of children abroad, all countries need to join the fight by passing stringent laws and educating their citizens on the harmful consequences of sex tourism. See *id.*

168. *Id.* at 1260.

imposition of sanctions on countries that do not take steps to stop this heinous crime.¹⁶⁹ The PROTECT Act is not meant to supplant the TVPA, but rather is a means to increase effectiveness by filling the gaps found in the TVPA.¹⁷⁰ Thus, the new legislation is a two-pronged approach to the issue of trafficking.¹⁷¹

A. *Trafficking Victims Protection Act of 2000: A Comprehensive Theme*

The first prong of new U.S. legislation meant to combat trafficking in persons is the Trafficking Victims Protection Act of 2000 (TVPA).¹⁷² This Act is considered the first modern anti-slavery legislation in the United States.¹⁷³ This Act acknowledges trafficking as a severe human rights violation and is by far the most comprehensive piece of legislation to address the global problem of trafficking in persons.¹⁷⁴ The purpose of the TVPA is to combat trafficking in persons and provide just and effective punishment of offenders.¹⁷⁵ Specifically, the TVPA changes existing laws: by expanding U.S. involvement in prevention measures; by increasing assistance available to victims; and by enhancing penalties for perpetrators.¹⁷⁶ It also provides for increased interagency cooperation throughout the executive branch of the U.S. government.¹⁷⁷

The TVPA is the most comprehensive piece of anti-

169. *See id.*

170. *See* Tiefenbrun, *Copyright Infringement*, *supra* note 25, at 366–67.

171. *See supra* notes 10, 23–25 and accompanying text (introducing the TVPA and PROTECT Act).

172. 22 U.S.C.A. § 7101(a) (2003).

173. Ryf, *supra* note 37, at 45.

174. *The U.S. Trafficking Victims Protection Act of 2000: An Explanatory Note*, THE PROTECTION PROJECT (2002) [hereinafter *Explanatory Note*], at http://www.protectionproject.org/trafic_in_us/trafic_in_us.htm (last visited Apr. 10, 2005); Mattar, *supra* note 56, at 159.

175. 22 U.S.C.A. § 7101(a); Ryf, *supra* note 37, at 53.

176. ASSESSMENT, *supra* note 12, at 2.

177. *Id.* at 4. The Departments of Health and Human Services, State, Justice and Homeland Security are just a few of the divisions working in conjunction with one another to end trafficking in children. *Id.*

trafficking legislation passed in the United States to date.¹⁷⁸ It takes the “three P approach”—prevention, protection, and prosecution—that has been advocated by human rights groups and legal scholars for the past decade.¹⁷⁹ Prior legislative efforts focused on one area at a time rather than providing broad measures to attack the problem on all fronts.¹⁸⁰ The TVPA tackles each area contemporaneously in order to broaden the United States’ influence and impact on the global dilemma of trafficking in children. However, the TVPA is more narrow in scope than the U.N. Protocol because it does not speak to trafficking for the purposes of labor, inter-country adoption, organ harvesting, or pornography.¹⁸¹ The TVPA also takes a more limited approach than the U.N. Protocol in its definition of the means of trafficking.¹⁸²

A Cabinet-level Interagency Task Force was convened to implement the Act and to assess the progress of the United States and other countries in abolishing trafficking.¹⁸³ The Act also mandates the establishment and maintenance of the Office to Combat and Monitor Trafficking in Persons to scrutinize and hold other countries accountable for their actions in dealing with trafficking.¹⁸⁴ The TPVA is a serious attempt to implement both

178. *See id.* at 2–3.

179. *See Potts, supra* note 12, at 239–43.

180. *See Berkman, supra* note 6, at 408–17 (analyzing various U.S. and international legislation); Dennis, *supra* note 128, at 789–96 (evaluating U.S. adoption of international protocols); Healy, *supra* note 1 (comparing trafficking laws in select countries around the world). For example, the Mann Act focused on prosecution of offenders domestically, but was impotent in prosecuting offenders abroad. *See supra* Part IV.A. It also lacked the means to provide protection for victims. *Id.*

181. *See Mattar, supra* note 56, at 163–64.

182. *Id.* at 164. The TVPA necessitates an act of force, fraud, or coercion for adult victims of trafficking while the UN Protocol requires only the threat of force or abuse of power. *Id.*

183. Mattar, *supra* note 56, at 163; ASSESSMENT, *supra* note 12, at 4. The task force is led by the Secretary of State and includes the Attorney General, the Administrator of the U.S. Agency for International Development, the Secretary of Labor, the Directors of the CIA and the Office of Management and Budget, and the Secretary of Homeland Security. ASSESSMENT, *supra* note 12, at 4.

184. *See Senate Hearing, supra* note 54, at 31 (prepared statement of Gary Haugen, President & C.E.O., International Justice Mission). In his testimony, Mr. Haugen explained that “the TVPA endeavored to place the voice and values of the American people on the side of these vulnerable women and children by making it clear

an inclusive approach to trafficking as well as a variety of the types of remedies called for by human rights commentators.¹⁸⁵

1. Chapter One: Prevention

An important part of the TVPA is the mandate to compile and publish a yearly report to assess the efforts of governments in meeting minimum standards to eliminate trafficking.¹⁸⁶ The TVPA also authorizes the compilation of an assessment on U.S. progress in the war against trafficking.¹⁸⁷ Following the presentation of the TIP Report to congressional committees, the President determines what action to take with countries that have not met minimum standards for severe forms of trafficking.¹⁸⁸ The TIP Report is a comprehensive worldwide collection of data on trafficking.¹⁸⁹ Secretary of State Colin Powell described the report as a diplomatic tool to end modern day slavery by highlighting the activities undertaken by countries around the world to combat trafficking.¹⁹⁰ Countries are given a three-year grace period to improve their policies and actions toward trafficking.¹⁹¹ In addition to monitoring countries' progress, the TVPA calls for the United States to assist these countries in their efforts to stop trafficking.¹⁹² One way the United States has provided this support is by drafting laws that

that their abuse would not be tolerated." *Id.* at 27 (statement of Gary A. Haugen, President and C.E.O., International Justice Mission).

185. See TIP REPORT, *supra* note 11, at 15; *Explanatory Note*, *supra* note 174; Young, *supra* note 42, at 73; Potts, *supra* note 12, at 230. In 2002, President Bush issued a National Security Directive commanding cooperation of all federal agencies to reduce trafficking, protect victims, and prosecute offenders. See ASSESSMENT, *supra* note 12, at 4.

186. See 22 U.S.C.A. § 7107(b)(1) (2003) (inferring importance of reporting requirement).

187. *Id.* § 7103(d)(2).

188. *Id.* § 7107(d). The TVPA has a limited definition of what qualifies as severe forms of trafficking. *Id.* § 7102(8). See *supra* text accompanying note 43 for definition.

189. See ASSESSMENT, *supra* note 12, at 1; Letter from Colin L. Powell, U.S. Secretary of State, Trafficking in Persons Report (June 30, 2003).

190. Letter from Colin L. Powell, U.S. Secretary of State, Trafficking in Persons Report (June 11, 2003) at <http://www.state.gov/g/tip/rls/tiprpt/2003/21335.htm>.

191. Mattar, *supra* note 56, at 171.

192. *Id.* at 163.

prohibit and punish trafficking.¹⁹³ The United States also has visitor exchange programs that allow government leaders to observe and examine successful measures deployed in the fight against trafficking.¹⁹⁴

The TVPA is the first piece of U.S. legislation to place consequences on countries that do not attempt to meet minimum standards to combat sex trafficking.¹⁹⁵ The TVPA seeks to put political pressure on the actions of other countries through the implementation of sanctions,¹⁹⁶ but because this is such a new report no country has yet felt the impact of sanctions.

The TIP Report is organized into a three-tier system that classifies countries based on their compliance with four minimum standards as outlined in the TVPA.¹⁹⁷ Through these standards, the United States has attempted to comport with the comprehensive measures advocated by scholars.¹⁹⁸ The first

193. See ASSESSMENT, *supra* note 12, at 19.

194. See *id.* at 18–21.

195. See *Senate Hearing*, *supra* note 54, at 27–28 (statement of Gary Haugen, President & C.E.O., International Justice Mission).

196. *Id.* at 31 (prepared statement of Gary Haugen, President & C.E.O., International Justice Mission). These sanctions include loss of U.S. military aid, decreased educational and cultural support, and reduced loans and grants from the World Bank and International Money Fund. See Miller, *supra* note 87. These sanctions are significant to a country such as Turkey, which relies on U.S. aid for military assistance and economic development support. USAID FY 2005 Congressional Budget Justification, *available at* <http://www.usaid.gov/policy/budget/cbj2005/ee/tr.html> (last visited Apr. 10, 2005). Recent actions taken by countries to eradicate sex trafficking support predictions that these sanctions will work in countries that rely on U.S. support. See *infra* note 207 and accompanying text (noting recent efforts made by some countries to combat sex trafficking). For countries that do not rely heavily on U.S. support, such as Cuba and North Korea, sanctions may not be as effective.

197. Mattar, *supra* note 56, at 164. It is important to note that these are *minimum* standards designed to eliminate trafficking. *Id.* Countries included in the report have been determined to engage in a significant amount of trafficking, which requires one hundred or more victims. TIP REPORT, *supra* note 11, at 14.

198. See Higgins-Thornton, *supra* note 17, at 622 (explaining the need for a comprehensive approach to the global problem of sex trafficking in children). The TVPA standards have prevention, punishment, and prohibition components, but lack an enumerated protection component. TIP REPORT, *supra* note 11, at 15. It does, however, provide for seven criteria that “should be considered” in relation to the fourth standard. *Id.* One of these criteria is whether a government protects victims of trafficking and puts safeguards in place to ensure that victims are not punished for their part in the trafficking crimes. *Id.*

standard is the prohibition of trafficking in persons and the punishment of violators of these laws.¹⁹⁹ The second standard dictates that governments prescribe appropriate punishment for crimes of sex trafficking.²⁰⁰ The third standard mandates that governments specify punishment that is sufficiently stringent to deter others from committing the crime, and demonstrates the serious and heinous nature of the crime.²⁰¹ The fourth standard examines governmental actions to eliminate trafficking.²⁰² Criteria used in determining if serious and sustained efforts have been attained are: whether the government vigorously investigates and prosecutes traffickers; whether the government protects victims; whether the government has adopted preventative measures; whether the government cooperates with other governments in the fight against trafficking; whether the government extradites persons accused of trafficking others; whether the government monitors trafficking patterns and responds appropriately; and whether the government investigates and prosecutes corrupt public officials involved in trafficking activities.²⁰³ These criteria provide means to determine whether a country is sufficiently working toward eradicating sex trafficking.²⁰⁴

For each country, the report includes a short narrative describing the scope and severity of trafficking within that country, a brief discussion of the government's conformity with the requisite standards, and a description of the country's attempts to prevent the offense, prosecute the offenders, and protect the victims involved in trafficking.²⁰⁵ The formation of taskforces and action plans, as well as draft versions of laws, is considered—though not heavily weighed on their own—in the final analysis of each country's rating.²⁰⁶

199. TIP REPORT, *supra* note 11, at 15; Mattar, *supra* note 56, at 164.

200. *See supra* note 196.

201. *Id.*

202. *Id.*

203. TIP REPORT, *supra* note 11, at 15. The report does not give a specific definition or example of what is considered "appropriate." *Id.*

204. *Id.*

205. *Id.* at 13.

206. *Id.*

Governments that fully comply with the minimum standards set forth in the Act are placed in Tier One.²⁰⁷ Governments that are not in full compliance, but are making significant efforts are placed in Tier Two.²⁰⁸ Countries that do not fully comply with the standards and are not making significant efforts are placed in Tier Three.²⁰⁹

For non-compliant countries, the U.S. State Department examines efforts being made by each country to become compliant in determining Tier status.²¹⁰ Certain mitigating factors are enumerated in the TVPA and are taken into consideration in this determination.²¹¹ These factors are: “the extent of trafficking in the country”; the scope of governmental non-compliance, especially in regard to government officials’ complicity; and the reasonableness of the country becoming compliant within the measure of their resources and capabilities.²¹² The Act seeks to put political and economic pressure on the actions of other countries through the implementation of sanctions.²¹³

Sanctions are used to modify a government’s behavior to conform to standards important to the United States.²¹⁴ According to Stuart E. Eiznestat, former Under Secretary of State for Business and Agricultural Affairs, sanctions can be an

207. *Id.* at 14; Mattar, *supra* note 56, at 164. The following countries qualified for Tier One status in 2003: Austria, Belgium, Benin, Colombia, Czech Republic, Denmark, France, Germany, Ghana, Hong Kong, Italy, Lithuania, Macedonia, Mauritius, Morocco, The Netherlands, Norway, Poland, Portugal, Korea, Spain, Sweden, Switzerland, Taiwan, United Arab Emirates, United Kingdom. TIP REPORT, *supra* note 11, at 21.

208. TIP REPORT, *supra* note 11, at 14. There are seventy-five countries that are in Tier Two as of 2003. *Id.* at 21–164 (listing Tier status for each country and explaining each country’s progress toward minimum standards).

209. *Id.* at 21–159. The following fifteen countries are in Tier Three status for 2003: Belize, Bosnia and Herzegovnia, Burma, Cuba, Dominican Republic, Georgia, Greece, Haiti, Kazakhstan, Liberia, North Korea, Sudan, Suriname, Turkey, Uzbekistan. *Id.* at 21.

210. *Id.* at 15.

211. *Id.* at 15–16.

212. *Id.* at 16. *See also Explanatory Note, supra* note 174 (clarifying conditions of the TVPA and accompanying report).

213. *See Explanatory Note, supra* note 174; Mattar, *supra* note 56. There is much debate over whether sanctions are truly effective. Mattar, *supra* note 56, at 172.

214. Mattar, *supra* note 56, at 172.

appropriate means to advance U.S. policy goals when used effectively.²¹⁵ Sanctions placed on foreign governments have been compared to collective or vicarious liability applied to corporations.²¹⁶ Sanctions are more effective when the impacted group is in a position to exert control over decision-making processes of the country.²¹⁷

It has been argued that sanctions themselves are a violation of human rights because they have a harmful effect on a country's economy and social structure.²¹⁸ There are numerous reasons cited to demonstrate that sanctions are ineffective.²¹⁹ Sanctions may exact collateral damage²²⁰ on innocent people, especially the poor and marginalized.²²¹ Moreover, trafficking is predominantly a criminal activity committed by individuals, and government sanctions will not directly affect the wrongdoers.²²² Economic sanctions can hurt victims of trafficking by decreasing the resources available to them and by increasing their vulnerability.²²³ Additionally, nongovernmental organizations that provide information to governments to raise the government's awareness of its country's trafficking problem may feel the consequences of sanctions through decreased funding.²²⁴

215. *Sanctions and U.S. Policy Interests: Hearings Before House Int'l Relations Comm.*, F.D.C.H. (1998) (testimony of Stuart E. Eizenstat, Undersec'y of State for Bus. and Agric. Affairs, U.S. Dep't of State).

216. See Daryl J. Levinson, *Collective Sanctions*, 56 STAN. L. REV. 345, 349 (2003) (discussing the concept of sanctions as a tool for collective responsibility to effect political change).

217. See *id.* at 350.

218. Mattar, *supra* note 56, at 172.

219. See Cassandra LaRae-Perez, Note, *Economic Sanctions as a Use of Force: Reevaluating the Use of Sanctions from an Effects-Based Perspective*, 20 B.U. INT'L L.J. 161 (2002) (analyzing the negative impact economic sanctions impose on citizens of affected countries).

220. Mattar, *supra* note 56, at 172.

221. *Id.*

222. *Id.* (citing *International Trafficking in Women and Children: Prosecution, Testimonies, and Prevention: Hearing Before the Subcomm. on Near Eastern and South Asian Affairs of the Senate Comm. on Foreign Relations*, Sen. Hrg. 106705, 106th Cong. (2000) (statement of Frank E. Loy, Undersec'y of State for Global Aff., U.S. Dep't of State)).

223. *Id.*

224. *Id.* at 172.

Foreign governments may also be reluctant to accurately report trafficking. Without transnational cooperation, the fight against trafficking would be dramatically reduced.²²⁵ Finally, it is argued that sanctions would thwart cooperation between countries—one of the specific purposes of the TVPA.²²⁶

John R. Miller, Director of the Office to Monitor and Combat Trafficking in Persons, argues that the threat of sanctions has the opposite effects of those cited by opponents, and are already shown to be catalysts for improvement in the fight against trafficking.²²⁷ In the three months leading up to the TIP Report's publication, "some countries made more progress than they had in the previous two years."²²⁸ Once the report was released, countries had three months to make remedial efforts to improve their situation.²²⁹ Numerous countries, such as Turkey and Georgia, took action.²³⁰ Turkey employed new screening procedures for victims, and Georgia appointed officers to focus on trafficking.²³¹ The Dominican Republic began an educational campaign and established an anti-trafficking police unit.²³² Director Miller attributes much of this activity to impending sanctions, and cites diplomatic ambassador efforts and public disclosure of a country's problems as two factors that have contributed to improved efforts by some nations.²³³

For the first time in U.S. history, in accordance with the TVPA, President Bush issued a determination report outlining consequences for countries found to be out of compliance with the minimum standards in the TIP Report.²³⁴ At the threat of

225. *Id.*

226. *Id.* at 172–73; *Explanatory Note*, *supra* note 174.

227. Miller, *supra* note 87.

228. *Id.* Laws against trafficking were passed for the first time in countries such as Haiti and the Philippines, and victims were assisted in Serbia and Cambodia. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. Presidential Determination with Respect to Foreign Governments' Efforts Regarding Trafficking in Persons, 68 Fed. Reg. 53,871 (Sept. 9, 2003) [hereinafter Presidential Determination]. Countries were given three years from the TVPA's enactment to attempt significant anti-trafficking measures before the U.S. imposed

being named to Tier Three status, and with the prospect of impending sanctions, several nations effectively began to remedy their complicity in the sex trade.²³⁵ An example of this is Cambodia.²³⁶ The nongovernmental agency, International Justice Mission (IJM), provided the government with investigative findings of girls being sold into prostitution, but the report was ignored.²³⁷ Once Cambodia was placed in Tier Three status of the TIP Report, the new U.S. Ambassador to Cambodia entered into an aggressive agreement with Cambodian authorities to implement counter-trafficking policy into the country.²³⁸ This new agreement led to the rescue of thirty-seven victims and to the arrest of a dozen suspects.²³⁹ Moreover, a corrupt senior Cambodian police official involved in trafficking operations was fired and arrested.²⁴⁰

For those countries that did not successfully attempt to meet minimum standards, President Bush made specific determinations regarding U.S. funding.²⁴¹ The President imposed sanctions on Burma, Cuba, Liberia, North Korea, and Sudan for fiscal year 2004.²⁴² Sanctions differ from country to

sanctions. TIP REPORT, *supra* note 11, at 13.

235. See *Senate Hearing*, *supra* note 54, at 28 (statement of Gary Haugen, President and C.E.O., International Justice Mission).

236. *Id.* at 29 (statement of Gary Haugen, President and C.E.O., International Justice Mission).

237. *Id.*

238. *Id.*

239. *Id.* A woman, who traveled from Vietnam to Cambodia to prosper from the child sex trade, was sentenced to twenty years for running a brothel with victims as young as ten years old. *Cambodia's child sex crackdown*, BBC NEWS (Feb. 4, 2004), at <http://news.bbc.co.uk/2/hi/asia-pacific/3458581.stm>. Her son was sentenced to five years for his role in the scheme. *Id.* This is a major step for the Cambodian justice system. *Id.*

240. *Global Trends in Trafficking and the "Trafficking in Persons Report": Hearing Before the Subcomm. on Int'l Terrorism, Nonproliferation and Human Rights of the House Comm. on Int'l Relations*, 108th Cong. 64 (2003) [hereinafter *House Hearing*] (statement of Gary A. Haugen, President and CEO, Founder, International Justice Mission).

241. Presidential Determination, 68 Fed. Reg. 53,871, *supra* note 234. Significantly, among the fifteen countries in Tier Three status, ten avoided sanctions by implementing some measures to move toward compliance of the minimum standards. TIP REPORT, *supra* note 11, at 16, 21.

242. Presidential Determination, 68 Fed. Reg. 53,871, *supra* note 234 (referring to 22 U.S.C.A. § 7107(d)(1)(A)(ii)). These sanctions include removal of U.S. funding for the

country based on diplomatic relations previously established between the country and the United States.²⁴³

While the TVPA calls for sanctions to be imposed on countries that have not made substantial efforts to reduce trafficking, the TVPA also provides for a variety of supportive means to prevent trafficking.²⁴⁴ Social and economic alternatives are offered to potential victims.²⁴⁵ Examples of these initiatives are: job training and counseling, educational programs, public awareness programs, and loans.²⁴⁶ The TVPA also mandates the assessment by the United States of a country's progress in the areas of prevention, protection, and prosecution.²⁴⁷ This assessment analyzes executive branch activities and suggests measures to augment the fight against trafficking.²⁴⁸ The assessment also contrasts previous recommendations²⁴⁹ with current measures to evaluate the effectiveness of efforts stemming from the TVPA.²⁵⁰

2. Chapter Two: Protection

The TVPA acknowledges that it is often a struggle for

listed countries' governments to participate in educational or cultural exchange programs. TIP REPORT, *supra* note 11, at 16.

243. See Presidential Determination, 68 Fed. Reg. 53,871, *supra* note 234; TIP REPORT, *supra* note 11, at 16. For example, since the United States does not provide assistance directly to the government of Burma, sanctions on Burma forbid any new investment, arms sales, or international financial assistance and place a ban on imports of products from Burma. Presidential Determination, 68 Fed. Reg. 53,871, *supra* note 234; MATHEA FALCO, COUNCIL ON FOREIGN RELATIONS, BURMA: TIME FOR CHANGE 2, 18 (2003), available at http://www.cfr.org/pdf/Burma_TF.pdf (last visited Apr. 10, 2005). The United States took a different approach with Sudan. Presidential Determination, 68 Fed. Reg. 53,871, *supra* note 234. Because Sudan is plagued with political and civil unrest, which contributes to the trafficking problem, the United States determined that it is imperative to continue implementation of a peace accord through the provision of multilateral assistance to the process. See *id.*; Kathleen Fitzgibbon, *Modern Day Slavery? The Scope of Trafficking in Persons in Africa*, 12 AFRICAN SECURITY REVIEW 1 (2003), available at <http://www.iss.co.za/Pubs/ASR/12No1/Efitz.html>.

244. *Explanatory Note*, *supra* note 174.

245. 22 U.S.C.A. § 7104(a)-(b) (2000); *Explanatory Note*, *supra* note 174.

246. ASSESSMENT, *supra* note 12, at 7.

247. *Explanatory Note*, *supra* note 174.

248. ASSESSMENT, *supra* note 12, at 3, 23.

249. Richard, *supra* note 44, at 43-46.

250. ASSESSMENT, *supra* note 12, at 18-21.

victims to report their plight²⁵¹ and to help in the prosecution of their perpetrators.²⁵² In response, the TVPA incorporates specific protection measures.²⁵³ For example, the TPVA allows victims of severe trafficking to receive benefits and services from the United States.²⁵⁴ Assistance programs provide such things as housing, living expenses, medical care, and other services to assist the victim in becoming self sufficient and safe from their perpetrators.²⁵⁵ Victims of trafficking are also eligible for participation in the witness protection program because trafficking is considered to be part of organized crime.²⁵⁶ A victim's identity is kept confidential.²⁵⁷ Previously, because protection services were not available, a victim would be held in jail or prison prior to the trafficker's trial rather than being housed in a facility that could appropriately meet her needs.²⁵⁸

251. *See id.* at 5.

252. 22 U.S.C.A. § 7101(b)(20) (2000). Victims are at a disadvantage when dealing with a language or culture that is unfamiliar to them, also because they often lack political, economic, or social power. *Id.*

253. *Explanatory Note, supra* note 174.

254. *Id.* On March 1, 2003, the Immigration and Naturalization Service's functions were reassigned to the Department of Homeland Security. ASSESSMENT, *supra* note 12, at 21 n.11.

255. *Explanatory Note, supra* note 174. Survivors of domestic sex trafficking have voiced concerns that benefits available to foreign victims are denied to victims who are U.S. citizens. Jim Lobe, *Exploited Girls in U.S. Seek Same Protection Afforded Foreign Women* (Mar. 5, 2004), at <http://www.oneworld.net/article/view/80884/1>. It is important to note that victim assistance funds are available to alien victims trafficked internationally into the United States and alien victims trafficked domestically, but are not available to the over 200,000 U.S. children who are victims of commercial sexual exploitation. ASSESSMENT, *supra* note 12, at 2 n.2, 6 n.3. A statutory amendment would be necessary for U.S. victims to receive benefits since the current language in the TVPA, as well as its legislative history, bestows grant programs for assistance only to aliens. *Id.* at 6 n.3.

256. 22 U.S.C.A. § 7105(c)(1); *Explanatory Note, supra* note 174.

257. 22 U.S.C.A. § 7105(c)(1)(C)(ii); *Explanatory Note, supra* note 174.

258. Michael R. Candes, Comment, *The Victims of Trafficking and Violence Protection Act of 2000: Will it Become the Thirteenth Amendment of the Twenty-First Century?*, 32 U. MIAMI INTER-AM. L. REV. 571, 572, 575 (2001). An example is a seventeen year old girl brought from Mexico to Florida, ostensibly to work in a nursing home. *Id.* at 572. Once in the United States, she was forced to work in a brothel by the Cadena family and was told she owed the family a \$2,300 smuggling fee. *Id.* After her rescue, the girl was detained in a jail for five months while waiting to give witness testimony against Rogerio Cadena, the ringleader of the trafficking family. *Id.* Cadena

Another powerful tool afforded victims is new immigration status.²⁵⁹ Normally, a person's eligibility to receive immigration benefits is based on immigration status.²⁶⁰ Victims of trafficking are often in the United States illegally and therefore lack the necessary documentation to receive such benefits.²⁶¹ The TVPA confronts this issue by granting temporary resident status through "continued presence" requests²⁶² to victims of trafficking without requiring them to meet the stringent conditions for asylum imposed by U.S. courts.²⁶³ The U.S. Department of Health and Human Services provides victims with certification and eligibility letters that permit them access to the types of services available to refugees.²⁶⁴ Further, the TVPA modifies immigration law by providing nonimmigrant and permanent resident status to up to 5,000 victims each year.²⁶⁵ The Department of Justice implemented new regulations for the T

received only fifteen years in prison for the crimes of conspiracy to violate civil rights and use of a firearm in commission of a felony. *Id.* (citing *United States v. Cadena*, Superseding Indictment, No. 98-14015-CR-RYSKAMP (S.D. Fla. Apr. 23, 1998)).

259. See 22 U.S.C.A. § 7105(c)(3) (2000); *Explanatory Note*, *supra* note 174.

260. ASSESSMENT, *supra* note 12, at 9.

261. See *id.* at 8–9.

262. *Id.* Continued presence status allows a victim to remain in the United States legally while waiting to testify at trial. See *id.*

263. See 22 U.S.C.A. § 7105(c)(3); *Explanatory Note*, *supra* note 174. To qualify for asylum status a person must show persecution, which is "serious threat to life or freedom" on account of individual characteristics or political opinion; a high likelihood of such persecution or harm; and the nexus between the harm and one of the following grounds: nationality, political opinion, or membership in a specific social group, race, or religion. Hartsough, *supra* note 19, at 103–04. Because asylum criteria do not include gender as a particular ground to show persecution, victims of sex trafficking need to bring gender-based grounds under the "social group category" to obtain protected status. See *id.* at 104.

264. ASSESSMENT, *supra* note 12, at 14. Since the TVPA was enacted, Health and Human Services has provided 448 certifications or benefits eligibility letters to adult and child trafficking victims. *Id.* at 15. During the pre-certification process, victims have access to NGOs funded with \$9.7 million in grants that provide immediate assistance once a victim is encountered. *Id.* at 18.

265. *Explanatory Note*, *supra* note 174. This permanent resident status can be issued if victims have been in the United States for three years after receiving temporary residency visas and would risk extreme hardship if returned to their country of origin. *Explanatory Note*, *supra* note 174. To date, the United States is the only country that offers permanent residency status to trafficking victims. ASSESSMENT, *supra* note 12, at 21.

Visa in the nonimmigrant visa category.²⁶⁶ Since its inception, the Department of Homeland Security has granted 370 continued presence requests and has issued 172 T Visas.²⁶⁷

The refugee programs available to victims provide an infrastructure for people who have suffered from persecution and torture.²⁶⁸ Often victims have been torn away from their families and the cultures familiar to them.²⁶⁹ Occasionally, refugee programs are not sufficient to meet a victim's needs.²⁷⁰ As a way of filling the gaps, grant money is awarded to organizations that provide outreach services to victims of trafficking.²⁷¹ Enhanced assistance, such as intensive mental health counseling and specialized foster care programs, is offered to child victims.²⁷²

3. Chapter Three: Prosecution

The United States revamped some of its agencies under the Department of Homeland Security (DHS).²⁷³ One such agency is the Bureau of Immigration and Customs Enforcement (ICE).²⁷⁴ Under the TVPA, these agencies work closely with the

266. *Id.* New T Visa regulations are beyond the scope of this comment. See generally Juliet Stumpf & Bruce Freidman, *Advancing Civil Rights Through Immigration Law: One Step Forward, Two Steps Back?*, 6 N.Y.U. J. LEGIS. & PUB. POL'Y 131 (2002-03) (examining the ability of civil rights legislation to be propelled by immigration policy when combating trafficking in persons); *But cf.* Hartsough, *supra* note 19 (hypothesizing that the T Visa is a very limited option for victims of trafficking).

267. ASSESSMENT, *supra* note 12, at 9. The Department had received 453 T Visa requests and 238 were pending as of June 30, 2003. *Id.*

268. *Id.* at 14.

269. *See id.*

270. *Id.*

271. *Id.* The Department of Health and Human Services had awarded \$8 million in grants as of April 2004 to twenty-eight organizations. *Id.* In March 2003, the department awarded \$3.48 million to fifteen organizations that provide services such as temporary housing, cultural orientation, education, and legal assistance to victims of trafficking. *Id.*

272. *Id.* Agencies attempt to place child victims with culturally similar families that speak the child's language. *Id.* Also, therapeutic placements are established for children with special needs. *Id.*

273. Press Release, Department of Homeland Security, Secretary Ridge Announces "Operation Predator" (Jul. 9, 2003), available at <http://www.dhs.gov/dhspublic/display?content=1069>.

274. *Id.*

Department of Justice to identify and prosecute child sex traffickers.²⁷⁵

While previous laws have addressed the commercial effects of sex trafficking,²⁷⁶ TVPA is the first to penalize a range of offenses associated with trafficking of women and children.²⁷⁷ TVPA advances the prosecution of perpetrators of trafficking through increased punishments²⁷⁸ and the creation of new criminal offenses.²⁷⁹ Not only did prior laws fail to provide effective remedies for victims, but often the victims were punished more severely than their perpetrators.²⁸⁰ One reason for this is that prosecutors would enter into plea agreements with offenders, which lessened the trafficker's sentences.²⁸¹ The new witness protection program, as well as victim assistance services and improved immigration status provided under the TVPA, may do away with the need to strike pleas.²⁸²

Two new offenses crafted under the act are sex trafficking in children and unlawful conduct with respect to documents in furtherance of trafficking.²⁸³ It is a crime to destroy or tamper with another person's identification documents in furtherance of trafficking.²⁸⁴ Victims of trafficking are exempt from this law

275. *Id.*

276. *See infra* Parts III and IV (explaining past legislative efforts).

277. *Explanatory Note, supra* note 174.

278. *See* 22 U.S.C.A. §§ 7101(b)(15), 7109(b) (2000); *Explanatory Note, supra* note 174. Prior to this law, a person convicted of Peonage, Enticement into Slavery, or Sale into Involuntary Servitude, could only receive a maximum ten year sentence. 18 U.S.C. §§ 1581, 1583, 1584 (1999); Candes, *supra* note 258, at 573.

279. *See* 22 U.S.C.A. § 7101(b)(14); *Explanatory Note, supra* note 174. Two new offenses are sex trafficking in children and trafficking efforts induced by fraud. 22 U.S.C. § 7102(8).

280. Candes, *supra* note 258, at 574–75 (discussing *The Sex Trade: Trafficking of Women and Children in Europe and the United States: Hearing before the Comm'n on Security and Cooperation in Europe*, 106th Cong. (1999) (statement of Hon. Christopher H. Smith, Chairman)).

281. *See id.* Sometimes, plea bargains were offered to spare a victim from having to testify at trial. *Id.* This essentially re-victimized her because she would be held in prison or jail while waiting to testify at trial and then deported. *Cf. id.*

282. *Cf. Stumpf & Friedman, supra* note 266, at 160–61; *Explanatory Note, supra* note 174.

283. 22 U.S.C. § 7109 (2000).

284. 22 U.S.C. § 7109 (adding 18 U.S.C. § 1592 (2000)).

presumably as a means to further protect them.²⁸⁵

The U.S. Department of Justice has released results of the arrests and prosecutions brought under the new legislation.²⁸⁶ In the three years since the TVPA's inception, the U.S. Attorney's Office has charged seventy-nine sex traffickers.²⁸⁷ To date, seventy-seven of these defendants have either been convicted or pled guilty.²⁸⁸ Further, over 200 new investigations are pending.²⁸⁹

Two high-profile cases were resolved recently. The first involved two "[m]adams" from Mexico who had been luring young girls to the United States and forcing them into prostitution at a New Jersey brothel.²⁹⁰ The two sisters, Antonia and Librada Jimenez-Calderon, pled guilty to "sex trafficking of juveniles by using force, fraud or coercion and conspiracy."²⁹¹ U.S. District Judge Hochberg sentenced both women to 210 months, the maximum time provided by the U.S. Sentencing

285. See *id.*; *Explanatory Note*, *supra* note 174.

286. Press Release, Office to Monitor and Combat Trafficking in Persons, Fact Sheet: Accomplishments in the Fight to Prevent Trafficking in Persons (Feb. 25, 2003), available at http://www.usdoj.gov/opa/pr/2003/February/03_crt_110.htm [hereinafter Fact Sheet].

287. Attorney General John Ashcroft, Prepared Remarks Before the U.S. Department of Justice Regarding Human Trafficking (Jan. 29, 2004), available at <http://www.usdoj.gov/archive/ag/speeches/2004/12904aghumantrafficking.htm>. This number is three times as many as were charged in the three years prior to the passage of the TVPA. *Id.*

288. *Id.* This is a fifty percent increase from convictions obtained prior to passage of the TVPA. *Id.*

289. *Id.* This number is double the number opened in the three years prior to the TVPA. *Id.* Because the TVPA does not apply retroactively, it can only be used to prosecute conduct occurring after October 2000. Fact Sheet, *supra* note 286. Sex trafficking investigations have begun in every U.S. state except "Delaware, Maine, Rhode Island, South Dakota and Wyoming." ASSESSMENT, *supra* note 12, at 13.

290. News Release, U.S. Department of Justice, "Madams" Sentenced to 210 Months in Prison for Forcing Mexican Teens into Prostitution in N.J. (Aug. 7, 2003), at http://www.usdoj.gov/usao/nj/publicaffairs/NJ_Press/files/ji0807_r.htm.

291. *Id.* Two brothers of the women would meet girls in Mexico, offer to marry them, and then lure them to the United States. Once in the United States, the "[m]adams" took over, forcing their fourteen to seventeen year old victims to have sex with customers up to six times per day at a rate of \$35 per customer. *Id.* The brothers have been indicted but are fugitives. *Id.*

Guidelines.²⁹²

The second major case took place in Texas.²⁹³ Seven men were sentenced for smuggling women against their will from Guatemala, El Salvador, and Honduras.²⁹⁴ The men brought their victims to the United States where they forced them into servitude or prostitution until they had “repaid” the smuggling fees charged by the traffickers.²⁹⁵

In addition to the increased number of prosecutions of sex traffickers, the TVPA has also been responsible for increased sentences.²⁹⁶ The average prison term for sex trafficking offender is 158 months under the guidelines of the TVPA.²⁹⁷ The average term for an offender sentenced under the Mann Act is sixty-one months.²⁹⁸ Victim protection services have increased and an enormous amount of U.S. money is apportioned each year to fund prevention and protection projects.²⁹⁹

The TVPA lacks an enforcement arm to reach U.S. citizens engaging in sex acts with minors abroad.³⁰⁰ The PROTECT Act attempts to remedy the enforcement shortcomings of the TVPA.³⁰¹ While the TVPA is not perfect, its comprehensive approach provides long-awaited tools to fight the atrocity of sex trafficking in children.

B. The PROTECT ACT: An Encore to a Successful Performance

The second prong of U.S. legislation established to combat trafficking in persons is the PROTECT Act. According to a fact

292. *Id.* There is no parole in the U.S. Federal Justice System, so the women will serve the entire seventeen-and-one-half years of their sentences. *Id.*

293. Press Release, U.S. Department of Justice, Justice Department Announces Sentencing in South Texas Human Trafficking and Sex Slavery Prosecution (Jan. 29, 2004) at http://www.usdoj.gov/opa/pr/2004/January/04_crt_054.htm.

294. *Id.* The men received sentences ranging from four months to fourteen years in prison. *Id.*

295. *Id.*

296. See ASSESSMENT, *supra* note 12, at 15.

297. *Id.*

298. *Id.*

299. *Id.* at 6.

300. Tiefenbrun, *supra* note 3, at 172. Americans can go to countries where laws prohibiting sex with minors are not enforced to avoid legal repercussions. See *id.*

301. PROTECT Act, Pub. L. No. 108-21, 117 Stat. 650 (2003).

sheet released by the Department of Justice, the PROTECT Act “comprehensively strengthens law enforcement’s ability to prevent, investigate, prosecute and punish violent crimes committed against children.”³⁰² The PROTECT Act increases penalties for sex crimes, criminalizes the organization of sex tours, and modifies the burden of proof requirements for convictions.³⁰³ Also included in the Act are stronger penalty enhancements for the production of child pornography.³⁰⁴ This Act is more comprehensive than the TVPA in that it explicitly addresses pornography and sex tourism.³⁰⁵ The PROTECT Act attempts to fill the gaps of the TVPA, thus strengthening the U.S. government’s ability to prosecute offenders.³⁰⁶

1. *Strengthening the Action through Tougher Laws*

The PROTECT Act amends a variety of current U.S. laws, including the prosecution of sexual offenders and pornography perpetrators, and the funding of victim’s assistance.³⁰⁷ Some of the greatest changes appear in increased prosecution measures.³⁰⁸ Previous penalties for the sexual exploitation of children have been increased.³⁰⁹ The minimum and maximum sentences for any person who employs, uses, persuades, induces, entices, or transports a minor to engage in sexually explicit conduct, have been increased. The minimum sentence has been

302. Press Release, U.S. Department of Justice, Fact Sheet: Protect Act (April 30, 2003), available at http://www.usdoj.gov/opa/pr/2003/April/03_ag_266.htm [hereinafter Fact Sheet: Protect Act].

303. *U.S. Congress Passes Sweeping Child Protection Legislation*, WORLD VISION US, at http://www.worldvision.org/worldvision/wvusufso.nf/stable/globalissues_childprotection_protectact (last visited Apr. 10, 2005).

304. *Id.*

305. PROTECT Act, §§ 105, 501–513; 42 U.S.C. § 13032 (2003); 28 U.S.C. § 994 (2003) Mattar, *supra* note 56, at 163. The UN Protocol defines trafficking as “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.” G.A. Res. 55/25, *supra* note 138, at art. 3(a); Mattar, *supra* note 56, at 163–64.

306. PROTECT Act, Pub. L. No. 108–121, §§ 101–204, 117 Stat. 650 (2003); 42 U.S.C. §§ 5119a, 5791.

307. PROTECT Act, §§ 101–204; 42 U.S.C. §§ 5119a, 5791.

308. PROTECT Act, §§ 201–203.

309. *Id.* §§ 103–104.

increased from ten years to fifteen years and the maximum sentence has increased from twenty years to thirty years.³¹⁰ A person who has been previously convicted of any offense relating to the sexual exploitation of children faces increased minimum and maximum sentences, from ten to twenty years and from thirty to fifty years, respectively.³¹¹

Maximum sentences for the transportation, production, distribution, or reception of child pornography has been increased from fifteen to twenty years.³¹² If a person has a prior conviction relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or another child pornography conviction, the maximum sentence is raised from thirty to forty years.³¹³ Harsher penalties also are imposed on crimes associated with the trafficking of children. Under the PROTECT Act, sentences have been increased for those who knowingly “in or affecting interstate commerce, recruits, entices, harbors, transports, provides, or obtains by any means a person” under the age of eighteen to engage in a commercial sexual from twenty to forty years.³¹⁴ This punishment also pertains to anyone who benefits financially from a child trafficking venture.³¹⁵ The statute governing sex tourism formerly read that it was a crime for a U.S. citizen or resident to travel in interstate or foreign commerce for the purpose of engaging in a sexual act with a person less than eighteen years of age.³¹⁶ The PROTECT Act makes it a crime for any person to travel into the United States or for any U.S. citizen or alien to travel internationally for the purpose of engaging in illicit sexual conduct with another person.³¹⁷

310. *Id.* § 103.

311. PROTECT Act, Pub. L. No. 108–121, § 103, 117 Stat. 650 (2003).

312. *Id.*

313. *Id.*

314. *Id.*

315. PROTECT Act, Pub. L. No. 108–121, § 103, 117 Stat. 650 (2003).

316. *Id.* § 105(b)

317. *Id.* The Act defines illicit sexual conduct as “a sexual act (as defined in § 2246) with a person under eighteen years of age” that occurs in the special maritime and territorial jurisdiction of the United States in violation of ch. 109A; or a “commercial sexual act (as defined in § 1591) with a person” under age eighteen. *Id.* § 105(f).

The PROTECT Act has expanded coverage to reach U.S. citizens who commit enumerated sex crimes outside the United States.³¹⁸ For example, the maximum penalty for an act of sex tourism has been increased from fifteen to thirty years.³¹⁹ A powerful element of the PROTECT Act is that it removes the “intent” requirement of previous laws and states that prosecutors merely need to show that a person committed an illegal sex act abroad.³²⁰

The PROTECT Act adds a provision that anyone who, for financial gain, “arranges, induces, procures, or facilitates the travel of a person”—knowing that such a person’s interstate or foreign travel is “for the purpose of engaging in illicit sexual conduct”—can be sentenced up to thirty years in prison.³²¹ The PROTECT Act also makes it a crime to attempt or conspire to violate any of the sex tourism subsections.³²² Attempts and conspiracies will be punished as though the violation had been completed.³²³ Eighty-six year old John W. Seljan was indicted under the PROTECT Act for attempted travel to the Philippines to engage in sex with two under-age girls.³²⁴ Seljan was arrested at Los Angeles International Airport when attempting to board a plane to the Philippines.³²⁵ Under the strengthened penalties of the PROTECT Act, Seljan faces the same punishment for his attempted act as he would had he completed his trip.³²⁶

A final strength of the PROTECT Act is its procedural implications. The Act repeals previous statutes of limitations,

318. *Id.* §§ 105, 506.

319. *Id.* §§ 103, 105 (amending 18 U.S.C. § 2423 (2000)).

320. *House Hearing, supra* note 241, at 69 (prepared statement of Gary A. Haugen, President and CEO, Founder, International Justice Mission).

321. PROTECT Act, Pub. L. No. 108–121, § 105(d), 117 Stat. 650 (2003).

322. *Id.* § 105(e).

323. *Id.*

324. Press Release, Office of Public Diplomacy, Embassy of the United States of America, U.S. Law Enforcement Targets Child Sex Tourism (Dec. 19, 2003) at <http://usembassy.state.gov/srilanka/wwwhpr20031219.html>.

325. *CA Man On Trial in Int’l Sex Tourism Case*, KRON NEWS (Nov. 16, 2004), available at <http://www.kron.com/Global/story.asp?s=2575082>. Seljan had 100 pounds of chocolate and other candy in his suitcase. *Id.*

326. See PROTECT Act, § 105.; *CA Man On Trial in Int’l Sex Tourism Case, supra* note 325.

that expired when a victim turned twenty-five.³²⁷ Also, defendants charged with crimes against children have previously been granted bail while awaiting trial. The PROTECT Act models its bail determination rules after legislation used for deciding bail in drug, firearm, and violent crimes.³²⁸

2. *Prosecutions under the PROTECT Act: Acting Out the Consequences*

The first charges have been filed against American perpetrators under the PROTECT Act.³²⁹ Michael Clark, the sixty-nine year old U.S. citizen traveling to Cambodia to engage in illicit sexual acts with minor boys, was arrested and extradited to face charges in the United States.³³⁰ Officials credit the joint efforts of the Cambodian officials, ICE agents in the United States, the U.S. embassy, the Australian federal police, and a Cambodian NGO for the apprehension of Clark.³³¹ Collection of evidence to develop a case against Clark could not have been done without the new U.S. legislation and international cooperation. If convicted, Clark faces a mandatory penalty of thirty years for each crime—twice the maximum he could have received prior to passage of the PROTECT Act.³³²

In November of 2003, a second man was indicted by a Seattle grand jury and charged under the PROTECT Act with three counts of engaging in illicit conduct with minors while

327. Fact Sheet: Protect Act, *supra* note 302. In virtually all cases under the PROTECT Act, there are now “no statute of limitations for crimes involving the abduction or physical or sexual abuse of a child. *Id.*”

328. *Id.* Bail is therefore now more difficult to obtain in child sex abuse charges. *Id.*

329. Lynn Anderson & Michael James, *New U.S. Law Puts Md. Man in Court as ‘Sex Tourist,’* THE BALTIMORE SUN, Feb. 20, 2004, at 1A; Harden, *supra* note 8, at A5.

330. Harden, *supra* note 8, at A5; Press Release, Office of Public Diplomacy for the Embassy of the United States in Sri Lanka, U.S. Law Enforcement Targets Child Sex Tourism (Dec. 19, 2003), available at <http://usembassy.state.gov/srilanka/wwwhpr20031219.html>. Investigations in Cambodia disclosed that Clark had traveled there multiple times since 1998 and had molested up to fifty children. *Id.*

331. Press Release, U.S. Law Enforcement Targets Child Sex Tourism, *supra* note 330.

332. *Id.* Clark remains in federal custody. *Id.*

traveling abroad.³³³ Again, an ad hoc alliance between Cambodian law enforcement, ICE agents, and Australian federal police led to the capture of Gary Evans Jackson, a U.S. citizen who left for Southeast Asia in 2001.³³⁴

A third man accused of sexually assaulting boys in Cambodia also faces charges under the PROTECT Act.³³⁵ Richard Arthur Schmidt was extradited from Southeast Asia for committing lewd acts with minors.³³⁶ Schmidt has been convicted of several prior sexual offenses involving children in the United States.³³⁷ If convicted, Schmidt would spend the rest of his life in prison under the stringent sentencing policy of the PROTECT Act.³³⁸

The first sentence of a sex tourist was announced in federal court in New York on February 14, 2004.³³⁹ Former pediatrician, Stephan Irving was convicted on “five counts of committing sex offenses [sic] against children” while traveling to Honduras and Mexico.³⁴⁰ Dr. Irving received twenty-two years for victimizing children between the ages of six and twelve at an Acapulco resort.³⁴¹

3. *Operation Predator: Summarizing Past Offenses*

In addition to going after American sex tourists, the Office of Homeland Security and the Department of Justice are targeting sex offenders who are illegal aliens or foreign nationals that

333. *Id.*

334. *Id.*; Paul Shukovsky, *Local Man is Indicted in Sex Tourism Case*, SEATTLE POST INTELLIGENCE REPORTER, Nov. 21, 2003, at B2. Jackson is accused of sexual acts with three boys, all under age sixteen. *Id.* In addition to assaulting the boys, Jackson took digital pictures of them, which were seized at an internet café. *Id.*

335. Anderson & James, *supra* note 329, at 1A.

336. *Id.*

337. *Id.* In each case, Schmidt was sentenced to jail time but each time the sentences were reduced or suspended. *Id.*

338. PROTECT Act, Pub. L. No. 108-21, § 106(g), 117 Stat. 650 (2003). The Act’s “Two Strikes” provision mandates life imprisonment for repeat offenders. *Id.*

339. *Pedophile Tourist Sentenced: Victims as Young as Six*, NAT’L POST, Feb. 14, 2004, at A14, available at 2004 WL 11013339.

340. *Id.*

341. *Id.*

have evaded deportation.³⁴² This operation involves the cooperation and utilization of resources nationwide.³⁴³ The crackdown is on child pornographers, child predators, child-sex tourists, and pedophiles who have previously been convicted of a sex crime against children.³⁴⁴ To date, more than 1,700 aliens have been arrested, and many face deportation.³⁴⁵

Critics claim that Operation Predator violates defendants' rights by punishing them for previous crimes for which they had already served time.³⁴⁶ The ICE Department maintains, however, that only those who committed felonies are being targeted and deported.³⁴⁷ U.S. District Judge Faith Hochberg has expressed doubts about the way the administrative rule under the PROTECT Act is being interpreted.³⁴⁸ The Judge said the rule may be "an abuse of civil rights."³⁴⁹ A number of habeas corpus petitions have been filed by immigrants jailed while awaiting deportation.³⁵⁰ These habeas petitions claim that although Operation Predator is intended to deport child molesters, numerous men who served their sentences years ago have been jailed for minor offenses.³⁵¹ Opponents of Operation Predator assert that its scheme is unconstitutional because whole classes of people who have already served their sentences are being placed in jail, thereby denying them Due Process.³⁵²

342. Press Release, Office of Homeland Security, Secretary Ridge Announces "Operation Predator" (July 9, 2003), available at <http://www.dhs.gov/dhspublic/display?content=1069>.

343. *Id.* The nationwide cooperation, involving governors as well as state and local prisons, is being led by the Department of Homeland Security's Bureau of Immigration and Customs Enforcement. *Id.*

344. Lois Gormley, *Names of Arrested Sex Offenders Released*, DESERT SUN, Jan. 30, 2004, at B1, available at 2004 WLNR 16195379.

345. Richard Liebson, *Immigrant Sex Felon Surrenders*, THE JOURNAL NEWS, Jan. 31, 2004, at 1B, available at 2004 WLNR 16250831.

346. *See id.*

347. *Id.*

348. Jim Edwards, *Jailing of Immigrants Triggers Litigation*, N.J.L.J., Jan. 22, 2004, available at <http://www.law.com/jsp/article.jsp?id=1074259242113>.

349. *Id.* (internal quotations omitted).

350. *Id.*

351. *Id.*

352. *See id.*

An example of a habeas case is Ismael Alvarez.³⁵³ Alvarez is a legal immigrant from El Salvador who pled guilty to endangering the welfare of a child in 1996.³⁵⁴ He received two years of probation, which he completed without incident.³⁵⁵ Alvarez was arrested on September 10, 2003 by the Department of Homeland Security because he had been convicted of a crime of moral turpitude.³⁵⁶ Under Operation Predator, he is being held without bond and awaits a deportation hearing.³⁵⁷ It remains to be seen what the outcome will be for Alvarez and others like him.

The new two-pronged U.S. legislation offers promise for combating the war on child sex trafficking. However, awareness of some shortcomings has emerged since the passage of the Acts. No legislation is flawless, and the deficiencies of the TVPA and PROTECT Act appear to have realistic remedies.

First, although the United States appears to be spearheading the fight against trafficking in children, some countries may view the United States as hypocritical. This hypocrisy is evident in the U.S. failure to sign or ratify certain human rights conventions.³⁵⁸ The United States may be perceived as failing to conform to the international community's norms regarding human rights, while contemporaneously mandating standards of its own that it expects the rest of the world to follow.³⁵⁹ The United States can attempt to modify this world perception by ratifying part or all of the Convention on the Rights of the Child, or by raising international awareness of current U.S. legislation that provides strong protections for children.

On the domestic front, some federal judges are unhappy with the sentencing component of the PROTECT Act.³⁶⁰ Many

353. *Id.* (referring to *Alvarez v. Ashcroft*, 03-CV-5680 (D.N.J. Dec. 1, 2003)).

354. Edwards, *supra* note 348. The charge resulted from a consensual sex act between twenty-eight year old Alvarez and a fifteen year old girl. *Id.*

355. *Id.*

356. *Id.*

357. *Id.*

358. Mattar, *supra* note 56, at 170.

359. *Id.* See also *supra* note 116 and accompanying text.

360. Mark Allenbaugh, *Sentencing provisions and Ashcroft: An assault against*

have pointed to the loss of discretion in sentencing power as an affront on the legal system.³⁶¹ The PROTECT Act amends the U.S. Sentencing Guidelines to decrease the use of downward departures in sentencing by federal judges.³⁶² New guidelines mandate that a prosecutor should not deviate from the guidelines by offering lower sentences, and should report judges who fail to follow the Sentencing Guideline recommendations.³⁶³ An assortment of judges have argued that the PROTECT Act denies the necessary discretion needed in considering the totality of factors when determining a sentence.³⁶⁴

VI. SUGGESTIONS FOR REVISIONS TO INCREASE CURRENT EFFORTS: AN APPENDIX TO THE STORY

As a means to increase the effectiveness of the fight against child sex trafficking, this Comment offers a compilation of suggestions. These suggestions are intended to supplement the progress made by the United States and much of the international community.

The TIP Report published examples of best practices from around the world.³⁶⁵ Highlighting the strategies that are working and encouraging more countries to implement these practices would lead to greater global cooperation, and could decrease the success of the sex trafficking trade.³⁶⁶ Some examples of best practices include rewarding law enforcement,³⁶⁷ increasing border monitoring,³⁶⁸ and amplifying awareness

federal courts, CNN, Aug. 15, 2003, at <http://www.cnn.com/2003/LAW/08/15/findlaw.analysis.allenbaugh.sentencing/>.

361. *Id.*

362. *Id.*

363. *Id.* Sen. Edward Kennedy claims this is creating a "black list" of federal judges. *Id.*

364. *See id.* Supreme Court Justices William Rehnquist and Anthony Kennedy, as well as several appellate-level judges, have publicly denounced the guidelines set forth in the PROTECT Act. *Id.*

365. TIP REPORT, *supra* note 11, at 18.

366. *Id.* at 18.

367. *Id.* at 19. In India, police officers' performance appraisals are linked to their efforts in investigating and apprehending sex traffickers. *Id.*

368. *Id.* at 20. In Nepal, former victims assist the border officials at key crossing points by identifying traffickers. *Id.* Columbia stations government officials at the

efforts.³⁶⁹

Another example of a way to decrease sex trafficking is the application of civil remedies. Commentators suggest that the Racketeering Influenced and Corrupt Organization Act (RICO)³⁷⁰ should be applied to victims of trafficking as a way to seek restitution. To prevail under RICO, a person must be able to prove a pattern of racketeering and an injury to the person's business or property.³⁷¹ These requirements may be difficult for trafficking victims to prove because their limited resources may create an inability to uncover an organized crime ring or demonstrate loss to property or business.³⁷²

An easier route may be for a victim to file suit under the Alien Tort Claims Act (ATCA).³⁷³ This Act, which has been used as a remedy for human rights in recent years, also allows courts to hear claims resulting from a violation of a U.S. treaty.³⁷⁴ Though the ATCA has not yet been utilized in a trafficking case, the TVPA does allow for restitution to be paid to a victim in addition to "any other civil sanctions authorized by law."³⁷⁵ Therefore, it is foreseeable that a victim of trafficking could file and recover for a civil claim under TVPA.

Increased employment of extradition treaties may also decrease trafficking in children. A basic tenet of international law is the application of the territorial sovereignty of states to exercise civil and criminal jurisdiction within their territory.³⁷⁶ Any illegal acts committed in the state are "tried in the courts of

airport to talk to likely victims and dissuade them from leaving the country. *Id.*

369. *Id.* at 19. In Mozambique, the government and NGOs have coupled their efforts during festivals, youth debates, and dances to raise awareness about child prostitution. *Id.* They also have inundated radio and television stations with anti-trafficking messages. *Id.*

370. 18 U.S.C. §§ 1962, 1964 (2000); *Explanatory Note, supra* note 174.

371. *Id.*

372. *See id.*

373. 28 U.S.C. § 1350 (2003); *Explanatory Note, supra* note 174.

374. Lisa Girion, *1789 Law Acquires Human Rights Role*, L.A. TIMES, Jun. 16, 2003, at A12; 28 U.S.C. § 1350 (2003); *Explanatory Note, supra* note 174.

375. *Explanatory Note, supra* note 174; *see* 28 U.S.C. § 1350 (2003).

376. JEREMY SEABROOK, ECPAT EUROPE LAW ENFORCEMENT GROUP, NO HIDING PLACE: CHILD SEX TOURISM AND THE ROLE OF EXTRATERRITORIAL LEGISLATION 4 (2000) (1998).

that state.”³⁷⁷ When a person commits an offense in a foreign country, the country where the perpetrator has committed the crime may ask that the offender be extradited in order to be prosecuted for the crime.³⁷⁸ However, some countries favor non-extradition in order to prosecute defendants within their own jurisdictions, especially when the offense is a sex crime committed against a minor abroad.³⁷⁹ Extraterritorial legislation may be used when the state exercises jurisdiction because the victim is a citizen, when the offender is a citizen, when the state is attempting to protect a fundamental interest, or when a state prosecutes based on the belief that some crimes have been agreed upon by the international community as universally punishable.³⁸⁰

According to research conducted by the EPCAT Europe Law Enforcement Group, specific factors must exist in order for extraterritorial prosecution to work.³⁸¹ The act must be considered a crime in both countries, and the principle of double jeopardy must apply.³⁸² Most countries apply the law of the country in which the offense is being tried, although a few apply the sentence of the country which is the least restrictive.³⁸³

The TVPA provides for extraterritorial jurisdiction but requires international cooperation.³⁸⁴ The PROTECT Act takes this jurisdictional approach one step further, extending U.S. prosecutorial reach to Americans engaging in sex tourism in other countries.³⁸⁵ The increased ability to prosecute offenders who have previously escaped the law has the potential to bring dramatic results in curbing the child sex trafficking crisis. However, success will be dependant on cooperation of other

377. *Id.*

378. *Id.* Extradition generally occurs only between nations that have reciprocal agreements. *Id.*

379. *Id.*

380. *Id.* at 4–5.

381. *Id.* at 5. ECPAT stands for End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes. *Id.*

382. *Id.*

383. *Id.*

384. Tiefenbrun, *supra* note 3, at 172. This protects non-Americans who have been brought into the United States and who are forced into prostitution. *Id.* at 172.

385. PROTECT Act, Pub. L. No. 108-21, § 105, 117 Stat. 650 (2003).

countries extraditing U.S. citizens and assisting with investigation and evidence collection.³⁸⁶

VII. CURTAIN CALL: WILL NEW U.S. MEASURES RECEIVE A STANDING OVATION?

The United States can do only so much in the fight against the enormous international human rights crisis of trafficking in children. Both the United States and the international community appear to be realizing that legislation alone cannot adequately address the problem. In an effort to augment legal and political attempts to control the sex trafficking industry, the United States has enlisted the help of human rights groups and other NGOs.³⁸⁷ Support of these organizations can be found through increased funding, authorized by the TVPA and PROTECT Acts.³⁸⁸ Continued awareness-raising initiatives and education programs can also supplement the powerful effects of the new sex trafficking legislation.³⁸⁹

It is questionable whether the new U.S. legislation is sufficient to curb trafficking in children. While it remains to be seen what long-term impact the TVPA and PROTECT Act will have on other nations, commentators are noting initial positive effects.³⁹⁰ New York Times Columnist Nicholas Kristof, who has investigated child prostitution in Cambodia over the past several years, reports that progress is being made.³⁹¹ In the

386. See Tiefenbrun, *supra* note 3, at 172.

387. *Children for Sale*, *supra* note 7. Gary Haugen, director of the human rights group, International Justice Mission (IJM), is a former federal prosecutor who uses controversial tactics to infiltrate the underground network of sex trafficking. *Children for Sale*, *supra* note 7. IJM was recently awarded a million dollar grant from the U.S. government to continue its work. See Press Release, International Justice Mission, International Justice Mission Investigation in Cambodia Leads to Conviction of Sex Trafficking Offender (Jan. 15, 2004), available at http://www.ijm.org/downloads/Release_CambodiaTrial_1_15_04.pdf.

388. 22 U.S.C. § 7110(a)-(g) (2000); PROTECT Act, § 321. The United States government recently announced that it would increase funding to 100 million dollars for activities designed to eradicate human trafficking. *U.S. to Provide \$100 Million to Fight Human Trafficking*, THE WHITE HOUSE BULLETIN (Feb. 17, 2004).

389. ASSESSMENT, *supra* note 12, at 19.

390. Nicholas Kristof, *Stopping the Traffickers*, N.Y. TIMES, Jan. 31, 2004, at A17.

391. *Id.*

1990s it was the norm for thirteen year olds to be kidnapped by neighbors or sold by their parents into sexual slavery.³⁹² Now the age of victims has increased, and fewer girls are being beaten or imprisoned in brothels.³⁹³ Further, AIDS exposure has decreased due to better education programs and access to condoms.³⁹⁴ Today, girls who are thrust into prostitution may at least have a chance to escape this disease that offers a death sentence.

The heartbreaking account of child sex trafficking is still being told around the world. Like any other tale, the story unfolds one page at a time. Recently strengthened legislation introduced in the United States has addressed the weaknesses of past attempts, in an effort to erase the atrocity that faces many of the world's children. It is with great hope that the world waits to see if these concerted and concrete measures will be enough to bring this devastating story to an end.

*Stacey Mathews**

392. *Id.*

393. *Id.* During a recent trip to Cambodia, Kristof found that the average age of girls he saw was seventeen as opposed to the average age of thirteen in the 1990s. *Id.*

394. *Id.*

* The author earned a B.A. in English with an emphasis in Teaching 1995, University of Northern Colorado and is a J.D. Candidate, 2005, University of Houston Law Center. This comment received the 2004 Fulbright & Jaworski, L.L.P. Writing Award. I wish to thank my former editor and friend, Allison Hooker, for her constant support and guidance. I especially wish to thank my husband, Troy, for always reminding me to "think I can." Little E loves you.