

The Saga of Susannah
 A U.S. Remedy for Sex Trafficking in Women:
 The Victims of Trafficking and Violence
 Protection Act of 2000*

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I. INTRODUCTION

This is a story about a young girl named Susannah. But it could be the story of any one of millions of women who are duped, drugged, and deceived each year into performing sex acts without their consent and under conditions they never could have anticipated. This Article examines some of the cultural, social, political and economic causes of the worldwide practice of sex trafficking and discusses ways to eradicate this contemporary form of slavery by incorporating economic theory.

A. A Narrative

Susannah is pretty. She is a twenty-two-year old unemployed factory worker, desperately seeking work and barely surviving in Sarajevo. Susannah lives at home with her family in a war-torn shack surrounded by rubble and ugly memories. Quite unexpectedly, a friendly old woman named Angel comes up to Susannah one day and speaks to her in a gentle tone. Angel uses all her charm and persuasion to snare her carefully chosen victim. Angel showers Susannah with compliments, tempts her with gifts, a drink, dinner in her home; and like a guardian angel, offers Susannah the opportunity of employment, prosperity, a visa, and a passport out of this life of misery. Angel is a devil in disguise. She is a well-dressed, prosperous-looking agent of a loan shark who works in the lucrative international crime business of trafficking young women into foreign lands where they end up in seedy brothels only to engage in the dehumanizing labor of forced prostitution.

The guardian angel seems to answer Susannah's prayers for prosperity. Hungry and naive, Susannah agrees to come to Angel's apartment for dinner. They dine alone lavishly. Angel offers Susannah many wonderful drinks. Halfway through the meal, Angel drugs Susannah and hands her over to another agent who appears out of nowhere and drives Susannah, unconscious, across the border. When Susannah awakens the next day, she finds herself in unfriendly surroundings, in a brothel located in a foreign land where she is unable to speak the language. Worst of all, Susannah is now owned by a brutal man who forces her to work off a \$40,000 debt which he claims Susannah owes to his agency. The agency is actually an international crime organization that paid the agent for his services, which include buying Susannah a visa, a passport, and transportation to a new country. Once Susannah crosses the border, the trafficker confiscates Susannah's passport and visa, indicating that he will return her documents only when she finally works off the debt by sexually servicing up to twenty men a day

in the brothel.¹ To make sure Susannah has understood the conditions of the contract, the trafficker flings her into a room, orders ten of his thugs to gang rape Susannah in the course of an entire morning, and leaves Susannah there to lick her wounds without food or water for two more days.

After several months of conditioning and providing sex services to customers in the brothel, Susannah contracts venereal disease and suspects that she may have AIDS. When Susannah asks her trafficker if she can see a doctor, her requests are denied. Susannah is held captive and under tight surveillance in the brothel, often drugged to be kept more controllable, tied to her bed every night just to make sure she doesn't attempt to escape, and deprived of the right to learn the language of her new country. Susannah is utterly defenseless and dependent on her trafficker who continuously threatens her with beatings, escalation of debt, and violence to her family back home.

Susannah is enslaved by her captor in debt bondage. To pay off her \$40,000 debt, which seems to mount rather than decline as her years of service go by, Susannah is forced to work sixteen to eighteen hours a day under terrible conditions. Even though she is being held against her will, Susannah is required to pay for her room and board, the sum of which is subtracted from the revenue she brings into the brothel. Susannah never actually receives a salary for services. If Susannah is rebellious, the trafficker will beat her, rape her, send his friends in to gang rape her, then frighten her with threats of violence and death to her and to her family—efforts designed to break her spirit. Here Susannah remains, an illegal alien unprotected in an alien land, without hope of escape.²

One day, Susannah does manage to escape the brothel. As soon as she is out, Susannah finds herself alone on the streets having acquired the dangerous immigration status of an undocumented worker. Susannah thinks twice about seeking the help of the police, whom she suspects are getting paid off by her trafficker to protect the brothel. Besides, Susannah knows that the police would only report her to the immigration officer who would then, no doubt, throw her in jail pending deportation back to Bosnia.

Susannah's only crime is poverty. Sadly, Susannah remains enslaved in forced prostitution without protection while her trafficker gets rich by sexually exploiting her. The trafficker can buy his own protection from the police who use the brothels and from the powerful organized crime networks who profit from Susannah's labors. Weak laws and light penalties for trafficking further aid the

¹*The Sex Trade: Trafficking of Women and Children in Europe and the United States: Hearing Before the House Comm'n on Security and Cooperation in Europe*, 106th Cong. 21 (1999) [hereinafter *The Sex Trade Hearing*] (statement of Dr. Laura J. Lederer).

²*Id.*

trafficker.³ Susannah has no where to go and no one to help her. If Susannah is caught by her trafficker, her life will become an even more horrifying living hell.

B. Subtext of the Narrative

More than 2,000,000 women around the world are bought and sold each year for the purpose of sexual exploitation.⁴ Sex trafficking originates in source countries with a high incidence of poverty, a low regard for women, few educational and economic opportunities for women, insufficient public awareness about the crime of trafficking,⁵ and inadequate laws to prosecute traffickers. Destination countries are usually relatively rich. That is why 50,000 of these 2,000,000 women are trafficked into the United States each year in a lucrative sex trade industry.⁶

Sex trafficking is a contemporary form of slavery⁷ that violates women's fundamental human rights.⁸ These basic rights are enumerated in the Universal

³*Id.* at 21–22.

⁴The number of victims is difficult to verify, but some have reported as many as 4,000,000 women trafficked each year. See generally 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, 77–79 (1998) (noting various sources that report on the trafficking of women). The statistics that seem most carefully documented are found in a CIA report: AMY O'NEIL RICHARD, CENTER FOR THE STUDY OF INTELLIGENCE, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME (Apr. 2000), available at <http://www.cia.gov/csi/monograph/women/trafficking.pdf> [hereinafter CIA REPORT].

⁵According to Mira Med Institute, an anti-trafficking NGO, "there has been a relative media blackout on the subject of trafficking in women." Donna M. Hughes, *The "Natasha" Trade: The Transnational Shadow Market of Trafficking in Women*, 53 J. INT'L AFF. 625, 644–45 (Spring 2000). This lack of information has left women in Russia without knowledge about what actually happens to the victimized emigre women once they leave Russia to find prosperity in destination countries. *Id.*

⁶"Traffic in human beings was estimated to generate some \$6 billion annually, according to a report of the International Organization of Migration." Statement of Pino Arlacchi, Executive Director of the United Nations Office for Drug Control and Crime Prevention, in *U.N.: Economic Alternatives to Illicit Drug Cultivation, Trafficking Must Be Created*, M2 PRESSWIRE, Feb. 19, 1998, available at 1998 WL 10217151.

⁷Anne Gallagher, *Contemporary Forms of Female Slavery*, in 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 487, 495–96 (Kelly D. Askin & Dorean M. Koenig eds., 2000) [hereinafter WOMEN AND INTERNATIONAL HUMAN RIGHTS].

⁸See *infra* text accompanying notes 25–67 in Part II.A of this Article for a discussion of the trafficking process. See also Stephanie Farior, *The International Law on Trafficking in Women and Children for Prostitution: Making It Live Up to Its Potential*, 10 HARV. HUM. RTS. J. 213, 253 (1997) (concluding existing laws lack enforcement); Beth Stephens, *Expanding Remedies for Human Rights Abuses: Civil Litigation in Domestic Courts*, in 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS, *supra* note 7, at 119–23 (discussing need for enforcement mechanisms).

Declaration of Human Rights⁹ and in many international agreements,¹⁰ namely the right to life, liberty and security of persons, the right not to be held in slavery or servitude, and the right to be free from cruel or inhumane treatment." In a judicial system which lacks effective remedies for trafficking, ironically it is the defenseless and enslaved victims who are penalized, not the perpetrators. Trafficked women seeking help are locked up in prison for long periods of time because they are viewed solely as illegal aliens, not as victims of slavery or forced prostitution. Sex trafficking victims are sometimes arrested in brothel raids and then deported to their home country.¹² There they suffer the further humiliation of being treated as criminals or pariahs¹³—simply because they were duped into believing they could find legitimate work in the United States or elsewhere. While victims suffer punishment and penalties, the well-protected

⁹Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948).

¹⁰Some of the international agreements affecting women's human rights include: Convention Concerning the Employment of Women Before and After Childbirth, Nov. 29, 1919, 38 U.N.T.S. 53 (entered into force Jun. 13, 1921); International Convention for the Suppression of the Traffic in Women and Children, *opened for signature* Sept. 30, 1921, 9 L.N.T.S. 416; Convention Against Discrimination in Education, 429 U.N.T.S. 93 (entered into force May 29, 1962); International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *opened for signature* Mar. 21, 1950, 96 U.N.T.S. 271; Convention on the Political Rights of Women, *opened for signature* Mar. 31, 1953, 27 U.S.T. 1909, 193 U.N.T.S. 135; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3201, 266 U.N.T.S. 3; Convention Concerning Conditions of Employment of Plantation Workers, ILO, 42d Sess., Conv. No. C110 (June 4, 1958) (adopted June 24, 1958) (available through ILO database, ILOLEX, at <http://ilolex.ch:1567/english/index.htm>); Convention on the Nationality of Married Women, 309 U.N.T.S. 65 (entered into force Aug. 11, 1958); Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, Dec. 10, 1962, 521 U.N.T.S. 231; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/736 (1989); Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *opened for signature* May 2, 1991, G.A. Res. 158, U.N. GAOR 3d Comm., 45th Sess., Supp. No. 49, U.N. Doc. A/45/49 (1990). See Natalie H. Kaufman, *Assorted Instruments Affecting Women's International Human Rights*, in 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS, *supra* note 7, at 373–88.

¹¹*The Sex Trade Hearing*, *supra* note 1, at 1 (opening statement of Rep. Christopher H. Smith).

¹²*Id.*

¹³In India, women in prostitution are "viewed as criminals by the police and not worthy of extra rescue efforts." Dorothy Q. Thomas & Robin S. Levi, *Common Abuses Against Women*, in 1 WOMEN AND INTERNATIONAL HUMAN RIGHTS, *supra* note 7, at 139, 175; see also Seth Mydans, *In Pakistan, Rape Victims are the "Criminals,"* N.Y. Times, May 17, 2002 at A3; CATHARINE MACKINNON, SEX EQUALITY: RAPE LAW 97 (2001). The women themselves believe they are "violated and spoiled" and should never return home because they are "social pariahs."

Id.

perpetrators often go unpunished—being charged, if at all, with a minor immigration law violation.

On October 28, 2000, President William Jefferson Clinton signed into law the Victims of Trafficking and Violence Protection Act of 2000 ("the Victims Protection Act").¹⁴ By establishing harsh penalties for traffickers who trade in human beings, this long-awaited law may radically transform the reprehensible pattern of punishing the sex-trafficked victim rather than the perpetrator. The Victims Protection Act increases United States economic and social assistance to other countries in an attempt to foster international cooperation in order to track down and punish sex trafficking offenders.¹⁵ The law also imposes economic sanctions on nations, that refuse to provide adequate assistance to victims of trafficking.¹⁶

Like the Saga of Susannah, sex trafficking is a crime associated with human tragedy and irony. For example, it is ironic that some feminists and critical race theorists, who are fundamentally opposed to the victimization of women, criticize The Victims Protection Act and the decision by the United States to change cultural practices like the sex trafficking of women. Some feminists claim women will be negatively affected if the United States provides economic and educational assistance to foreign countries and imposes sanctions on non-compliant nations that abuse and fail to protect women. Some feminists claim the United States is once again engaging in imperialism by imposing its values on other cultures, and U.S. efforts to deal with other nations are merely another way to maintain U.S. hegemonic superiority.¹⁷

It is also ironic that zealous enforcement of a good law may cause bad results for women. In an attempt to prevent trafficking and the pernicious crime of forced prostitution, laws prohibiting prostitution actually discourage victims from seeking help from the authorities who end up throwing the victims in jail for engaging in the illegal act of prostitution. Governmental regulation and/or criminalization of prostitution usually worsens the prostitute's situation, by magnifying the stigma and marginalizing the profession, and by increasing the

¹⁴The Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in various titles of U.S.C.) [hereinafter *The Victims Protection Act*]. The Victims Protection Act is comprised of three divisions: A) The Trafficking Victims Protection Act of 2000, B) Violence Against Women Act of 2000, and C) Miscellaneous Provisions. This paper focuses primarily on Division A, The Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101–7110 (2000). In his weekly radio address, President Clinton said this law was "the most significant step we've ever taken to secure the health and safety of women at home and around the world." Deb Riechman, *Clinton Signs Law to Combat Violence*, DAYTON DAILY NEWS (Ohio), Oct. 29, 2000, at 3A.

¹⁵22 U.S.C. § 7105(a) (2000).

¹⁶*Id.* § 7107(a).

¹⁷See discussion *infra* notes 84–92 (regarding feminist and critical race theorist discussion).

prostitute's risk of violence and other abuse by police, customers, and pimps.¹⁸ The increased risk of violence due to strict government regulation of prostitution negatively impacts innocent victims of forced prostitution. However, trafficked women who are sent into countries where prostitution is legal or tolerated do not necessarily benefit much from legalized prostitution because enforcement of protection for victims of forced prostitution in these countries is usually inadequate.¹⁹ Moreover, there is a higher incidence of sex trafficking in countries like Holland and Germany where prostitution is legal, even though in France, where prostitution is also legal, there is a low incidence of sex trafficking. Therefore, legalizing prostitution is not necessarily the solution to the sex trafficking problem.

It is also ironic that excessively restrictive immigration policies existing in certain source and destination countries have been identified as one of the main causes for the increase in sex trafficking.²⁰ Restrictive immigration policies force poor women seeking to better their economic situations by emigration²¹ to resort to the financial assistance of unscrupulous loan sharks and traffickers, like Angel and her loan shark boss, who promise to provide Susannah with a way out of her misery in Sarajevo. Moreover, immigration laws that are zealously enforced in the destination countries in an effort to protect victims often have a negative effect on the very victims they seek to protect by requiring their deportation.²² Immigration procedures should be enforced more strictly in the source and transit countries only in order to identify possible trafficking victims before the exploitation actually occurs. However, current restrictive immigration laws, requiring detention and deportation should not be zealously enforced against the victim once she reaches the destination country, identifies herself as a victim of sex trafficking, and seeks assistance from the authorities.

Sex trafficking is likely to increase because the current sex trafficking laws around the world are weak, or non-existent in certain countries. Existing laws are not enforced at all or enforced too strictly, too late, and to the detriment of the victim. The powerful networks of international organized crime are attracted to the sex trade industry precisely because the criminal penalty for sex trafficking in most countries is light. Unless specific enforceable trafficking laws aimed at prevention of the crime, prosecution of the perpetrator, and protection of the

¹⁸Ann Lucas, *Women and Prostitution*, in 1 *WOMEN AND INTERNATIONAL HUMAN RIGHTS*, *supra* note 7, at 683, 696.

¹⁹*Id.* at 703 (noting laws are "designed to protect customers and brothel owners, not the prostitute").

²⁰Gallagher, *supra* note 7, at 499.

²¹*Id.*

²²*Id.*

victim are enacted on the national level and in countries around the world, this serious human rights violation is likely to continue globally.

The Victims Protection Act seeks to rectify the inadequacy of current U.S. penalties for sex trafficking. Hopefully, the new U.S. law will influence other nations to enact or amend sex trafficking legislation, to correct weak enforcement policies, and to harmonize legislation internationally. The Victims Protection Act sets up a coordinated effort to criminalize the conduct of traffickers and penalize sex trafficking as if it were a crime as serious as rape, punishable with a sentence of twenty years to life imprisonment.²³ This United States law may indeed set a legislative example for other nations, and even though the effort may be deemed imperialistic or hegemonic, the beneficial result of the protection of women's human rights would justify the effort.

A serious question remains. Will this new law be strictly enforced in the United States, and will it be able to accomplish productive international cooperation in order to reach the interlocking rings of businessmen, modern mafias, and corrupt government officials who are supporting this crime and human rights violation? Many countries look to the United States to effectively address the crime of sex trafficking and to lead by legislative example.²⁴ Therefore, it is imperative that an enforcement arm be added to this new United States law to protect the victims, punish the traffickers, and prevent the continuation of a savage and cruel form of contemporary slavery.

C. Organization of Article

This Article is organized in three parts. The first part will describe the problem of sex trafficking: the nature of the crime, its history, and its underlying cultural, social, political, and economic causes, and how these issues fit into the feminist and critical race theoretical legal discourses. The second part outlines international legal solutions that have been adopted in the past to address the problem of sex trafficking. Many international human rights laws and humanitarian laws have proven to be largely ineffective in the eradication of sex trafficking because the treaties are not enforced and the penalties are weak. The third part analyzes the recently enacted Victims Protection Act which is the attempt by the United States to address the global problem of trafficking by increasing the penalty and rewarding the victim. The Victims Protection Act punishes the trafficker with 20 years to life imprisonment and provides the victim with the possibility of permanent residency in the United States.

²³18 U.S.C. § 1590 (2000).

²⁴*The Sex Trade Hearing, supra* note 1, at 24 (statement of Dr. Laura J. Lederer).

The thesis of this Article is based on economic theory and proposes the need to make an adjustment to the current cost/benefit analysis in the sex trafficking industry. Expanding on the economic argument proposed by feminists, this Article suggests that in order to limit, if not completely eradicate, sex trafficking, it is necessary to increase the costs of the sex trafficking industry. Before The Victims Protection Act was passed, the benefit of sex trafficking clearly outweighed the cost of doing business in this industry. For the rich and powerful in the international organized crime networks, the cost of doing business in the sex trafficking trade is small; the risk of getting caught is also relatively small, and the punishment for trafficking is much weaker than the penalty for drugs or weapons traffic. Thus, the benefit of sex trafficking outweighs the cost. If the penalty for sex trafficking were increased, the risk to perpetrators would increase and create a disincentive to traffic in women. If traffickers lose more than they gain by the risk of a life sentence in prison, the severe penalty should decrease the incentive of commercial gain and dissuade traffickers from taking part in the sex trade industry. In order for this cost/benefit adjustment in sex trafficking to work, law enforcement officials must cooperate with the new Victims Protection Act, which has set the penalty for trafficking on a par with rape.

II. PROBLEM OF SEX TRAFFICKING

A. *Methods of Sex Trafficking*

Women are often trafficked by fraud and deception from relatively poor or war-torn countries of origin, through a country of transit with relaxed immigration laws, and finally into a relatively rich destination country. Generally, the common thread in the many different methods of trafficking is that a woman is duped into believing she will find prosperity, or simply a better life, by taking a fraudulent offer from a trafficker in disguise.

The young, impoverished woman, who is often a refugee, is sometimes sold to traffickers by her own parents or husband for money.²⁵ This deplorable practice

²⁵See CATHARINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 168 (1959) ("Women as a whole are kept poor, hence socially dependent on men, available for sexual or reproductive use."); see also Sarah Shannon, *Prostitution and the Mafia: The Involvement of Organized Crime in the Global Sex Trade*, in *ILLEGAL IMMIGRATION AND COMMERCIAL SEX: THE NEW SLAVE TRADE* 119, 122 (Phil Williams ed., 1999) (citations omitted). According to at least one author:

Most often the guilty party is a father or uncle, who decides that his daughter or niece could provide much needed cash. The girl may be sold to a criminal group or pimp and never acknowledged or thought about again. Conversely, she may continue to live with the family while she is pressed into sexual service. This seems to happen more often with younger girls, who are frequently sold for sex only as long as they are still too

occurs in cultures that devalue women and engage traditionally in other harmful practices like female infanticide, female genital mutilation, child marriage, and selective abortion for female children.²⁶ These discriminatory practices are prevalent in cultures having a preference for sons, an abnormally high number of girls, a food shortage problem, and limited opportunities for educating female children.²⁷

The Saga of Susannah illustrates the typical method of sex trafficking involving the use of one or two agents and a trafficker who force the victim to work off a debt by sexually servicing ten to twenty men a day in a brothel.²⁸ Like Angel, an agent hand picks the most vulnerable and disenfranchised women, like Susannah, who live in a town that does not adequately protect its women and leaves families equally defenseless. These young women are likely prey for the traffickers who can sell them like human cargo to a brothel owner for up to \$16,000 per woman.²⁹ The agent assures the victim that the loan shark will procure her respectable work as a nanny, restaurant employee, legitimate entertainer, model, factory worker, or exotic dancer in a relatively wealthy country—if she agrees to pay a hefty price, or if she agrees to work off her debt to the loan shark.³⁰ But the victim, like Susannah, actually receives no pay for her work, and she must pay for her room and board in the brothel, the pimp's fees, compulsory lawyer's fees, doctor's fees, and sometimes, private living expenses. In addition, through the use of violence and intimidation, the trafficker requires the victim to repay a debt in the amount of \$20,000, \$30,000, or in some cases \$40,000.³¹ Even after Susannah has paid off her debt, which may take years, "she must turn over 50 to 75 percent of her earnings to pimps."³² Survival is all that matters in this miserable life of debt bondage.

Traffickers often make false promises of high wages and good working conditions in exciting cities in the United States by capitalizing on rising unemployment in Europe, on war, refugee camps, on the low status of women in

young to become pregnant.

Id. For cases involving the sale of one's wife to a person intending to exploit her, see Shakespeare Shil, *Girls Sold to Poverty, Misery*, BUS. RECORDER, Apr. 24, 1999, available at 1999 WL 14886896 (describing sale of Bangladeshi woman by her husband to sex trafficker).

²⁶Christina M. Cerna & Jennifer C. Wallace, *Women and Culture*, in 1 WOMEN AND INTERNATIONAL HUMAN RIGHTS, *supra* note 7, at 630–34.

²⁷*Id.*

²⁸*The Sex Trade Hearing*, *supra* note a, at 21 (statement of Dr. Laura J. Lederer). For a discussion of forced prostitution as sexual slavery practiced in the United States, see CATHARINE MACKJINNON, *SEX EQUALITY: FAMILY LAW 1447–60* (2001). The Japanese equivalent was the military sexual slavery of comfort women. *Id.* 1460–71.

²⁹*The Sex Trade Hearing*, *supra* note 1, at 22. (Statement of Dr. Laura Lederer).

³⁰*Id.* at 21.

³¹*Id.* at 22.

³²Hughes, *supra* note 5, at 639–40.

the source countries and other disintegrating social networks.³³ Once the loan contract is entered into and the price for transit and visa is paid, the agent hands the innocent victim over to the trafficker who, upon arrival in the foreign land, then confiscates the victim's passport and visa, forces her into the undignified status of being an illegal alien or undocumented worker and into a deplorable life of contemporary slavery.³⁴

If the victim of trafficking seeks the help of the police, she is at once confronted with the harsher reality that some of the police protect not the victim, but the network and the traffickers. There is documented corruption and complicity by law enforcement officials throughout the sex trafficking process in countries of origin, transit, and destination.³⁵ Bribes and payoffs are given to local visa officials, to border patrol officers, and to local police who keep the brothels running.³⁶ Thus, the victim is tragically without protection in the destination country, and the traffickers have bought their own protection from the mafia and the police.³⁷

Instead of receiving shelter and assistance from harm, the victim is usually held by the police on suspicion of being an illegal alien, arrested for working without a visa, put in detention or prison awaiting deportation, and ultimately shipped back home only to be treated, both here and there, like a common criminal.³⁸ The police rarely attempt to arrest the brothel owners or to identify the traffickers.³⁹

Trafficking is accomplished by various means, including enticement, kidnapping, selling a loved one, the illegal use of legitimate travel documents, the use of imposter passports, and entry without inspection. Traffickers lure women to the United States with false promises of good jobs. They recruit women abroad through advertisements and employment, travel, model, or matchmaking agencies.⁴⁰ Recruiters also target beauty contest winners and entice them with phony work offers.⁴¹ Traffickers send recruiters to villages and towns,⁴² just as they sent Angel to ensnare Susannah in Sarajevo. Friends and acquaintances recruit women informally through word of mouth.⁴³ Recruiters or agents often front the money for provision of travel documents, transportation, and supposed

³³CIA REPORT, *supra* note 4, at 5.

³⁴*Id.*

³⁵*The Sex Trade Hearing, supra* note 1, at 22 (statement of Dr. Laura J. Lederer).

³⁶*Id.*

³⁷*Id.*

³⁸*Id.*

³⁹*Id.* at 21.

⁴⁰CIA REPORT, *supra* note 4, at 5.

⁴¹*Id.*

⁴²*Id.*

⁴³*Id.*

jobs, and the victim is then forced to remain in debt bondage until she repays the ever-increasing debt.⁴⁴ The Internet is the latest hot spot for promoting global trafficking and recruitment of women and children. "[I]n the United States, the Internet has become an integral component of trafficking in women for the marriage market."⁴⁵ It is used to advertise marriage brokers and to display women and girl-children for sale as brides.⁴⁶ Many of these bridal schemes are sex trafficking operations in disguise, just as massage parlors are notorious fronts for forced prostitution.

The best way to traffic women into the United States is for the women to obtain long term visas or overstay their legitimate short term visa.⁴⁷ Traffickers in Eastern Europe, Asia, and the Newly Independent States commonly use business (B1) and tourist (B2) visas to bring women into the United States.⁴⁸ In Russia and Ukraine, it is possible to get a multiple entry visa for up to three months, but in Latvia, the Czech Republic, and Poland one can obtain a multiple entry visa for ten years.⁴⁹ In Mexico, Thailand, the Philippines, and the People's Republic of China, one can obtain a ten-year visa as well.⁵⁰ The longer the visa time length, the greater the room for abuse.⁵¹

Student (F1), fiancee (K1), and entertainer visas (PI, P3) are also used to acquire entry in the United States.⁵² Traffickers can illegally purchase 1-20 student forms to facilitate obtaining student visas to the United States.⁵³

Traffickers also obtain visas through the travel agency referral program. This is a program that is "intended to assist some overburdened embassies in expediting the visa process by allowing travel agencies to refer visa applicants."⁵⁴ The embassies and travel agencies usually do not scrutinize the applicants very carefully.⁵⁵ Thus, a victim may slip through the border without being recognized as a victim at all.

Asian traffickers commonly use photo substitutions and impostor passports to transport women into the United States.⁵⁶ These passports can be recycled.⁵⁷

⁴⁴*Id.*

⁴⁵Radhika Coomaraswamy & Lisa M. Kois, *Violence Against Women*, in 1 *WOMEN AND INTERNATIONAL HUMAN RIGHTS*, *supra* note 7, at 177, 202.

⁴⁶*Id.*

⁴⁷CIA REPORT, *supra* note 4, at 7.

⁴⁸*Id.*

⁴⁹*Id.*

⁵⁰*Id.*

⁵¹*Id.*

⁵²*Id.*

⁵³*Id.*

⁵⁴*Id.*

⁵⁵*Id.*

⁵⁶*Id.* at 8.

⁵⁷*Id.*

Asian traffickers also use a "jockey" or person who escorts the woman from Asia to the United States.⁵⁸ The escort "pretend[s] to be the woman's boyfriend, cousin, or husband," and "he may go so far as to marry the woman on paper."⁵⁹ The jockey is used for the purpose of answering any questions from immigration officials at the ports of entry.⁶⁰ Traffickers also facilitate entry by booking late night flights or by flying on holidays when fewer immigration officials are on duty.⁶¹

Sometimes victims cross the border into the United States without inspection.⁶² Latin American "coyotes" typically transport aliens across the southern border or lead trafficking victims on foot to the United States.⁶³ Traffickers also gain entry in the United States by booking a woman on an international flight to a destination outside the United States.⁶⁴ She will then transit through a United States airport en route to the ostensible destination country.⁶⁵ Once in the United States airport, the woman is met by someone associated with the trafficking ring.⁶⁶ The two then leave the airport together, purposely missing their flight, and they then remain in the United States where the woman is reduced to working as a slave in a brothel or sweatshop.⁶⁷

B. Definition of Sex Trafficking as Slavery, the Meaning of Force, and the Role of Consent

Trafficking includes the recruitment, abduction, transport, harboring, transfer, sale, or receipt of persons within national or across international borders, through the use of fraud, coercion, force, or kidnapping, for the purposes of placing persons in situations of slavery-like conditions, forced labor, or services, domestic servitude, bonded sweatshop labor or other debt bondage.⁶⁸ Susannah

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 9.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at v. Debt bondage is defined in Article I(a) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery as: the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and

was recruited by Angel through the use of fraud, force and coercion; she was transported against her will to another country, perhaps Italy, where she was sold to a brothel and forced to work off a debt by prostitution.

The term "force," as used in this definition of sex trafficking, signifies "coercion, drugging, kidnapping, violence, threats, intimidation, or other situation where there is lack of consent."⁶⁹ The element of "force" and the related concept of "consent" are key components in the definition of trafficking. If the trafficker can present evidence that the woman consented to or was not forced into the act of prostitution, the victim may not be successful in proving that a crime of sex trafficking was committed. It is precisely because of the insistence on proof of force and lack of consent that the many international conventions protecting women against sex trafficking have not been enforced. However, it is well accepted now that the use of force in sex trafficking can refer to either physical or psychological force which occurs when someone is held against his or her will.⁷⁰ Susannah was beaten, raped, and psychologically manipulated by threatening the safety of her family. Subtle forms of restraint can be used to detain someone, and victims' vulnerabilities are relevant in the determination of the degree of force used. Thus, if defendants use force, threats of force, or threats of legal coercion to create a "climate of fear" in order to compel service, the defendants can be found guilty of holding women in conditions of involuntary servitude.⁷¹ The definition of force or coercion contained in the most recent draft of the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, includes both physical and psychological coercion.⁷²

The Victims Protection Act⁷³ further refines the definition of the term sex trafficking. Sex trafficking is: "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act."⁷⁴ "Severe forms of trafficking in persons," which is a special classification that

Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3201, 3204, 266 U.N.T.S. 3, 41.

⁶⁹*The Sex Trade Hearing*, *supra* note 1, at 54, 55 (written submission of Dr. Laura J. Lederer, Director, The Protection Project).

⁷⁰See CIA REPORT, *supra* note 4, at vi. See CATHARINE MACKINNON, SEX EQUALITY: RAPE LAW, *supra* note 13, at 817-18 for discussion of "consent" to sex as applied in the law of rape: "any forms of force . . . can make submission to sex unfree." *Id.* at 817.

⁷¹*Id.*

⁷²*Id.*

⁷³The Victims Protection Act, *supra* note 14. This law was overwhelmingly approved by the House of Representatives at the second session of the 106th Congress and by the Senate. 146 CONG. REC. H9036 (daily ed. Oct. 6, 2000); 146 CONG. REC. S10227-28 (daily ed. Oct. 11, 2000).

⁷⁴The Victims Protection Act, *supra* note 14, 22 U.S.C. § 7102(9) (2000); *see also* 22 U.S.C. § 7102(3) (defining "commercial sex act" as "any sex act on account of which anything of value is given to or received by any person").

qualifies victims for enhanced benefits and services including possible permanent residency in the United States, is 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 act has not attained 18 years of age; or the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."

Debates on the definition of trafficking often focus on consent and whether or not the woman knew or did not know about the type of work she would be doing in the destination country. There are two categories of non-consensual workers that fall under the definition of victims of sex trafficking: forced prostitutes and voluntary prostitutes working in unanticipated conditions. Many of the women trafficked into sex work are duped, drugged, and forced into doing sex work against their will. This form of non-consensual sex work is called "forced prostitution" and constitutes violence against women and the deprivation of their fundamental right to self-determination.⁷⁶ The second category of non-consensual sex workers are the women who willingly migrate to destination countries where they have consented to, and expect to do, sex work. However, upon arrival the women are forced to do sex work under conditions they did not agree to, contemplate, or anticipate.⁷⁷ This second category is also a form of non-consensual sex work which is included in the definition of sex trafficking in this Article.

It is arguable that consent is not a probative issue in the definition of sex trafficking because one cannot legally consent to slavery, and sex trafficking is clearly a variant of slavery. The Thirteenth Amendment to the United States Constitution outlaws slavery and prohibits an individual from selling himself or

⁷⁵*Id.* at 22 U.S.C. § 7102(8).

⁷⁶Jo Doezeana, *Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women*, 18 GENDER ISSUES 23, 33 (2000) (citing Global Alliance Against Trafficking in Women, *A Proposal to Replace the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, GAATW BULLETIN (1994), available at <http://www.walnet.org/csis/papers/doezeana-loose.html>.) The Global Alliance Against Trafficking in Women ("GAATW") is a group of feminists that does not place value judgments on a woman's career choice of sex work. Cf. CATHARINE MACKINNON AND ANDREA DWORKIN, EDS., IN HARMS WAY: THE PORNOGRAPHY CIVIL RIGHTS HEARINGS 68 n.23 (2001): ("At any rate, even when prostitution seems to have been chosen freely, it is actually the result of coercion . . . All prostitution is forced prostitution.").

⁷⁷*Id.* at 31. See CATHARINE MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN 9-25 (1979) (discussing "women's" work and "sex-defined work,").

herself into bondage.⁷⁸ Multilateral treaties and customary international law condemn slavery.⁷⁹ Since its inception, the United Nations has always been committed to the abolition or elimination of slavery.⁸⁰ On November 15, 2000, one month after the enactment of The Victims Protection Act, the United Nations General Assembly adopted the U.N. Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children [U.N. Protocol to Prevent Trafficking] and a Protocol Against the Smuggling of Migrants by Land, Sea and Air.⁸¹ The U.N. Protocol to Prevent Trafficking specifically states that the consent of the victim of trafficking in persons is "irrelevant."⁸² But despite a multitude of U.N. recommendations, decisions, and other pronouncements, slavery is not dead, and the traffic and sale of human beings for sexual exploitation are flourishing.⁸³

C. Feminists Debate Sex Trafficking

Feminist legal scholars writing about sex trafficking typically fall into two distinct categories that reflect two different types of non-consensual prostitution.

⁷⁸U.S. CONST. amend. XIII, § 1.

⁷⁹A. Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT'L L. 303, 305–06 (1999).

⁸⁰*Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on Its Forty-Seventh Session*, U.N. ESCOR Comm'n on Human Rights, 52d Sess., Agenda Item 15, at 2, U.N. Doc. E/CN.4/1996/85 (1996).

⁸¹*Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*, G.A. Res. 25, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/25 (2000). The text of the Convention and the Protocols may be obtained from the U.N. Office for Drug Control and Crime Prevention's web site at <http://www.odccp.org/palermo>. The text of the Convention and the Protocols are annexed to the Draft Resolution contained in the November 2, 2000 Report by the Ad Hoc Committee (U.N. Doc. A/55/383) to the U.N. General Assembly [hereinafter U.N. Protocol to Prevent Trafficking].

⁸²*See id.* at Annex II, Article 3(b). Art. 3(b) conditionally removes "consent" from the definitional requirement for sex trafficking. Specifically, "[t]he consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used." *Id.* Article 3(a) defines trafficking as:

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

Id. at Art. 3(a).

⁸³*Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on Its Forty-Seventh Session*, *supra* note 80.

One group of feminist scholars, called neo-abolitionists,⁸⁴ condemns both voluntary and involuntary prostitution on the theory that prostitution is never really entirely consensual and reduces all women to nothing more than pure sex objects.⁸⁵ The other group of feminist scholars accepts the right of women to choose prostitution as a career and condemns sex trafficking only when the career choice is non-consensual or when the conditions imposed on a consensual sex worker are inhumane and unanticipated.⁸⁶ These feminists argue that to condemn the right of consensual prostitutes to engage in their career of choice is to buy into a myth of the purity and innocence of women as dependent victims. This Article focuses on the need to alter the economic benefits of sex trafficking in order to eradicate the deplorable conditions imposed on women who engage in non-consensual forced prostitution or voluntary prostitution under unanticipated conditions, including both categories of sex trafficking described above.

D. Critical Race Theorists Debate Cultural Relativism

Is sex trafficking excusable as a cultural norm in certain countries? Some critical race theorists have focused on the difficult question of cultural relativism.⁸⁷ According to this theory, western countries need to respect cultural norms practiced in developing countries, even if these norms differ from those of developed countries. However, if sex trafficking is considered a variant form of slave trade, one cannot argue persuasively that sex trafficking is simply an accepted cultural norm in certain countries that must be respected as such under

⁸⁴See Doezeema, *supra* note 76, at 33. For example, Kathleen Barry, founder of The Coalition Against Trafficking in Women ("CATW") and author of *FEMALE SEXUAL SLAVERY* (1984), is of the neo-abolitionist belief that all forms of prostitution constitute violence against women, sexual exploitation, and an institution that victimizes all women. Doezeema, *supra* note 76, at 33; see also CATHARINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE*, *supra* note 25, at 168 ("Because the stigma of prostitution is the stigma of sexuality is the stigma of the female gender, prostitution may be legal or illegal, but so long as women are unequal to men and that inequality is sexualized, women will be bought and sold as prostitutes, and law will do nothing about it."). The neo-abolitionists claim that prostitution justifies the sale of women and reduces all women to sex. Doezeema, *supra* note 76, at 33. The other feminist school draws a distinction between "forced prostitution" and "voluntary prostitution" and does not seek to place a value judgment on women who choose prostitution or sex work for their livelihood. *Id.* The Global Alliance Against Trafficking in Women (GAATW) is the primary exponent of this other feminist position. *Id.*

⁸⁵Doezeema, *supra* note 76, at 33.

⁸⁶*Id.*

⁸⁷See, e.g., Hope Lewis, *Between Irua and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide*, in *CRITICAL RACE FEMINISM* 361, 363 (Adrien Katherine Wing ed., 1997).

the theory of cultural relativism.⁸⁸ Sex trafficking, like slave trade, is a *universal* crime prohibited by the principle of *jus cogens* provided in Articles 53 and 64 of the Vienna Convention on the Law of Treaties.⁸⁹ The illegality of sex trafficking, like slave trade, is a peremptory norm of general international law which is accepted and recognized by the international community as a whole, and from which no derogation is permitted. Viewed as a variant of the universal crime of slavery, sex trafficking cannot be justified as a relative "cultural" norm practiced in certain developing countries, like the practice of female genital mutilation,⁹⁰ which is admittedly a difficult case based, in part, on religious beliefs, or murdering girl babies,⁹¹ which is an easy case. Sex trafficking simply cannot be excused by the argument of cultural relativism because, like murdering girl babies, sex trafficking is universally condemned. The parents who sell their female babies for money into the sex work industry, and the traffickers who, by loan sharking, snare the poverty-stricken women into a network of forced prostitution, are perceived in their own countries as criminals.⁹² Sex trafficking should not be viewed as a cultural practice but rather as a universal crime linked to slave trade.

That is not to say that legal scholars should disregard the cultural, social, political, and economic causes of the worldwide practice of sex trafficking. Traffickers successfully lure women into sex work because these women are victims of poverty, of the social practice that marginalizes women, of the failure of some societies to place a value on traditional women's work, and of the lack of education and employment opportunities for women in developing and

⁸⁸See Isabelle R. Gunning, *Arrogant Perception, World Traveling, and Multicultural Feminism: The Case of Female Genital Surgeries*, in *CRITICAL RACE FEMINISM*, *supra* note 87, at 352, 357 (discussing whether Western feminists should criticize practice of female genital surgeries in non-Western cultures).

⁸⁹Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331, 344, 347. Article 53 defines *jus cogens* norms as principles "accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." *Id.* Article 64 states that newly emerging *jus cogens* norms supercede existing treaties. See also CHERIF M. BASSIOUNI, *THE PROTECTION OF HUMAN RIGHTS IN THE ADMINISTRATION OF CRIMINAL JUSTICE*, at xxiv (1994) (stating that "[m]any scholars consider the [U.N.'s Universal] Declaration [of Human Rights in 1948] to be legally binding because it constitutes part of the 'general principles of international law,' while more ardent human rights activists deem the Declaration to have reached the status of *jus cogens*").

⁹⁰See Gunning, *supra* note 88, at 352–53.

⁹¹Sharon K. Hom, *Female Infanticide in China: The Human Rights Specter and Thoughts Toward (An) other Vision* in *GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER* 251 (Adrien Katherine Wing ed., 2000).

⁹²See Yasmeen Hassan, *Stove Burning, Acid Throwing, and Honor Killing in 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS*, *supra* note 7, at 587, fn.1 (stating that forced prostitution, stove burning and honor killing are "cultural practices that may even be frowned upon").

transition countries. Women lured into sex work are victims of a myriad of complex social, cultural, and political factors that feminists have discussed persuasively in an ongoing critical discourse in order to explain some of the underlying causes of sex trafficking. This Article stresses the causative economic factors of sex trafficking and, by incorporating economic theory, proposes a possible solution to the eradication or reduction of sex trafficking.

E. Statistics on Trafficking

Statistics on trafficking are unreliable and difficult to verify because of the secrecy of the sex trafficking industry and the social stigma attached to sexual activity.⁹³ One report estimated that more than 2,000,000 women are trafficked around the world each year and another report cited as many as 4,000,000.⁹⁴ The dearth of accurate statistics should not justify the distorted view that sex trafficking is a "cultural myth."⁹⁵ The numbers of women and children trafficked globally for purposes of forced prostitution may soon be as high as the African slave trade of the 1700s.⁹⁶

Statistics about the profits earned from sex trafficking also vary. Traffickers in some countries can buy a woman for \$15,000, and traffickers in other countries charge as much as \$40,000 for a woman.⁹⁷ In Japan, for example, the usual pay received for the sale of a woman is two million yen or approximately \$14,000 to \$15,000.⁹⁸ Traffic in human beings designated for sex work is estimated to generate somewhere between \$7 to \$12 billion annually."

⁹³Hughes, *supra* note 5, at 627. "It is difficult to know how many women have been trafficked for the purpose of sexual exploitation. The trade is secretive, the women are silenced, the traffickers are dangerous, and not many agencies are counting." *Id.* (internal citation omitted).

⁹⁴CIA REPORT, *supra* note 4, at 3.

⁹⁵*But see* Doezema, *supra* note 76, at 25. Professor Doezema calls "White Slavery" a racist concept and sex trafficking in women a "cultural myth". However, Professor Doezema does not infer that sex trafficking does not exist. Professor Doezema only means to underscore that many women choose to do sex work willingly and, therefore, they should not be condemned for that choice. From this fact Professor Doezema concludes, without proof, that the majority of sex trafficked women go into sex work willingly. *Id.* at 46–47. This view does serious damage to the cause of eradicating sex trafficking.

⁹⁶*The Sex Trade Hearing*, *supra* note 1, at 22 (statement of Dr. Laura J. Lederer).

⁹⁷CIA REPORT, *supra* note 4, at 56.

⁹⁸CIA REPORT, *supra* note 4, at 57. *See* CATHARINE MACKINNON, *IN HARM'S WAY*, *supra* note 76, at 67 n.18 ("Like slavery in the usual sense, prostitution has an economic aspect . . . it is a market and indeed a very lucrative one. The merchandise involved is men's pleasure . . . supplied by physical intimacy with women or children.").

⁹⁹John Daniszewski, *Russian Coalition Fights Sex Slavery*, *L.A. TIMES*, May 17, 2001, at A3.

F. Countries Engaged in Trafficking

Tourism invites sex trafficking. One of the most active areas of the world for sex trafficking is Asia, where tourism has expanded rapidly due to increased international trade. The profitable sex industry in Southeast Asia thrives on the exploitation of women who service sex-starved tourists. Approximately sixty percent of Thailand's tourists visit this country solely for sexual purposes.¹⁰⁰ Thousands of Thai women are trafficked into Japan each year¹⁰¹ for exploitation in the very lucrative sex entertainment industry. The very restrictive visa policies in Japan provide extraordinary opportunities for traffickers to get rich on the exploitation of women seeking a way into this relatively rich country and out of their poverty stricken conditions in Thailand.¹⁰²

Economic transition also encourages sex trafficking. Since 1991, many countries in Eastern Europe have experienced the political, social, and economic uncertainties that accompany transition from a planned to a market economy. These countries constitute another area of the world that is developing a significant industry in the trade of human cargo. Russia,¹⁰³ Ukraine,¹⁰⁴ Poland and the Czech Republic are major countries of origin for trafficking women into Central and Western Europe.¹⁰⁵ An estimated 250,000 women and children from Russia, the Newly Independent States, and Eastern Europe are trafficked into Western Europe, the Middle East, Japan, Canada and the United States each year.¹⁰⁶

Unemployment resulting from the destabilization of a country in economic and political transition can enhance opportunities for sex trafficking. The former Soviet Union is the fastest growing region for trafficking women due mainly to rampant unemployment conditions that particularly affect women.¹⁰⁷ The United States Department of State estimates that in 1997 alone 100,000 women were

¹⁰⁰Michelle Kuo, *Asia's Dirty Secret*, 22 HARV. INT'L L.J. 42 (2000).

¹⁰¹HUMAN RIGHTS WATCH REPORT, OWED JUSTICE: THAI WOMEN TRAFFICKED INTO DEBT BONDAGE IN JAPAN 15-16 (2000), available at <http://www.hrw.org/reports/2000/japan>.

¹⁰²*Id.* at 18-24.

¹⁰³See Christopher M. Pilkerton, *Traffic Jam: Recommendations for Civil and Criminal Penalties to Curb the Recent Trafficking of Women from Post-Cold War Russia*, 6 MICH. J. GENDER & L. 221, 222 (1999).

¹⁰⁴See TRAFFICKING IN MIGRANTS Q. BULL. 18 (1998) (noting trends in the trafficking of Slavic women into slavery, especially from the Ukraine, Poland, and Hungary; see also Hughes, *supra* note 5, at 628 ("In 1998 the Ukrainian Ministry of Interior estimated that 400,000 Ukrainian women were trafficked during the previous decade; other sources . . . thought the number was higher.")).

¹⁰⁵*The Sex Trade Hearing*, *supra* note 1, at 4-5 (statement of Anita Botti).

¹⁰⁶*Id.* at 22 (statement of Dr. Laura J. Lederer).

¹⁰⁷*Id.* at 4 (statement of Anita Botti).

trafficked into the U.S.A. and Europe from the former Soviet Union,¹⁰⁸ In Russia today, "some 6.5 million women are unemployed, and 2.5 million children are spending their days on the streets rather than in schools."¹⁰⁹ International crime networks prey on itinerant, refugee, and poverty-stricken women by taunting them, coercing them, making false promises, and deceiving them into thinking they will find good jobs, new homes, and opportunities to travel abroad.¹¹⁰ Most Russian women are trafficked to Western Europe, particularly Germany, Italy, and the Netherlands.¹¹¹

Weak law enforcement may be a cause of the increase in sex trafficking. The incidence of sex trafficking is high in Western Europe because the enforcement of the law prohibiting sex trafficking is weak in that part of the world.¹¹² For example, of the 155 cases of forced prostitution that were brought to the courts in the Netherlands in one year, only four resulted in convictions, and thousands of sex trafficking cases were never even brought to the courts at all in the Netherlands.¹¹³ Prostitution is legal in the Netherlands. Legalizing prostitution merely facilitates the job of the trafficker and does not necessarily enhance the protection of the victim of forced prostitution.

Wealth and perceived opportunities also enhance sex trafficking and act as a lure for the thousands of refugee women desperately seeking work and a place to call home. The United States is the land of opportunity par excellence. It is no wonder that the United States is one of the primary destination points for trafficked women, coming from several source countries and especially from the former Soviet Union.¹¹⁴ "An estimated 45,000 to 50,000 women and children are trafficked annually to the United States, primarily by small crime rings and loosely connected criminal networks."¹¹⁵ The victims trafficked to the United States come from Southeast Asia and Latin America and more recently from the New Independent States and Central and Eastern Europe.¹¹⁶ Roughly 4,000 of the 50,000 women trafficked into the United States are from the former Soviet Union

¹⁰⁸*Id.* at 2 (statement of Rep. Christopher H. Smith).

¹⁰⁹*Id.*

¹¹⁰*See id.* (discussing common methods of sex trafficking).

¹¹¹*Id.* at 4 (statement of Anita Botti).

¹¹²*Id.* at 23 (statement of Dr. Laura J. Lederer).

¹¹³*Id.* at 22.

¹¹⁴*Id.* at 5 (statement of Anita Botti); *see also* JANICE G. RAYMOND & DONNA M. HUGHES, REPORT OF THE COALITION AGAINST TRAFFICKING IN WOMEN, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES 100-05 (Mar. 2001) (listing incidents of trafficking to the United States), available at http://www.catwinternational.org/sex_traff_us.pdf [hereinafter CATW REPORT].

¹¹⁵*See* CIA REPORT, *supra* note 4, at iii.

¹¹⁶*Id.*

and Eastern Europe."⁷ Approximately half of these 50,000 women are coerced into bonded sweatshop labor and domestic servitude in the United States."⁸

Trafficking has been reported in at least twenty different states in the United States, with most cases occurring in New York, California, and Florida.¹⁹ Florida law enforcement officials claim that Florida is being inundated with trafficked women from Russia, Ukraine, and Central Europe.²⁰ The primary source countries for trafficking in the United States are Thailand, Vietnam, China, Mexico, Russia, Ukraine, and the Czech Republic.²¹ But women have also been trafficked to the United States from the Philippines, Korea, Malaysia, Latvia, Hungary, Poland, Brazil, and Honduras, among other countries.²²

Women are brought to the United States "primarily for the sex industry (prostitution, stripping, peep and touch shows, and massage parlors offering a variety of sexual services), sweatshop labor, domestic servitude, agricultural work," maid services at motels and hotels, peddling, and begging.²³ The I.N.S. has discovered over 250 brothels in twenty-six different cities in the United States, and these brothels are likely to be involved in trafficking victims.²⁴ The average age of the trafficking victim in the United States is roughly twenty years old.²⁵

Examples of trafficking in women in the United States include Latvian women who were threatened and forced to dance nude in Chicago; Thai women who were brought to the United States for the sex industry, and then forced to be virtual sex slaves; ethnically Korean-Chinese women who were held as indentured servants in the Commonwealth of the Northern Mariana Islands,²⁶ which is governed by U.S. law; and hearing-impaired and mute Mexicans who were brought to the United States where they were enslaved, beaten, and forced to peddle trinkets in New York City.²⁷

Labor trafficking operations in sweat shops in the United States generally last from four and a half years to six and a half years, whereas sex trafficking operations for prostitution last from a year to two and a half years before being

¹¹⁷*The Sex Trade Hearing, supra* note 1, at 5 (statement of Anita Botti).

¹¹⁸*Id.*

¹¹⁹CIA REPORT, *supra* note 4, at 3.

¹²⁰*Id.*

¹²¹*Id.*

¹²²*Id.*

¹²³*Id.*

¹²⁴*Id.*

¹²⁵*Id.*

¹²⁶See Mary Beth Herald, *The Northern Mariana Islands: A Changing Course Under Its Covenant with the United States*, 71 OREGON L.R. 127 (1992).

¹²⁷CIA REPORT, *supra* note 4, at v.

discovered.¹²⁸ Once uncovered, trafficking and slavery cases in the United States usually take about a year and a half to investigate and prosecute, according to the Department of Justice's Involuntary Servitude Coordinator in the Civil Rights Division, Criminal Section.¹²⁹

The high incidence of sex trafficking in the United States is a result of inadequate legislation and poor enforcement of penalties for trafficking.¹³⁰ The United States is similar to Europe in this regard. Many European countries do not have sufficient "legislative or enforcement mechanisms to identify, apprehend, and punish" the traffickers who are protected by organized crime syndicates.¹³¹ Moreover, most countries lack adequate protection for the rights of the victims of sex trafficking. Since governments do not seem to help the victims effectively, non-governmental organizations and private sector activists have been fighting organized crime on their own by trying to warn and educate women not to accept fraudulent offers.¹³² Trafficking issues in the United States are being addressed by Human Rights Watch,¹³³ the Global Alliance Against Trafficking in Women (GAATW), the Coalition Against Trafficking in Women (CATW), and the United Nations Educational, Scientific, and Cultural Organization (UNESCO),¹³⁴ among other non-governmental organizations.

By enacting The Victims Protection Act, the United States has finally decided to do more legislatively to stop this egregious crime. The time has come for the governments of other countries to cooperate with each other by passing and enforcing laws that prohibit trafficking,¹³⁵ punish the trafficker and not the victim, and make the punishment fit the crime.

¹²⁸*Id.* at 3.

¹²⁹*Id.*

¹³⁰*The Sex Trade Hearing*, *supra* note 1, at 3 (statement of Rep. Christopher H. Smith).

¹³¹*Id.* at 2-3.

¹³²*Id.* at 2. In 1991, Dr. Kathleen Barry, director of the Coalition Against Trafficking in Women (CATW), a non-governmental organization with consultative status with the United Nations Educational, Scientific, and Cultural Organization ("UNESCO"), started a working group to identify international human rights approaches to the exploitation of women in prostitution. This group wrote the Draft Convention Against Sexual Exploitation. For a reprint of the draft, see Elizabeth F. Defeis, *Draft Convention Against Sexual Exploitation (CASE)*, in 2 *WOMEN AND INTERNATIONAL HUMAN RIGHTS*, *supra* note 7, at 319, 323, 333.

¹³³The Human Rights Watch web site addressing women's rights issues is at <http://www.hrw.org/women> (last visited Nov. 18, 2001).

¹³⁴Ann D. Jordan, *Commercial Sex Workers in Asia: A Blind Spot in Human Rights Law*, in 2 *WOMEN AND INTERNATIONAL HUMAN RIGHTS*, *supra* note 7, at 525, 528.

¹³⁵*The Sex Trade Hearing*, *supra* note 1, at 3-4 (statement of Rep. Christopher H. Smith).

G. History of Trafficking

Trafficking is not a new problem.¹³⁶ The kidnapping, recruitment, and transporting of women and children dates back thousands of years, but the conceptualization of this activity as "trafficking" surfaced around the turn of the century.¹³⁷ Although sex trafficking has been practiced for many years, especially in Asian countries, it was not until the recent demise of communism in Eastern and Central Europe and the break up of the Soviet Union in 1991 that the practice of sex trafficking escalated into a full-blown sex trade industry.¹³⁸

In 1877, the First Congress of the International Abolitionist Federation was "responsible for initially generating public awareness of and interest in the organized trafficking in women," commonly referred to as "white slavery."¹³⁹ The term "white slavery" has been immortalized in the United States because it is the name of the principal American law against involuntary servitude, namely the White-Slave Traffic (Mann) Act.¹⁴⁰

In 1870, Victor Hugo noted that "[t]he slavery of black women is abolished in America; but the slavery of white women continues in Europe."¹⁴¹ While forced prostitution and sex trafficking of women could be prosecuted in most countries under a variety of both international and domestic statutes, the international community has not been successful in its attempts to decrease this degrading practice.¹⁴² In fact, the crime is increasing at alarming rates.¹⁴³

H. Some Causes of the Increase in Trafficking

Polarity characterizes our world economy. It is not uncommon to hear critical commentaries about the wealth of the North in contrast to the poverty of the South, especially with regard to the allegedly deleterious role that globalization has played in the development of international trade.¹⁴⁴ The poor developing

¹³⁶*Id.* at 38 (statement of Anita Botti).

¹³⁷KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY* 115 (1995).

¹³⁸*The Sex Trade Hearing*, *supra* note 1, at 2 (statement of Rep. Christopher H. Smith).

¹³⁹Nora V. Demleitner, *Forced Prostitution: Naming an International Offense* 18 *FORDHAM INT'L L.J.* 163, 165 (1994).

¹⁴⁰White-Slave Traffic (Mann) Act, ch 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421–2424 (1994 & Supp. V 1999)).

¹⁴¹PROSTITUTION IN AMERICA, THREE INVESTIGATIONS, 1902–1914, at 196 (Edwin R.A. Seligman ed., reprint 1976).

¹⁴²Demleitner, *supra* note 139, at 164.

¹⁴³*The Sex Trade Hearing*, *supra* note 1, at 2 (statement of Rep. Christopher H. Smith).

¹⁴⁴See Susan Tiefenbrun, *Free Trade and Protectionism: The Semiotics of Seattle*, 17 *ARIZ. J. INT'L & COMP. L.* 257, 273–74 (2000).

nations are touted as enemies of the rich developed nations, and the "haves" are deplored for not understanding or appreciating the plight of the "have nots."¹⁴⁵ Public awareness of the North/South polarity is enhanced by globalization and by the concomitant increase in world travel which international trading naturally encourages or requires. Ironically, sex trafficking and the trade in human cargo actually plays a significant role in facilitating interaction between the polar opposite nations. Transition countries and less developed nations supply an abundance of women to perform sex services for people from developed nations that are willing and able to pay high prices to obtain the services.¹⁴⁶ Sex trafficking may be based on an economically sound system of comparative advantage, but it is nonetheless an economic system which is sorely lacking in moral values.

Trafficking thrives in countries characterized by dire poverty, the lack of real or significant economic opportunities for women, the failure to educate women to become financially independent,¹⁴⁷ and the failure to educate men not to victimize women who are unable to provide adequately for themselves. Trafficking is facilitated by official, government corruption and collaboration with organized crime networks that protect traffickers.¹⁴⁸ Trafficking is further enabled by countries without a rule of law and whose legal systems fail to adequately penalize traffickers. Thus, trafficking follows a pattern of polarity which starts out in poor countries where there is a large supply of vulnerable women eager to escape their condition and ends up in rich countries where there is a large demand for sexual services and the capability of meeting the high price of sexual exploitation.

The demise of communism in the former Soviet Union in 1991, and in Eastern Europe shortly thereafter, contributed to the development of a dangerous pattern of labor migration of women from Eastern European countries in transition¹⁴⁹ to countries of relative wealth and opportunity. Vulnerable women on the move are prime targets for traffickers. This migratory pattern has caused a serious increase in sex trafficking.

¹⁴⁵*Id.*

¹⁴⁶Maya Raghu, Note, *Sex Trafficking of Thai Women and the United States Asylum Law Response*, 12 GEO. IMMIGR. L.J. 145, 153 (1997) (describing rise of Thai Sex Trade).

¹⁴⁷Cerna & Wallace, *supra* note 26, at 633 ("Statistics demonstrate that of the 960 million illiterate people in the world, two-thirds are women." (internal citation omitted.))

¹⁴⁸Hughes, *supra* note 5, at 626.

¹⁴⁹*Id.* at 632; *see also* Raghu, *supra* note 146, at 145 ("The prime conditions for trafficking arise when developing nations commence the transformation of their economies, usually state-controlled and agricultural, to export-oriented industrial societies . . . served to alienate and dislocate large segments of society.").

Wars in the Balkans, in Africa,¹⁵⁰ in the Middle East, in India, and in Asia have increased the number of migrant women traveling alone. Like Susannah, who had been out of work since the war in Serbia broke out, there are many unemployed refugees from war-torn countries desperately seeking a better life for themselves and for their families. Women on the move and alone are in a particularly vulnerable condition. Refugee camps are not much better, and they are perfect targets for traffickers who prey on displaced women. Transnational crime networks take advantage of known patterns of refugee migration to certain countries in order to smuggle women into these countries for work in the sex industry. For example, after 1989 in the midst of the excitement of Perestroika and Glasnost, many Soviet Jews were prophetically fearful of an imminent Russian revolution. This fear caused over 800,000 Soviet Jews to emigrate to Israel.¹⁵¹ Russian and Ukrainian traffickers used the knowledge of this pattern of emigration to Israel as a "cover" to smuggle 10,000 Russian and Ukrainian women to work there as sex slaves.¹⁵² The sex trafficking business in Israel has grown into a \$450 million a year industry.¹⁵³

Privatization and liberalization of markets in countries in transition have created wider and more open market places throughout the world.¹⁵⁴ While privatization enables previously illegal markets of a shadow economy to operate legally and to expand in a new liberal environment, privatization does not prevent these countries in transition from retaining their former methods of doing business which are based on corruption and protection schemes that facilitate the trafficking business.¹⁵⁵

The failure to remedy the generally low status of women worldwide is one of the principal causes of the increase in sex trafficking. Women and girls are forced into prostitution and into "marriage" in increasing numbers because of the devaluation of the female being and the growing disparity in the sex ratio of men to women. In some cultures women are conceived of as excess; they are marginalized¹⁵⁶ and purposely deprived of an opportunity to receive an education,

¹⁵⁰*Women, Children Taken Away As Part of The Booty*, AFR. NEWS SERVICE, Jan. 21, 2000, available at 2000 WL 4130346 ("Whether or not slavery exists in Sudan is a thorny issue that continues to generate much debate the world over . . . [E]lderly women, recounted harrowing experiences about their capture, life in bondage, and how they eventually secured their freedom. [T]he Human Rights Watch talked of the government's complicity in the slave raids (in Sudan) and in the 'trade in human cargo.'").

¹⁵¹Hughes, *supra* note 5, at 632.

¹⁵²*Id.*

¹⁵³*Id.*

¹⁵⁴*Id.* at 630.

¹⁵⁵*Id.*

¹⁵⁶Berta Esperanza Hernández-Truyol, *Human Rights Through a Gendered Lens: Emergence, Evolution, Revolution*, in 1 WOMEN AND INTERNATIONAL HUMAN RIGHTS, *supra* note 7, at 3, 37 ("Respect for culture does not require embracing traditions that marginalize and victimize

to learn a trade, or to seek remunerative work which could help them out of their pattern of survival by dependency on men.¹⁵⁷ In some cultures like China where male babies are favored, female babies are frequently forcibly aborted. To a woman growing up in this environment, her only source of survival is dependency on men, and the trafficker is just another one of the men the uneducated and deprived woman has been forced to depend upon all her life for survival. Thus, sex trafficking is a natural extension of the desperate lifestyle that many women in some cultures are forced to lead because their governments will not enact or enforce human rights laws to protect them.

Another major cause of the increase in sex trafficking is the rapid growth of international organized crime syndicates that prey upon vulnerable victims and their families. Underground networks of international organized crime are lured to the business of sex trafficking by high profits, weak laws, and lenient penalties for perpetrators.¹⁵⁸

To a large extent, the increase in trafficking in women in the developing countries is due to growing economic disparities on the national and international levels. "Penniless women in foreign countries [and foreign cultures] are at the mercy of those who arrange and profit from the [sex trafficking] trade."¹⁵⁹ "The overwhelming majority of the world's poor, about 70 percent, are women."¹⁶⁰ Some would like to believe that globalization is the root cause of this economic disparity¹⁶¹ and, therefore, the cause of the increase in sex trafficking. On the

women.").

¹⁵⁷*Foreign Operations, Export Financing and Related Programs Appropriations for 1995: Hearing Before the Subcomm. on Foreign Operations, Export Financing and Related Programs of the House Comm. on Appropriations*, 103d Cong. 225 (1994) (testimony of Dorothy Q. Thomas, Director of the Women's Rights Project, Human Rights Watch) [hereinafter, Dorothy Q. Thomas Statement].

¹⁵⁸*The Sex Trade Hearing*, *supra* note 1, at 4 (statement of Anita Botti).

¹⁵⁹Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 630 (1991).

¹⁶⁰Barbara Stark, *The International Covenant on Economic, Social and Cultural Rights as a Resource for Women*, in 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS, *supra* note 7, at 209, 217.

¹⁶¹See Barbara Stark, *Women and Globalization: The Failure and Postmodern Possibilities of International Law*, 33 VAND. J. TRANSNAT'L L. 503, 507 (2000). In a very interesting and creative analysis, Professor Stark contends that the impact of globalization on women is complex and often contradictory. Some reputable studies by economists assert that "women have generally benefited from improvements in the world economy," while other experts describe "the overall negative effects of globalization on women." *Id.*; see also Stacey H. Leong, *Women in China: Free Market Reforms Decrease Gender Equality*, 2 U.C. DAVIS J. INT'L L. & POL'Y 137, 140 (1996) ("Market socialism [in China] placed women in a position of economic inferiority."); Kathleen Peratis et al., *Markets and Women's International Human Rights*, 25 BROOKLYN J. INT'L L. 141, 143 (1999) ("[W]omen's rights activists are recognizing that globalization—market and trade liberalization—is . . . reinforcing the violation of women's human rights . . .").

contrary, globalization facilitates economic expansion, political alliances, and social linkages that can help poor women.

Sex trafficking has increased in part because law enforcement has preferred to look the other way. This indifference to the harm of sex trafficking, a crime which "has been described as the most denigrating, dehumanizing of all crimes that can possibly be imagined,"¹⁶² is partially due to the misguided belief by the ignorant few that women are fundamentally immoral, "complicit in the trafficking process,"¹⁶³ and actually enjoy being enslaved. Another reason why law enforcement looks the other way is that police and immigration officials are too quick to classify the trafficked woman as an illegal alien.¹⁶⁴ They fail to recognize that victims of sex trafficking are a special category of undocumented worker. Moreover, most immigration officers and police officials simply do not identify forced prostitution and trafficking as a contemporary form of slavery.¹⁶⁵ These are errors of omission on the part of law enforcement officials. But the worst form of offense is the error of commission. In this regard it has been reported that officials both here and abroad are often complicit in the sex trafficking activity by supporting and even frequenting the brothels,¹⁶⁶ protecting the international crime networks, and refusing to arrest the traffickers or brothel owners.¹⁶⁷ Corruption and complicity are causal factors that have led to the burgeoning of a multi-billion dollar international trade in women and girls for sexual exploitation.¹⁶⁸

Sex trafficking thrives because people are unwilling to identify this crime with slavery, which is almost universally prohibited. Forced prostitution is slavery, and slavery is the very foundation of the profitable sex trade industry. Despite the universal condemnation of slavery, the sex trafficking business remains invisible to law enforcement officials who often dismiss this crime as a

¹⁶²Shannon, *supra* note 25, at 120 (quoting U.S. DEP'T OF LABOR, BUREAU OF INT'L LABOR AFFAIRS, FORCED LABOR: THE PROSTITUTION OF CHILDREN 1 (1996)).

¹⁶³Hughes, *supra* note 5, at 638; *see also* CATHARINE MACKINNON, ONLY WORDS 60 (1993) ("Sexual Abuse is further unequal in that the victim is expected to enjoy it . . . this does not mean that the victims want the abuse.").

¹⁶⁴CIA REPORT, *supra* note 4, at 31.

¹⁶⁵*Id.*

¹⁶⁶Dorothy Q. Thomas Statement, *supra* note 157, at 225.

¹⁶⁷CIA REPORT, *supra* note 4, at 39.

¹⁶⁸Hughes, *supra* note 5, at 635.

random, unfortunate, cultural practice¹⁶⁹ rather than an international human rights violation.¹⁷⁰

1. Role of International Crime Organizations in Trafficking

International crime organizations¹⁷¹ are allegedly running the sex trafficking industry through powerful networks that trade and traffic impoverished women by the use of force, fraud, and coercion for commercial gain.¹⁷² Some of the more familiar crime groups are the Italian Camorra, the Chinese Triads, the Russian Mafiya, and the Japanese Yakusa.¹⁷³ "The Russian Mafiya . . . has trafficked women into the sex industry in the United States, particularly in New York, New Jersey, and California."¹⁷⁴ However, "[international criminal organizations are much more heavily involved in trafficking in women and children overseas than they are in the United States."¹⁷⁵ Generally, both here and abroad, the "international trafficking trade appears to be highly organized, involving sophisticated international networks of procurers, document forgers and providers, escorts, organizers, financiers, corrupt officials, and brothel operators."¹⁷⁶

Profits earned from sex trafficking are often applied to the illegal narcotics industry that is also protected by international crime organizations.¹⁷⁷ Thus, there is a direct link between sex trafficking and drugs. The trafficking industry is complex and closely intertwined with other related criminal activities, such as extortion, racketeering, money laundering, bribery of public officials, drug use, gambling, smuggling, loan sharking, conspiracy, document forgery, visa, mail,

¹⁶⁹Cerna & Wallace, *supra* note 26, at 623, 627 ("This notion of cultural relativity is in direct conflict with the idea of an international system of human rights."); see also Isabelle Talleyrand, *Military Prostitution: How the Authorities Worldwide Aid and Abet International Trafficking in Women*, 27 SYRACUSE J. INT'L L. & COM. 151, 158 (2000) (discussing failure of legal systems to deal with forced prostitution in military); Deborah L. Rhode, *Fox Ignored Real Sex Trade*, NAT'L L. J., Mar. 13, 2000, at A23 (discussing failure of legal system to protect victims of sex trade).

¹⁷⁰Dorothy Q. Thomas Statement, *supra* note 157, at 221.

¹⁷¹See CIA REPORT, *supra* note 4, at vii. ("An organized criminal group is a structured group of three or more persons existing for a period of time and having the aim of committing a serious crime in order to, directly or indirectly, obtain a financial or other material benefit.")

¹⁷²For example, in China, the Sun Yee On, the 14K, the Big Circle Boys, and Wo On Lok Triads have been linked repeatedly to smuggling illegal immigrants and to prostitution rackets. *Id.* at 56. "Japanese organized crime or the Yakusa are involved in trafficking in women and the adult entertainment industry." *Id.*

¹⁷³JANICE G. RAYMOND, GUIDE TO THE NEW U.N. TRAFFICKING PROTOCOL 2 (2001), available at http://www.catwinternational.org/un_protocol.pdf.

¹⁷⁴*Id.*

¹⁷⁵CIA REPORT, *supra* note 4, at 55.

¹⁷⁶*Id.*

¹⁷⁷*Id.* at 1.

and wire fraud¹⁷⁸ and even murder.¹⁷⁹ Other industries related to trafficking include mail order bride companies, maid schemes, domestic servant schemes, and illicit foreign adoptions.¹⁸⁰ These businesses are sometimes the fronts for an underground network of organized crime involving the sex trade industry. The involvement of international organized crime networks in the sex trafficking industry is extensive because the sex work industry is lucrative. Profits from sex trafficking rank third behind drugs and arms.¹⁸¹

International organized crime networks operate in Asia, Russia, Eastern and Western Europe, Latin America and Africa. "[A]t least seven 'families' in Bangkok, Thailand recruit[,]. . . sell, and smuggle Asian women throughout the world, including the U.S., to serve as prostitutes."¹⁸²

Russian organized crime has traditionally been involved in prostitution and has now grown to include trafficking. "Russian organized crime provides 'the roof,' or cover for trafficking operations, while lower-level Russian criminals manage recruitment and logistics. Russian criminals often operate behind the [disguise] of employment, travel, modeling, and/or matchmaking agencies"¹⁸³ which are often listed on the Internet in order to reach a global market.¹⁸⁴

Ukrainian criminal syndicates are heavily involved in trafficking of women.¹⁸⁵ "They bribe Ukrainian immigration officials to look the other way or . . . facilitate the illegal entry or exit of undocumented or improperly documented women."¹⁸⁶ Ukrainian crime groups control the prostitution markets in Hungary and Austria, and force girls into prostitution in Turkey.¹⁸⁷ "Georgian trafficking rings with strong ties to Russian organized crime also traffic women through employment agencies used as fronts."¹⁸⁸

Poland is not only a source country but a transit country for women trafficked from other countries such as Bulgaria, Romania and the Newly

¹⁷⁸*Id.*

¹⁷⁹*Id.* at 55–60.

¹⁸⁰*Id.* at 27–29.

¹⁸¹*Country Reports on Human Rights Practices for 1999: Hearing Before the Subcomm. on International Operations and Human Rights of the House Comm. on International Relations, 106th Cong. 8 (2000) (statement of Hon. Harold Hongju Koh, Assistant Secretary, Bureau of Democracy, Human Rights and Labor, U.S. Department of State) [hereinafter Koh House Statement]; see also Daniszewski, supra note 99, at A3 ("World involvement in the sex industry is even bigger than the drug industry.").*

¹⁸²CIA REPORT, *supra* note 4, at 57.

¹⁸³*Id.*

¹⁸⁴*The Sex Trade Hearing, supra* note 1, at 20; Daniszewski, *supra* note 99, ("Such ads appear daily on the Internet.").

¹⁸⁵CIA REPORT, *supra* note 4, at 59.

¹⁸⁶*Id.* at 57.

¹⁸⁷*Id.* at 59.

¹⁸⁸*Id.*

Independent States.¹⁸⁹ Polish criminal networks recruit, transport and deliver women from these countries into the hands of organized prostitution rings in destination countries.¹⁹⁰ "Trafficking is also an efficiently cruel enterprise in Poland, ... [and] traffickers sink profits from their prostitution rings into illegal narcotics, weapons, or stolen cars."¹⁹¹

Criminal groups in Albania are rapidly expanding their organized drug networks to include prostitution rings that operate in northern Italy.¹⁹² Susannah was probably trafficked by one of these Albanian criminals and transported to Italy. Albanian criminals "tak[e] advantage of broken-up families and confusion in the refugee camps in neighboring countries to target and traffic Kosovo minors for adoption or the sex industry."¹⁹³ These girls end up "in prostitution and child exploitation rings in northern Italy, especially Turin and Milan."¹⁹⁴ There is "evidence of torture and terror by the Albanian criminals in order to keep these girls in line,"¹⁹⁵ and some uncooperative girls have been reportedly tortured by burning or tattooing the crime group's symbols on their body.¹⁹⁶ Some less lucky girls have been killed by Albanian crime organizations.¹⁹⁷ Albanian criminal organizations recruit directly in Belgian refugee centers and take control of prostitution networks in Belgium particularly in Antwerp and Brussels.¹⁹⁸

Prosecutors in Italy believe that Nigerian organized crime rings are trafficking women to and within Italy for the sex industry.¹⁹⁹ "A Nigerian slave trade operates in Genoa, Italy."²⁰⁰ "The women and girls are reportedly kept in submission by threats, voodoo, and magic."²⁰¹

The composition of the international crime organizations varies from country to country. In the United States, the sex trafficking perpetrators tend to be "smaller crime groups, smuggling rings, gangs, loosely linked criminal networks, and corrupt individuals who . . . victimize their own nationals."²⁰² In contrast, European and Asian trafficking involves large, hierarchical structures of the criminal group.²⁰³ "Asian and Russian organized crime groups are clearly present

¹⁸⁹ *Id.* at 60.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 61.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.* at vii.

²⁰³ *Id.*

in the [United States], and they are involved in alien smuggling and/or prostitution among other illicit activities."²⁰⁴ It is predicted that "the large criminal syndicates involved in trafficking in women will become more immersed in trafficking to the [United States] given the industry's extensive profits."²⁰⁵

J. Profits from the Industry of Sex Trafficking

The trafficking of women for the purpose of sexual exploitation is a lucrative form of modern-day slavery.²⁰⁶ Trafficking in women provides cheap and reusable labor for a huge international industry as economically beneficial as drug trafficking and weapons.²⁰⁷ For example, of the thousands of Thai women who are trafficked each year into Japan,²⁰⁸ most of them are employed in Japan's booming "sex entertainment industry" which is worth four trillion to ten trillion yen a year.²⁰⁹ Trafficking of women supports the Japanese economy, as it does in many other countries, and accounts for the government's turning a blind eye to this heinous crime against women.

Sex trafficking is a growth industry that is developing rapidly around the world because of the globalization of business, the growth of tourism, and the increasing number of wealthy tourists and businessmen seeking sexual services when traveling abroad. There is an increasing demand in Western countries for mail-order brides, and this demand is developing into a big industry.²¹⁰ Tourist agencies, hotels, transportation services, police, immigration and government officials all benefit directly or indirectly from sex trafficking and contribute to the sex trade industry. In Thailand, government officials actually condone sex trafficking and view violence in the form of forced prostitution as a necessary form of regional development and an important source of foreign currency.²¹¹ For these countries sex trafficking is a necessary form of economic advancement that is tolerated.

Why would a nation tolerate slavery when slavery has been supposedly universally condemned? The answer is found in economic benefit. Fact-finding

²⁰⁴ *Id.* at vii–viii.

²⁰⁵ *Id.* at viii.

²⁰⁶ See *The Sex Trade Hearing*, *supra* note 1, at 1 (statement of Rep. Christopher H. Smith).

²⁰⁷ Koh House Statement, *supra* note 181, at 8.

²⁰⁸ *Japan Ignores Trafficking Abuses*, NATION, Sept. 21, 2000, available at 2000 WL 24247190.

²⁰⁹ *Abused Thai Women "Trafficked" to Japan Need Help: Report*, JAPAN WKLY. MONITOR, Sept. 25, 2000, available at 2000 WL 23404353.

²¹⁰ CIA REPORT, *supra* note 4, at 27.

²¹¹ Aihwa Ong, *Industrialization and Prostitution in Southeast Asia*, in JOYCE YU, FEMALE SEXUAL SLAVERY AND ECONOMIC EXPLOITATION: MAKING LOCAL AND GLOBAL CONNECTIONS 11, 18 (1985).

missions established pursuant to the 1921 International Convention for the Suppression of the Traffic in Women and Children²¹² concluded that "profit... is at the root of the whole business" of sex trafficking.²¹³ A recent CIA Report also "concluded that human trafficking has become the fastest-growing source of profits for organized criminal enterprises around the world,"²¹⁴ and it is estimated to have become a \$7 billion a year business.²¹⁵ On March 7, 2000, the Honorable Harold Hongju Koh, Assistant Secretary of State for Democracy, Human Rights and Labor, reported to the House of Representatives International Relations Committee on International Economic Policy and Trade that "the trafficking industry is one of the fastest growing and most lucrative criminal enterprises in the world[,] generating billions of dollars annually and feeding into criminal syndicates' involvement in other illicit and violent activities."²¹⁶ Koh said that trafficking in persons is considered the third largest source of profits for organized crime.²¹⁷

Because the risk is low and the profits are high, the sex trafficking industry is slowly overtaking drug trafficking as the industry of choice for international organized crime groups.²¹⁸ According to Michael Platzer of the United Nations Center for International Crime Prevention, "[T]here's a lot of talk about drugs, but it's the white slave trade that earns the biggest money for criminal groups in Eastern Europe."²¹⁹ Sex traffickers make "anywhere from one to eight million dollars on the sale of human beings in a period ranging from one to six years."²²⁰ Buying women who are trafficked is a limited investment; but the sale of their services continues to generate profits long after the initial outlays have been covered. In the drug trafficking industry, the high priced and highly sought after narcotics product can be sold only once, but when you commodify a human being

²¹²International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921, 9 L.N.T.S. 415 [hereinafter 1921 Convention], amended by Protocol to Amend the Convention for the Suppression of the Traffic in Women and Children and the Convention for the Suppression of the Traffic in Women of Full Age, Nov. 12, 1947, 53 U.N.T.S. 13.

²¹³CIA REPORT, *supra* note 4, at 19.

²¹⁴*Id.*

²¹⁵Jim Lobe, *Congress Passes Sweeping Labor Anti-Trafficking Law*, INTERPRESS SERVICE, Oct. 13, 2000.

²¹⁶Koh House Statement, *supra* note 181, at 8.

²¹⁷*Id.*

²¹⁸Hughes, *supra* note 5, at 625.

²¹⁹*Id.* at 640 (citing Roland-Pierre Paringaux, *Prostitution Takes a Turn for the West*, LE MONDE, May 24, 1998); Roland-Pierre Paringaux, *Le Miroir Aux Ukrainiennes*, LE MONDE, Apr. 27, 1998, at 11.

²²⁰CIA REPORT, *supra* note 4, at 19.

she can be sold over and over again; thus, the potential profits in the sex trade industry are high and the risk for the perpetrators is low.²²¹

The purchase and sale of women is an attractive business because, according to the mentality of traffickers, women are "expendable, reusable, and resalable commodities."²²² In some cases, "the women can be sold to other brothel owners, providing yet another accretion of profit."²²³ "Indeed, there are perhaps few other criminal activities in which the profit to cost ratio is so high."²²⁴ The business becomes more attractive when you factor in government corruption and official cooperation. The sex traffickers are protected by the international crime networks, facilitated by corrupt officials and their general indifference, and enabled by the legal system and its policy and practice of lenient penalties for trafficking.²²⁵

How are the profits actually made? Traffickers charge poor people inflated prices for securing phony jobs, travel documents, transportation, lodging, meals, and incidentals.²²⁶ To increase the profits, the traffickers lower their overhead costs by forcing the women to be kept in poor, crowded conditions. Like Susannah, who was forced to pay \$40,000 for a visa, passport, and transportation to a country she had no desire to be sent to, trafficked women must pay exorbitant and unexpected fees to their traffickers to obtain a passport and visa which they need to exit the source country. They pay additional fees to buy back their passport which the trafficker usually confiscates upon arrival of the victim in the destination country.²²⁷ For example, the fee to buy back a stolen passport is \$900 for women from the Newly Independent States and Central Europe, and some Latvian women have been known to pay as much as \$4,000 in cash.²²⁸ Susannah would probably have to pay close to \$4,000 to get her passport returned. Women are also charged excessive prices to obtain other necessary identification papers such as identification cards, driver's licenses, and driving permits. An ID card costs \$700, a driver's license \$900, and an ID card with a driver's permit typically costs the victim \$1,000. Victims also pay for their living quarters in the brothel they have been forced to reside in against their will.²²⁹

²²¹*The Sex Trade Hearing*, *supra* note 1, at 22 (statement of Dr. Laura J. Lederer) (noting that of 155 prosecuted cases of forced prostitution in the Netherlands in one year (where prostitution is legal), "only four resulted in convictions").

²²²CIA REPORT, *supra* note 4, at 1.

²²³Phil Williams, *Trafficking in Women and Children: A Market Perspective*, in *ILLEGAL IMMIGRATION AND COMMERCIAL SEX: THE NEW SLAVE TRADE* 145, 153 (Phil Williams ed., 1999).

²²⁴*Id.*

²²⁵Hughes, *supra* note 5, at 640-41.

²²⁶*Id.* at 639.

²²⁷CIA REPORT, *supra* note 4, at 15, 19.

²²⁸*Id.* at 19.

²²⁹*Id.*

There is a great disparity between the cost to the smuggler and the fee charged to the victim. For example, the average Thai smuggler who successfully facilitates the entry of a woman into the United States is paid between \$13,000 to \$15,000. This fee covers the cost of the woman's passport (worth \$1,500 to \$3,000), her airline ticket, and "additional fees which must be paid to the 'jockey' who assists in bringing the woman into the United States."²³⁰ The Thai recruitment agents receive a commission of \$800 to \$1,400 per woman recruited.²³¹ The "jockey" is paid \$1,000 for every woman or girl he successfully admits to the United States.²³² The smuggler makes about \$7,500 to \$9,000 per woman.²³³ But the smuggler's money goes into the pockets of the international crime organization bosses by wiring it back through companies to a Thai bank account.²³⁴ Thus, most of the money made from illegal operations like trafficking in women is sent back to the crime bosses who reap the enormous profits. The "dirty money" is laundered into clean money and used, perhaps, to buy legitimate businesses and properties.

In one specific case a Thai trafficker who enslaved Thai women in a New York brothel made \$1.5 million over roughly a year and three months,²³⁵ and the women were made to pay debts ranging from \$30,000 to \$50,000.²³⁶ These illustrative examples indicate that the profits made in the sex industry trade can be staggering.

The economic advantage of the sex trade industry is one of the many reasons why this evil practice has continued for so long, despite an abundance of international conventions enacted to eradicate trafficking. Feminist scholars claim persuasively that "a real commitment to the prevention of sexual trafficking in women is unlikely to be made unless [this commitment] does not adversely affect other economic interests."²³⁷ The economic advantage of sexual exploitation

²³⁰*Id.*

²³¹*Id.*

²³²*Id.*

²³³*Id.*

²³⁴*Id.*

²³⁵*Id.*

²³⁶*Id.*

²³⁷Charlesworth et al., *supra* note 159, at 630; see also Andrea Marie Bertone, *Sexual Trafficking in Women: International Political Economy and the Politics of Sex*, 18 GENDER ISSUES 4 (2000) (discussing economic effects of trafficking in women); Elizabeth Spahn, *Shattered Jade, Broken Shoe: Foreign Economic Development and the Sexual Exploitation of Women in China*, 50 ME. L. REV. 255 (1998) (discussing absence of a pension system in China as inducement to enter prostitution); Shelley Wright, *Women and the Global Economic Order: A Feminist Perspective*, 10 AM. U. J. INT'L L. & POL'Y 861 (1995).

seems, sadly, to outweigh the moral and legal commitment to the equality of the sexes and to the protection of women's human rights.²³⁸

K. Global Consequences of Sex Trafficking

The corruption commonly associated with the trafficking industry in many countries undermines law enforcement and the rule of law globally. Trafficking could not exist without the complicity of corrupt officials who take bribes and complacently look away as illegal aliens or victims of sex trafficking slip into countries that fail to protect them.²³⁹

Trafficking in the sex industry has serious societal consequences because it contributes to the spread of HIV and AIDS.²⁴⁰ One case uncovered by the I.N.S. involved at least one trafficker who specifically purchased HIV-positive females to work in brothels as forced prostitutes "because he found them to be cheap labor and since he believed they had nothing to live for."²⁴¹

The globalization of sex trafficking has serious policy implications. One country's isolated efforts to combat trafficking will be futile without a larger coordinated international effort. "[C]ountries of origin, transit, and destination must work together collaboratively" to fight this transnational crime.²⁴²

The increase of sex trafficking worldwide implies the serious loss of women's human rights and the continuing marginalization of women's roles in society. The increase in sex trafficking will have devastating effects on the very nature of relationships between men and women in society. The proliferation of this crime and its justification in the name of economic benefit reaches to the core of human injustice and must be eradicated.

²³⁸DeFeis, *supra* note 132, at 319 ("Although discussion of the protection of women's human rights has moved to the forefront of the agendas of international and human rights organizations, translating that discussion into meaningful protection remains one of the challenges of the twenty-first century.").

²³⁹Hughes, *supra* note 5, at 641.

²⁴⁰CIA REPORT, *supra* note 4, at 1.

²⁴¹*Id.*

²⁴²*Id.* at 2.

III. PAST LEGAL SOLUTIONS TO THE PROBLEM OF SEX TRAFFICKING

A. *International Laws Prohibiting Sex Trafficking*I. *International Human Rights Laws*

Trafficking is a pernicious evil adversely affecting women's human rights all over the world. Numerous international conventions,²⁴³ enacted from 1904 to the present, have attempted without much success to eradicate or reduce the crime of sex trafficking. Unfortunately, there are "virtually no international laws with enforcement capability"²⁴⁴ to adequately prevent and prohibit sex trafficking. International laws define "trafficking as requiring both coercive recruitment and forced prostitution."²⁴⁵ By requiring both prongs to be met in the test for trafficking, "women subjected] to one but not the other practice, as well as those subjected to non-sexual forced labor/slavery-like practices, remain ineligible for protection under international antitrafficking laws."²⁴⁶ This statement applies to anti-trafficking laws passed prior to the UN Protocol to Prevent Trafficking (2000) which removes "consent" conditionally from the definitional requirement

²⁴³See *supra* note 10 for a related list of International Human Rights Agreements. A list of international trafficking agreements include the following: International Convention for the Suppression of Traffic in Women and Children, Sept. 30, 1921, 9 L.N.T.S. 416; International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431; International Convention to Suppress the Slave Trade and Slavery, Sept. 24, 1926, 46 Stat. 2183; Convention Concerning Forced or Compulsory Labor, *Adopted by General Conference of International Labor Organization*, 14th Sess. (June 28, 1930); Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institution and Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3201, 266 U.N.T.S. 3; U.N. CHARTER, June 26, 1945, 59 Stat. 1031, T.S. No. 933, 3 Bevans 1153 (as amended); *Universal Declaration of Human Rights*, G.A. Res. 217 (III). A, U.N. Doc. A/810, at 71 (1948); *Convention for Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, opened for signature*, Mar. 21, 1950, 96 U.N.T.S. 271; *International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966); *Convention on the Elimination of All Forms of Discrimination Against Women*, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) [hereinafter CEDAW]; *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984); G.A. Res. 39/46, Annex, A/39/51; *Convention on the Rights of the Child*, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 166, at 166, U.N. Doc. A/44/49 (1989); *Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*, G.A. Res. 25 U.N. GAOR, 55th Sess. U.N. Doc. A/RES/55/25 (2000).

²⁴⁴*The Sex Trade Hearing*, *supra* note 1, at 23 (statement of Dr. Laura J. Lederer).

²⁴⁵Janie Chuang, *Redirecting the Debate Over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 66 (1998).

²⁴⁶*Id.*

for sex trafficking and which defines trafficking as coercive recruitment achieved by abduction, fraud, deception, abuse of power or vulnerability or giving or receiving payments of benefits to achieve the consent of the victim.²⁴⁷

"The international community has repeatedly condemned slavery and involuntary servitude, violence against women, and other elements of human trafficking."²⁴⁸ These condemnations are in the form of declarations, treaties, and United Nations resolutions and reports. These include:

1. the Universal Declaration of Human Rights of 1948;
2. the 1956 Supplementary Convention on the Abolition of Slavery; the Slave Trade, and Institutions and Practices Similar to Slavery;
3. the 1948 American Declaration on the Rights and Duties of Man;
4. the 1957 Abolition of Forced Labor Convention;
5. the 1966 International Covenant on Civil and Political Rights;
6. the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
7. United Nations General Assembly Resolutions 50/167, 51/66, and 52/98;
8. the Final Report of the World Congress Against Sexual Exploitation of Children (Stockholm, 1996);
9. the Fourth World Conference on Women (Beijing, 1995);
10. the 1991 Moscow Document of the Organization for Security and Cooperation in Europe;²⁴⁹
11. and the 2000 U.N. Protocol to Prevent Trafficking.²⁵⁰

The International Agreement for the Suppression of the White Slave Traffic was drafted in 1902 and enacted in 1904 to prohibit procurement of women and girls for immoral purposes abroad and to protect female victims rather than to punish the procurers.²⁵¹ Procurement is the "act or offence of procuring women for lewd purposes,"²⁵² The 1904 Agreement was ratified by twelve countries in 1904.²⁵³ However, the 1904 Agreement did not work effectively to decrease the

²⁴⁷UN Protocol to Prevent Trafficking, *supra* note 81, at Annex II, Art. 3(a).

²⁴⁸H.R. REP. NO. 106-939, § 102(23), at 6 (2000); 146 CONG. REC. H8855, § 102 (8) (2000).

²⁴⁹H.R. REP. NO. 106-939, § 102(23), at 6.

²⁵⁰RAYMOND, *supra* note 173, at 13-20.

²⁵¹International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 35 Stat. 1979 [hereinafter 1904 Agreement]. The 1904 Agreement was amended by the International Convention for the Suppression of White Slave Traffic, May 4, 1910, 2 U.S.T. 1997, 30 U.N.T.S. 23.

²⁵²*The Sex Trade Hearing*, *supra* note 1, at 59 (Protection Project Report by Dr. Laura J. Lederer).

²⁵³*Id.* at 54.

"white slave traffic" because of its limited scope.²⁵⁴ "[S]ix years later a number of the states parties to the 1904 Agreement signed the [1910] International Convention for the Suppression of the White Slave Traffic, which criminalized the procurement of women.²⁵⁵ The 1910 Convention bound its thirteen signatories to severely punish any person who hired, abducted, or enticed for immoral purposes any women under the age of twenty-one.²⁵⁶ In addition, state parties must punish those who use "violence, threats, fraud, or any compulsion on a woman over twenty-one to accomplish the same purpose, even if he or she committed the acts constituting the offense in different countries."²⁵⁷ Neither the 1904 Agreement nor the 1910 Convention covered women held in brothels because this was considered to fall under the domestic jurisdiction of each signatory.²⁵⁸ "In the United States, this led to the adoption of the 1910 Mann Act, which forbids transporting a person across state or international lines for prostitution or other immoral purposes."²⁵⁹

After World War I, the League of Nations agreed in Article XXIII of the Covenant of the League of Nations to "entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children and the traffic in opium and other dangerous drugs."²⁶⁰ "The International Convention for the Suppression of the Traffic in Women and Children . . . was concluded in 1921 under the auspices of the League [of Nations], and was ratified by a substantially larger number of states than the earlier conventions.²⁶¹ Additionally, "[t]o secure the general adhesion to the 1921 Convention, The League of Nations established an Advisory Committee on the Traffic in Women and Children to which states had to report periodically."²⁶²

²⁵⁴H. WILSON HARRIS, *HUMAN MERCHANDISE: A STUDY OF THE INTERNATIONAL TRAFFIC IN WOMEN* 38 (1928).

²⁵⁵Demleitner, *supra* note 139, at 168–69 (citing International Convention for the Suppression of the White Slave Traffic, May 4, 1910, 211 Consol. T.S. 45, 46, 1912 Gr. Brit. T.S. No. 20, at 267 [hereinafter 1910 Convention]).

²⁵⁶*Id.*

²⁵⁷*Id.* at 169.

²⁵⁸*Id.*

²⁵⁹*The Sex Trade Hearing, supra* note 1, at 54 (Protection Project Report by Dr. Laura J. Lederer).

²⁶⁰LEAGUE OF NATIONS COVENANT art. XXIII, para. 1(c).

²⁶¹1921 Convention, *supra* note 212, at 417; Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431 [hereinafter 1933 Convention]; Demleitner, *supra* note 139, at 169–70 (quoting HARRIS, *supra* note 254, at 40 ("The 1921 Convention was originally signed by 33 states, 26 of which ratified it.")).

²⁶²Demleitner, *supra* note 139, at 170 (citing HARRIS, *supra* note 254, at 27, 39).

The International Convention for the Suppression of the Traffic in Women of Full Age, which was signed in 1933, extended the scope of punishable acts.²⁶³ Previously, such acts had been criminalized only with regard to minors to women of age and declared that even consent by the women did not exempt traffickers from penalties for the preparatory acts, attempts, and the actual procurement of adult women for immoral purposes in another country.²⁶⁴

For a while the legalization of prostitution was being considered as a possible solution to the sex trafficking problem. A "Consolidated Convention" of 1937 was drafted to abolish any regulation of prostitution, repress third-party profiting from prostitution, and rehabilitate the female victims; however, due to the outbreak of World War II, the Consolidated Convention was never opened for signature.²⁶⁵

The United Nations continued the work of the League of Nations on the trafficking of women. The United Nations General Assembly enacted the Universal Declaration of Human Rights in 1948.²⁶⁶ In 1949, the United Nations responded to the continuing trade in women and children by passing the 1950 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others.²⁶⁷ The purpose of the 1950 Convention was to consolidate prior treaties, and it therefore terminated the 1904, 1910, 1921, and 1933 treaties.²⁶⁸ Fifty-three nations ratified or acceded to the 1950 Convention, and it "now reflects the philosophy of the overwhelming majority of members of the international community."²⁶⁹

Like the 1910 Convention, "the 1950 Convention sets out to punish any person who 'procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person.'"²⁷⁰ The 1950 Convention rejected the regulation of brothels because "studies asserted that only when such regulation ceases will the entire brothel system wither away."²⁷¹ Regulation of brothels marginalizes prostitutes and usually makes it virtually impossible for the women to escape, since they are viewed by others and by themselves as

²⁶³*Id.* (citing 1921 Convention, *supra* note 212, at 415; 1933 Convention, *supra* note 261, at 431).

²⁶⁴*Id.* (citing 1921 Convention, *supra* note 212; 1933 Convention, *supra* note 261, at 431).

²⁶⁵*Id.* at 172.

²⁶⁶Universal Declaration of Human Rights, *supra* note 9, at 71.

²⁶⁷Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *opened for signature* Mar. 21, 1950, 96 U.N.T.S. 271 [hereinafter 1950 Convention].

²⁶⁸*Id.* at 274.

²⁶⁹U.N. DEP'T OF INT'L ECONOMICS & SOCIAL AFFAIRS, ACTIVITIES FOR THE ADVANCEMENT OF WOMEN: EQUALITY, DEVELOPMENT AND PEACE at 17, U.N. Doc. ST/ESA/174 (1985) [hereinafter 1985 REPORT].

²⁷⁰1950 Convention, *supra* note 267, art. 28, 96 U.N.T.S. at 274.

²⁷¹Demleitner, *supra* note 139, at 173.

deviants.²⁷² Under this approach prostitution is regarded as a matter of personal choice, and the goal of the 1950 Convention is "merely to abolish the exploitation of prostitution rather than the practice in all its forms."²⁷³

In the late 1950's the United Nations commissioned a study on the trafficking of women which investigated the traffic in persons and prostitution to determine the effect of the 1950 Convention.²⁷⁴ Although the study found that the percentage of foreign prostitutes was very low in most countries,²⁷⁵ the study concluded that trafficking and forced prostitution had not entirely disappeared.²⁷⁶ The closing of brothels all over the world clearly decreased the trafficking. This study also "suggested that the domestic punishment of brothel owners should include high fines, repressive measures, the confiscation of direct profits, and the closure of the brothel, even if the brothel also carried on legitimate activities."²⁷⁷

The United Nations Conventions, such as the Convention on the Rights of the Child, which has not been adopted by the United States, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was adopted by the U.N. General Assembly in December 1979, require that women have equal rights to work, to receive pay, to receive benefits, and to have safe working conditions. These conventions also prohibit the sexual exploitation of children and the discrimination against women in political activities.²⁷⁸ So far 165 nations have ratified CEDAW, but the United States has not.²⁷⁹ Nevertheless, these two conventions play an important role in setting international norms for the elimination of sex trafficking.

The United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families²⁸⁰ is an international instrument that provides rights to victims of international trafficking, but these

²⁷²*Id.*

²⁷³*Id.*

²⁷⁴U.N. DEP'T OF INT'L ECONOMICS & SOCIAL AFFAIRS, STUDY ON TRAFFIC IN PERSONS AND PROSTITUTION at 5, U.N. DOC. ST/SOA/SD/8, U.N. Sales No. 59.IV.5 (1959) [hereinafter STUDY ON TRAFFIC IN PERSONS AND PROSTITUTION].

²⁷⁵Demleitner, *supra* note 139, at 174-75.

²⁷⁶*Id.* at 175.

²⁷⁷*Id.* at 176 (citing STUDY ON TRAFFIC IN PERSONS AND PROSTITUTION, *supra* note 274, at 29).

²⁷⁸*Convention on the Rights of the Child*, *supra* note 243, at 166, 171; G.A. Res. 44/25, U.N. GAOR, at 166, 171; CEDAW, *supra* note 243, at 195-96.

²⁷⁹Malvina Halberstam, *U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women*, in 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS, *supra* note 7, at 142; see also Pauline Jelinek, *Treaty on Women Has Tough Fight in House*, SAN DIEGO UNION TRIB., May 4, 2000, at A15 (quoting Senator Jesse Helms' harsh criticism of the treaty: "This treaty is not about opportunities for women—it's about denigrating motherhood and undermining the family").

²⁸⁰*International Convention on the Protection of the Rights of All Migrant Workers and Their Families*, G.A. Res. 45/158, U.N. GAOR, 45th Sess., Supp. No. 49A, at 261, U.N. Doc. A/45/49 (1991) [hereinafter *Migrant Workers Convention*].

rights are provided under the category of rights accorded to foreign nationals.²⁸¹ The Migrant Workers Convention received only seven signatories and has not yet entered into force.

The U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children²⁸² is an international agreement adopted in 2001 that addresses the crime of trafficking in persons, especially women and children, on a transnational level.²⁸³ Its purpose is to accomplish what national legislation cannot do on its own, while intending to encourage the enactment of national laws and to harmonize existing regional legislation.²⁸⁴

Therefore, despite a profusion of international human rights laws and conventions that prohibit sex trafficking, the proliferation of this heinous crime continues because of the failure by signatories to enact and enforce national laws and their corresponding international conventions.

2. *International Humanitarian Laws*

International humanitarian law²⁸⁵ indirectly covers the crime of sex trafficking but it applies only in war time, in contrast to international human rights law, which applies in peacetime.²⁸⁶ Sex trafficking is subsumed under the crimes of rape and forced prostitution. In practice, forced prostitution has often been included in the analysis of rape that typically precedes or accompanies sex trafficking or forced prostitution in time of war.²⁸⁷ The American military's Lieber Code of 1863 codifies existing legal proscriptions, and prohibits "all rape" in times of war under either the penalty of death or other severe punishment.²⁸⁸ But the Lieber Code does not separately list forced prostitution.²⁸⁹ The Lieber Code does prohibit sex trafficking indirectly when it provides in Article 23 that

²⁸¹*Id.* at 262.

²⁸²U.N. Protocol to Prevent Trafficking, *supra* note 81.

²⁸³RAYMOND, *supra* note 173, at 1.

²⁸⁴*Id.*

²⁸⁵Kelly D. Askin, *Women and International Humanitarian Law*, in 1 *WOMEN AND INTERNATIONAL HUMAN RIGHTS*, *supra* note 7, at 41 (defining international humanitarian law as body of international law that applies during war).

²⁸⁶Demleitner, *supra* note 137, at 179.

²⁸⁷*Id.* at 180 (citing *Cyprus v. Turkey*, App. Nos. 6780/74, 6950/75, 4 Eur. H.R. Rep. 482, 493 (1982) (Commission report, where allegations of rape and forced prostitution were considered together)).

²⁸⁸Demleitner, *supra* note 139, at 180 (citing Theodor Meron, *Shakespeare's Henry the Fifth and the Law of War*, 86 AM. J. INT'L L. 1, 30 (1992)); FRANCIS LIEBER, INSTRUCTIONS FOR THE GOVERNMENT OF ARMIES OF THE UNITED STATES IN THE FIELD, art. 44 (1863), reprinted in *THE LAWS OF ARMED CONFLICTS: A COLLECTION OF CONVENTIONS, RESOLUTIONS AND OTHER DOCUMENTS 3-23* (Dietrich Schindler & Jiri Toman eds., 1988) [hereinafter LIEBER CODE].

²⁸⁹Demleitner, *supra* note 139, at 180.

"[private] citizens are no longer [to be] . . . enslaved, or carried off to distant parts."²⁹⁰

The Hague Regulations, annexed to the Hague Convention of 1907, provide only partial and indirect protection against rape.²⁹¹ The 1919 Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties which was "created by the preliminary Paris Peace Conference to inquire into the responsibility of the defeated World War I powers for offenses committed during the war," includes 'rape' and the 'abduction of girls and women for the purpose of enforced prostitution' (i.e. trafficking) in its compilation of war crimes.²⁹² Thus, in 1919, and for the first time in history, trafficking leading to forced prostitution is labeled as a war crime.

During the Second World War, "the Japanese and the Germans forced thousands of women into brothels . . . Nevertheless, [trafficking and] forced prostitution" were not issues in the Nuremberg War Crimes Trials or the trials conducted in the Pacific after the war in the late 1940s.²⁹³ The Nuremberg Principles, adopted by the U.N. General Assembly, recognized rape as both a war crime and a crime against humanity, but did not separately mention trafficking or forced prostitution.²⁹⁴

Foreign women are now using the United States courts to sue for sex trafficking and forced prostitution committed in Japan during World War II.²⁹⁵ The Japanese courts have consistently rejected suits by former so-called "comfort women" who were forced to work as sex slaves to Japanese military officers during and before World War II.²⁹⁶ Recently, fifteen women from South Korea, China, Taiwan, and the Philippines filed a class-action lawsuit against the Japanese government in the United States under the Alien Tort Claims Act.²⁹⁷ Documentation clearly establishes that the Japanese military controlled and

²⁹⁰*Id.* (citing YOUNGINDRA KHUSHALANI, DIGNITY AND HONOUR OF WOMEN AS BASIC AND FUNDAMENTAL HUMAN RIGHTS 6 (1982) (quoting Article 23 of the Lieber Code)).

²⁹¹*Id.* (citing Meron, *supra* note 288, at 30).

²⁹²*Id.* (citing KHUSHALANI, *supra* note 290, at 6).

²⁹³*Id.* at 180–81.

²⁹⁴*Id.* at 182.

²⁹⁵*Ex-comfort Women Sue Japan in U.S. Over Sex Slavery*, KYODO NEWS INT'L, INC., Sept. 18, 2000 [hereinafter *Ex-comfort Women*].

²⁹⁶See Etsuro Totsuka, *Commentary on a Victory for "Comfort Women": Japan's Judicial Recognition of Military Sexual Slavery*, 8 PAC. RIM. L. & POL'Y J. 47, 61 (1999) (predicting that first decision in favor of former "comfort women" would be overturned); *Tokyo Court Rejects Suit by Former 'Comfort Woman'*, KYODO NEWS INT'L, INC., Oct. 1, 1999.

²⁹⁷*Ex-comfort Women*, *supra* note 295; see also *Abused Thai Women 'Trafficked' to Japan Need Help: Report*, KYODO NEWS INT'L, INC., Sept. 25, 2000, at 1 (citing 227-page study of the Human Rights Watch which made plea for justice owed to Thai women trafficked into debt bondage in Japan); see HUMAN RIGHTS WATCH REPORT, *supra* note 101, at 182.

regulated "houses of relaxation."²⁹⁸ Brothel owners unequivocally confirmed that these women had been forced into prostitution.²⁹⁹

No court has ever considered the Japanese "geisha" tradition as a form of forced prostitution probably because of the special duality that exists in the minds of the Japanese when they conceive of a geisha. A geisha is both an artist and a prostitute, both revered and reviled in society, and definitely the victim of forced enslavement and debt bondage. Many geishas in Japan are recruited involuntarily at the age of eleven for a life of secrecy, seclusion, and indentured servitude that is orchestrated by debt bondage. Nevertheless, the geisha is glorified in Japan and is justified as a permissible cultural phenomenon.³⁰⁰

The 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War provides that "women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault."³⁰¹ Despite this legislative protection, sex trafficking and forced prostitution in wartime still persist. Euphemisms abound concerning women's "honor"; prosecutors consistently refuse to discuss evidence out of a claimed desire to protect the victim from further shame; there is a systemic distrust of women's testimony; and the notion still persists that rape is an inevitable spoil of war.³⁰² These and other biased beliefs and practices have made the offenses covered under the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War largely invisible to law enforcement officials in the history of international law.³⁰³

The lack of effectiveness of international conventions to protect women from rape, forced prostitution, and sex trafficking during wartime became apparent in the 1971 Bangladesh conflict when Pakistani soldiers raped thousands of women.³⁰⁴ As a result of this horrific event, Protocol I to the Geneva Conventions ("Protocol I") was passed, and Article 75(2)(b) of Protocol I explicitly prohibits enforced prostitution at any time and in any place whatsoever.³⁰⁵ Article 75 of Protocol I is a fundamental rights provision that

²⁹⁸Demleitner, *supra* note 139, at 182.

²⁹⁹*Id.*

³⁰⁰*See generally* ARTHUR GOLDEN, *MEMOIRS OF A GEISHA* (1997); LESLEY DOWNER, *WOMEN OF THE PLEASURE QUARTERS* (2001); LIZA DALBY, *GEISHA* (1983) (offering fictional and autobiographical accounts of Geisha life).

³⁰¹Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 27, 6 U.S.T. 3516, 3536, 75 U.N.T.S. 287, 306 [hereinafter *Fourth Geneva Convention*].

³⁰²Demleitner, *supra* note 139, at 182.

³⁰³*Id.* at 183.

³⁰⁴*Id.*

³⁰⁵*Id.* (citing Protocol Additional to the Geneva Convention of 12 August, 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, art. 75(2)(b), 1125 U.N.T.S. 3, 37, *reprinted in* 16 I.L.M. 1391, 1423 (1977) [hereinafter *Protocol I*]).

marks an important step in international law by declaring certain acts "always and universally outlawed" and by prohibiting any derogation.³⁰⁶ Article 4(2)(e) of Protocol H to the Geneva Conventions, which applies to non-international conflicts, forbids "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault."³⁰⁷ Presumably, sex trafficking is covered in Protocol II under "enforced prostitution." Therefore, the Geneva Conventions treat forced prostitution and sex trafficking as a separate crime, even though the imposition of sanctions for violations of this crime continues to be practically non-existent.³⁰⁸

"Although rape has been categorized as a crime against humanity in past international declarations and has been prohibited in military codes as far back as 1385,³⁰⁹ it has only been recently, since the establishment of the International Criminal Tribunals for the Former Yugoslavia ("ICTY")³¹⁰ and Rwanda ("ICTR"),³¹¹ that rape has been recognized as a crime against humanity, a war crime, and a form of genocide.³¹² By extension, sex trafficking, which involves rape and enforced prostitution, should also be considered a crime against humanity, a war crime, and under certain conditions a form of genocide under the Statutes of the Yugoslavian and Rwandan War Crimes Tribunals and in the case law of these two ad hoc tribunals.³¹³ In the *Prosecutor v. Akayesu* trial, which took place in the ICTR, the court for the first time conceptualized sexual

³⁰⁶Demleitner, *supra* note 139, at 183–84 (quoting KHUSHALANI, *supra* note 290, at 55).

³⁰⁷Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, art. 4(2)(e), 1125 U.N.T.S. 609, 612, *reprinted in* 16 I.L.M. 1442, 1444 (1977) [hereinafter Protocol II].

³⁰⁸Demleitner, *supra* note 139, at 184.

³⁰⁹Military Codes of Richard II (1385) called for capital punishment of anyone convicted of rape. Rape was also prohibited by the Military Code of Henry V in 1419. See Theodor Meron, *Rape as a Crime Under International Humanitarian Law*, 87 AM. J. INT'L L. 424, 425 (1993); see also Kate Nahapetian, *Selective Justice: Prosecuting Rape in the International Criminal Tribunals for the Former Yugoslavia and Rwanda*, 14 BERKELEY WOMEN'S L.J. 126, 126 (1999) (citing Theodor Meron, *Rape as a Crime Under International Humanitarian Law*, 87 AM. J. INT'L L. 424, 425 (1993); RICHARD SHELLY HARTIGAN, *LIEBER'S CODE AND THE LAW OF WAR* 54 (1983)).

³¹⁰The International Criminal Tribunal for the former Yugoslavia was established in May, 1993. S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993), *reprinted in* 32 I.L.M. 1203 (1993).

³¹¹The International Criminal Tribunal for Rwanda was established in November, 1994. S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/RES/955 (1994), *reprinted in* 33 I.L.M. 1600 (1994).

³¹²Nahapetian, *supra* note 309, at 126; see also Beth Stephens, *Humanitarian Law and Gender Violence: An End to Centuries of Neglect?*, in *WAR CRIMES AND WAR CRIMES TRIBUNALS: PAST, PRESENT, AND FUTURE* 87 (Leon Friedman & Susan Tiefenbrun eds., 1999) (examining changing views of rape as war crime).

³¹³Susan Tiefenbrun, *The Paradox of International Adjudication: Developments in the International Criminal Tribunals for the Former Yugoslavia and Rwanda, The World Court, and the International Criminal Court*, 25 N.C. J. INT'L L. & COM. REG. 551, 586 (2000).

violence, including rape, as an act of genocide.³¹⁴ In both the Statutes of the ICTR and the ICTY, rape is an element of a crime against humanity, but rape is not included in the definition of genocide.³¹⁵ Judge Pillay of South Africa, the only female judge on the tribunal, remarked at the end of the significant *Akayesu* trial: "From time immemorial, rape has been regarded as spoils of war——We want to send out a strong signal that rape is no longer a trophy of war."³¹⁶

B. Domestic Laws Outside the United States Prohibiting Sex Trafficking

International treaties and conventions cannot enforce norms by themselves. Countries must draft and pass national penal code statutes that specifically address commercial sexual exploitation if nations want law enforcement personnel to arrest, charge, and prosecute the traffickers.³¹⁷ Sex trafficking laws in these countries take three forms: procurement statutes, procurement with coercion statutes, and "trafficking" statutes, per se.³¹⁸ Currently, more than 154 countries have some form of legislation that "targets the prosecution of traffickers by prohibiting the procurement of women and children for the purposes of prostitution or forced labor."³¹⁹ Most of these laws were drafted between 1912 and 1960 to address earlier waves of trafficking, but these laws are poorly, if ever, enforced.³²⁰ Moreover, procurement laws are often ignored and rarely invoked. That is why women and children end up in jail and traffickers are free.³²¹

Since 176 countries have some kind of legislation that can be used to prosecute trafficking, and only fifteen out of 191 countries and territories report having no such trafficking laws at all,³²² it is clear that the persistence of sex trafficking is not due to insufficient legislation. Rather, it is due to inadequate enforcement of existing international and domestic laws, poor prevention programs, and ineffective protection programs for victims.

³¹⁴*Id.*

³¹⁵See Statute of the International Tribunal for Rwanda, art. 2–3, annexed to S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/RES/955 (1994); Statute of the International Tribunal for Yugoslavia, art. 4–5, annexed to Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), U.N. SCOR, U.N. Doc. S/25704 (1993), reprinted in 32 I.L.M. 1159, 1193 (1993).

³¹⁶Tiefenbrun, *supra* note 313, at 589 (citing Bill Berkeley, *Judgement Day*, WASH. POST, Oct. 11, 1998, at W10).

³¹⁷*The Sex Trade Hearing*, *supra* note 1, at 23 (statement of Dr. Laura J. Lederer).

³¹⁸See *id.* at 58–61 (Protection Project report by Dr. Laura J. Lederer).

³¹⁹*Id.* at 58.

³²⁰*Id.*

³²¹*Id.*

³²²*Id.*

Few, if any, countries have developed workable programs to prevent trafficking.³²³ Countries should institute programs to help women recognize traps in order to protect them from being trafficked. If Susannah had been properly informed, she could have recognized that Angel was merely an agent leading her into the trap of a life of forced prostitution. Men and boys should be educated not to sexually exploit women. Government officials should be informed about how to prevent trafficking. Governments should provide economic opportunities for women that will make them less vulnerable to the deception of the traffickers.³²⁴

Few, if any, countries have laws that adequately protect victims of trafficking³²⁵ and few provide social and mental health services that will help these women recover and lead normal lives.³²⁶ As a result, women who have been forced into prostitution and slavery end up in jail awaiting deportation and are eventually sent back to their homeland sick, drug-addicted, unemployed, unemployable, and filled with shame and fear.³²⁷ To combat the crime of sex trafficking that domestic and international laws have up until now failed to eradicate, non-governmental organizations (NGOs) worldwide work to protect women's human rights. The Coalition Against Trafficking in Women International (CATW), the Movement for the Abolition of Pornography and Prostitution (MAPP), the European Women's Lobby (EWL), the Association des Femmes de l'Europe Meridionale (AFEM) are but a few NGOs that have played a key role in the deliberations and adoption of the U.N. Protocol to Prevent Trafficking in 2001 and in the adoption of the Victims Protection Act in the United States in 2000.

C. Worldwide Range of Penalties

There is a wide range of penalties for the crimes of trafficking, procurement and procurement with coercion by countries around the world. Some laws aggregate these crimes together in the same violation, naming one penalty for any of the three different crimes.³²⁸ "Some provide detailed circumstances under which the penalty may be increased. Others do not specify the penalty at all."³²⁹

For example, in Croatia, the penalty for trafficking in the slave trade ranges from one to ten years.³³⁰ In Lichtenstein's Traffic in Human Beings Law the

³²³ *Id.*

³²⁴ *Id.* at 23 (statement of Dr. Laura J. Lederer).

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Id.* at 65 (Protection Project report by Dr. Laura J. Lederer).

³²⁹ *Id.*

³³⁰ *Id.*

punishment for traffickers ranges between six months and five years in prison.³³¹ "Some countries provide for confiscation of property and/or a fine in addition to jail time. The Greek Trafficking in Prostitution Law (Article 351) penalizes the trafficker with imprisonment for not less than one year and not more than 3 years, with a fine in addition."³³²

Most of the laws in countries around the world have an enhanced penalty for aggravated circumstances such as violence or abuse of authority, or if the victim is a minor.³³³ This enhanced penalty can increase the base penalty for trafficking. In the Ukraine the base penalty is increased from three to eight years to five to ten years for aggravated circumstances.³³⁴

Most of the procurement and procurement with coercion laws provide a range of penalties that do not reflect the severity of the offense.³³⁵ For example, France punishes procurement with five years imprisonment and a fine of one million francs, and coercion increases the penalty to ten years and ten million francs.³³⁶ Prostitution is legal in France, but procurement is a crime.³³⁷ Despite the legality of prostitution in France, the French prostitute is marginalized and does not benefit from the protection of French labor laws. In contrast to France, Russia does not punish procurement at all unless there is an element of coercion and then the penalty is up to four years in prison and a fine.³³⁸ In no case does the penalty imposed on the trafficker or procurer appear to be commensurate with the severity of the crime. The punishment simply does not fit the crime.

IV. CURRENT UNITED STATES LEGAL SOLUTIONS TO THE PROBLEM OF SEX TRAFFICKING ,

A. United States Challenges to Combat Sex Trafficking

I. Treat Victims as Human Rights Cases Not as Immigration Cases

In order to prevent trafficking, protect the victims, and prosecute the traffickers, the United States must overcome some serious challenges in investigating and prosecuting cases involving the trafficking of women. The main challenge is to abolish the government's insistence on treating the trafficked

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ THE FRENCH PENAL CODE 130-31 (Edward Tomlinson trans., 1999).

³³⁸ *The Sex Trade Hearing*, *supra* note 1, at 65 (Protection Project report by Dr. Laura J. Lederer).

woman as a simple immigration case. It is necessary to redirect the focus away from the illegal status of the woman and toward the human rights violation, the crime itself, and the abuse perpetrated on the victim.

2. Provide Adequate Shelters and Social Services to Victims

Victims of sex trafficking should not be housed in jail or in detention facilities. They should be placed in appropriate safe shelters providing medical, psychological, and social services including translation. Currently the I.N.S. houses over sixty percent of its detainees in local jails throughout the country, according to a 1998 report from Human Rights Watch.³³⁹ "At present, there are no shelters and very little funds specifically designed for trafficked victims."³⁴⁰ Shelters for domestic violence victims are the only resources currently available for trafficked victims, and even these shelters are not always available to trafficked victims.³⁴¹ Translation services should be provided in shelters in order to ease the psychic burden on trafficked victims who are often disenfranchised because they do not speak English. Shelters also need adequate security to protect the victims from the organized crime rings and gangs.³⁴² The need for mental health services for sex trafficked victims is often greater than the counseling needs of other victims of domestic violence.³⁴³ Sex trafficked victims who have been confined for years may even suffer from insanity, as was reported in the famous Bowery brothel case,³⁴⁴ and these women would certainly benefit from social services and mental health professionals in the shelters.

Under the assumption that financing is provided in separate appropriations bills,³⁴⁵ the new Victims Protection Act of 2000 authorizes the Justice Department to help private groups build shelters and provide additional assistance to trafficked victims.³⁴⁶

³³⁹CIA REPORT, *supra* note 4, at 39.

³⁴⁰*Id.*

³⁴¹*Id.*

³⁴²*Id.*

³⁴³*Id.*

³⁴⁴*Id.* at 40.

³⁴⁵Appropriations were authorized in The Victims Protection Act of 2000, 22 U.S.C., § 7110 (2000).

³⁴⁶Eric Schmitt & Joel Brinkley, *House Passes Bill to Toughen Laws on Forced Labor*, N.Y. TIMES, Oct. 7, 2000, at A1.

3. *Immigration Constraints in the United States Trafficking Problem*

Immigration policies in the United States place significant restraints on the fair treatment of sex trafficking victims.³⁴⁷ I.N.S. agents claim that sex trafficked victims are in the United States illegally and must be treated in the same manner as other undocumented workers because they have broken the law.³⁴⁸ I.N.S. agents claim it is unfair to "play favorites" because there are other illegal aliens who are also exploited by unscrupulous employers.³⁴⁹ Their argument is that it is not easy to know where to draw the line in terms of who is being exploited.³⁵⁰ State Department consular officers concede that mistakes are made in the visa process because of the heavy volume of visa applicants.³⁵¹ Often the less experienced foreign service officer cannot recognize a potential trafficking victim.³⁵² At the border it is even more difficult to process people rapidly and still identify trafficking victims.³⁵³

The Board of Immigration Appeals has never granted asylum to a trafficked woman, even though it has been proposed that some women who are the victims of sex trafficking may be able to satisfy the criteria for asylee status under United States immigration law.³⁵⁴

Many victims of trafficking have illegally emigrated to the countries in which they live and work. Consequently, they risk being prosecuted or deported under domestic immigration laws.³⁵⁵ Restrictive domestic immigration laws often deter victims of trafficking from reporting the abuses they have suffered and may further victimize the women by requiring their deportation.³⁵⁶ For them, deportation to their homeland may subject them to further criminal liability under the emigration and prostitution laws of their native countries.³⁵⁷ In addition, the social stigma and shame that victims might suffer upon return to their home country could lead to their alienation and further victimization.³⁵⁸

A comprehensive approach is needed to protect victims of trafficking by offering them permanent residency status in the country to which they have been

³⁴⁷See generally Ilene Durst, *Lost in Translation: Why Due Process Demands Deference to the Refugee's Narrative*, 53 RUTGERS L. REV. 127 (2000).

³⁴⁸CIA REPORT, *supra* note 4, at 36.

³⁴⁹*Id.*

³⁵⁰*Id.*

³⁵¹*Id.*

³⁵²*Id.*

³⁵³*Id.*

³⁵⁴Young, *supra* note 4, at 98–99.

³⁵⁵Chuang, *supra* note 245, at 97.

³⁵⁶*Id.*

³⁵⁷*Id.*

³⁵⁸*Id.* at 97–98.

trafficked.³⁵⁹ However, the current generally hostile climate towards immigrants and the role that state territorial sovereignty has played in international legal and political systems create serious obstacles to providing illegal aliens and undocumented victims of trafficking adequate protections under international law.³⁶⁰

4. *Provide Adequate Visas for Permanent Residency and Right to Work*

The "S" visa, which allows sex trafficking victims to stay in the United States as temporary residents if they possess critical and reliable information that is essential to a criminal case, is used too infrequently. Non-governmental Organizations and I.N.S. officials claim that there are not enough "S" visas to go around for all the trafficking victims. There are only two hundred "S" visas permitted a year, with an additional fifty available for those immigrants who possess significant information tied to terrorist actions. The "S" visa can only be used in criminal cases.³⁶¹

Many trafficking victims remain in legal limbo as they wait to be called as a material witnesses at a trial.³⁶² During this period they face economic hardships because they are not permitted to work.³⁶³ Work authorization during this time period depends on I.N.S. discretion.³⁶⁴ If the victim has been "paroled-in" rather than given "deferred status," then the paroled-in victim has less "bad time" which would otherwise accrue to her case.³⁶⁵

To circumvent the inconvenience attached to the "S" visa, the United States Department of Justice has proposed a new visa called the "T" visa provided in The Victims Protection Act of 2000.³⁶⁶ Aliens who have suffered severe physical or mental abuse in the United States as a result of criminal activity will be eligible to obtain the "T" visa but only if they possess material information, not necessarily critical information, to the case.³⁶⁷ There will be one thousand "T" visas a year for these victims and their family members.³⁶⁸ These visas also allow sex trafficking victims to receive work authorization.³⁶⁹ The "T" visa will be valid for up to three years and can be adjusted to permanent legal status for humanitar-

³⁵⁹*Id.* at 101.

³⁶⁰*Id.*

³⁶¹CIA REPORT, *supra* note 4, at 41.

³⁶²*Id.*

³⁶³*Id.* at 41-42.

³⁶⁴*Id.* at 42.

³⁶⁵*Id.*

³⁶⁶*Id.*

³⁶⁷*Id.*

³⁶⁸*Id.*

³⁶⁹*Id.*

ian reasons, if necessary.³⁷⁰ Once the aliens become permanent residents, there would be offsets against the annual number permitted for a country.³⁷¹ Such a visa would be beneficial to law enforcement by ensuring the government material witnesses for their cases. The "T" visa would also provide a rest period for the victims during which time they can be given assistance and shelter.³⁷²

5. Increase Penalties for Perpetrators

In order to account for the seriousness of the harms inflicted upon the victims of sex trafficking, penalties should be increased at least to a level on a par with drug trafficking. Madeline Albright, former U.S. Secretary of State, has made her views clear on this point: "[T]he women who have been victimized deserve to have their voices heard. And if we apply a standard of zero tolerance to those who sell illegal drugs, we should be at least as tough in opposing those who buy and sell human beings."³⁷³

A review of the trafficking cases in the United States shows that penalties for sex traffickers are light in comparison to sentences given to drug dealers.³⁷⁴ These light penalties do not reflect the multitude of human rights abuses perpetrated against women who are sex trafficked.³⁷⁵ The statutory maximum sentence for involuntary servitude is only ten years per count in the United States.³⁷⁶ In contrast, the statutory maximum for dealing in ten grams of LSD or distributing a kilogram of heroin is a life sentence.³⁷⁷ For example, "[i]n Los Angeles, where traffickers kidnapped a Chinese woman, raped her, forced her into prostitution, posted guards to control her movements, and burned her with cigarettes, the lead defendant received four years and the other defendants received two to three years."³⁷⁸ These cases have created the general perception that punishment for trafficking in women is less severe than punishment for trafficking in illegal drugs.³⁷⁹ As a result of this perception, sex trafficking, which

³⁷⁰*Id.*

³⁷¹*Id.*

³⁷²*Id.*

³⁷³*International Trafficking in Women and Children: Hearing Before the Subcomm. on Near Eastern and South Asian Affairs, 106th Cong. 11 (2000) (statement of Frank E. Loy, Under Sec'y, Global Affairs, Dep't of State) (quoting Madeline Albright).*

³⁷⁴CIA REPORT, *supra* note 4, at 33.

³⁷⁵*Id.*

³⁷⁶*Id.*

³⁷⁷*Id.*

³⁷⁸*Id.*

³⁷⁹*Id.*

is an industry that reaps enormous profits, is becoming the crime of choice among international organized crime rings.³⁸⁰

Trafficking cases are unattractive to assistant United States attorneys because these cases require enormous amounts of paperwork and do not result in a just sentence for the perpetrator.³⁸¹ The light sentences for traffickers currently provide inadequate retribution for the horrific human and civil rights violations inflicted upon the victims.³⁸² Traffickers and brothel owners sometimes end up being prosecuted simply for the offense of hiring illegal aliens, immigration fraud, and/or violations of the Mann Act—crimes with penalties that are light compared to the more serious crimes of kidnapping, RICO violations, peonage (involuntary servitude for the purpose of repayment of a debt), money laundering, and collection of extension of credit by extortion, all of which carry harsher penalties.³⁸³

Prosecutors in the United States claim that they use all the legal tools at their disposal to convict and sentence sex traffickers, but the high standards of proof in current involuntary servitude prosecutions prevent them from inflicting harsher sentences.³⁸⁴ Some prosecutors claim that they prefer to enter plea agreements "in order to avoid having the victims testify at trial against their traffickers out of concern for the trauma that would result from public testimony and cross-examination."³⁸⁵

Since the criminal provisions of the labor statutes, which are possible alternatives to the involuntary servitude prosecutions, also carry weak penalties, it would not be effective to prosecute traffickers of women for slave labor.³⁸⁶ The Fair Labor Standards Act (FLSA)³⁸⁷ provides for no more than a six month maximum sentence for willful violations.³⁸⁸ The criminal penalties for intentional violations of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA)³⁸⁹ is a maximum one-year sentence for the first offense and a three-year sentence for a subsequent offense.³⁹⁰ Since there are no sentencing guidelines, judges often give traffickers probation.³⁹¹ It is for these reasons that prosecutors

³⁸⁰ See Lobe, *supra* note 215 (noting that "human trafficking has become the fastest-growing source of profits for organized criminal enterprises around the world").

³⁸¹ CIA REPORT, *supra* note 4, at 34.

³⁸² *Id.*

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Id.*

³⁸⁶ *Id.*

³⁸⁷ 29 U.S.C. §§ 201-219 (2000).

³⁸⁸ *Id.* § 216(a).

³⁸⁹ 29 U.S.C. §§ 1801-1872.

³⁹⁰ *Id.* § 1851.

³⁹¹ *Id.*

are reluctant to treat involuntary servitude cases as labor cases.³⁹² Congress should strengthen the current labor statutes and provide for stronger sentencing guidelines to punish those who benefit from slave labor.³⁹³

Not all prosecutors favor increased penalties for sex trafficking, because increased penalties may result in fewer pleas, more trials, additional trauma for the victims, and fewer cases being prosecuted.³⁹⁴ Many prosecutors contend that the sentencing guidelines are actually more important than the statutory maximum sentences.³⁹⁵ The sentencing guidelines apply various factors to determine the actual sentence imposed within the statutory maximum. For example, conspiracy prosecutions under 18 U.S.C. § 241 carry a potential life sentence.³⁹⁶ When multiple substantive counts are charged, as is done in federal involuntary servitude prosecutions, the statutory maximum sentence for each count can be aggregated to determine the full sentence.³⁹⁷ Thus, the defendant can be sentenced to a substantial number of years in prison.

In 1996, Congress directed the United States Sentencing Commission to revise the guidelines for involuntary servitude and alien smuggling in order to more adequately address the seriousness of the problem.³⁹⁸ Revisions raised the involuntary servitude guidelines to place them on a par with kidnapping and extortion.³⁹⁹ Enhancements in immigration cases were also provided but only in cases where aliens are injured or hurt.⁴⁰⁰

The Victims Protection Act finally provides an adequate and just sentence for the crime of sex trafficking by doubling the former ten-year minimum sentence to twenty years and by establishing a maximum life sentence in prison.

6. Provide Effective Protection for Witnesses and Their Families

Under the terms and conditions of the Victims Protection Act of 2000, the victims willing to testify against their traffickers must receive adequate witness protection in addition to receiving enhanced benefits and services provided by the state and federal government. The duty to provide protection to the victim's family back home is challenging. However, without this protection, victims will likely be unwilling to assist in prosecuting the perpetrators.

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ CIA REPORT, *supra* note 4, at 34.

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ *Id.*

³⁹⁸ *Id.* at 35.

³⁹⁹ *Id.*

⁴⁰⁰ *Id.*

In the past, the international community has been lax in its efforts to provide witness protection. For example, the International Criminal Tribunal for Crimes in the Former Yugoslavia (ICTY), which is located in the Hague, faced serious questions concerning its witness protection program.⁴⁰¹ In 1998 the ICTY did not provide protection for witnesses when they needed it most—before and after testifying—even though promises were made to extend such protection.⁴⁰² Women refugees feared reprisals if they were sent back to Bosnia after testifying. They had no guarantee of help from the tribunal in their attempts to secure permanent residency status in a safe country.⁴⁰³ Witnesses in Bosnia were simply unable to get protection.⁴⁰⁴

* There is little doubt that if Susannah decided to assist in the prosecution of her trafficker in the United States, she would not receive the kind of protection she needs to ensure her safety and the safety of her family in Bosnia. That is probably enough of a risk to dissuade Susannah from being a witness. She would probably prefer losing the possibility of permanent residency status than losing her life or her family. The Victims Protection Act should effectively address the witness and family protection issue. This is one of the many challenges facing the United States as it now seeks to enhance the sex trafficker's risk of getting caught and punished by rewarding victims with permanent residency status for assisting in the prosecution of traffickers.

Thus, some of the major challenges facing the United States in its endeavor to eradicate sex trafficking include the enforcement of human rights laws, the availability of adequate shelters and social services, relief from immigration constraints, the provision of adequate visas and work permits for victims, the enforcement of increased penalties for perpetrators, and the provisions of effective witness protection.

B. Legislative History of United States Laws on Sex Trafficking of Women

Prior U.S. law has failed to meet the challenges of combatting sex trafficking. Until the recent enactment of the Victims Protection Act, the United States did not have one comprehensive trafficking law.⁴⁰⁵ Law enforcement relied upon a number of criminal, labor, and immigration laws to address activities in trafficking schemes.⁴⁰⁶ Trafficking in women cases have traditionally been prosecuted under Title 18 sections such as the Mann Act (§ 2421), involuntary

⁴⁰¹HUMAN RIGHTS WATCH, WORLD REPORT 1999, at 441 (1998).

⁴⁰²*Id.*

⁴⁰³*Id.*

⁴⁰⁴*Id.*

⁴⁰⁵CIA REPORT, *supra* note 4, at 35.

⁴⁰⁶*Id.*

servitude and slavery (§ 1581), and extortionate collection of extension of credit (§ 894).⁴⁰⁷ Sex trafficking cases have also been prosecuted under Title 8 sections, such as recruiting, smuggling, and transporting aliens (§ 1324) or harboring for prostitution (§ 1328).^{4TM}

Using numerous statutes to convict a trafficker is cumbersome because the prosecutor is required to prove each element of each crime.⁴⁰⁹ The new trafficking statute will streamline the prosecutorial burden and allow better tracking of cases and record keeping.⁴¹⁰ It will improve Department of Justice coordination and serve as a greater deterrent to trafficking behavior.⁴¹¹ Finally, the trafficking law will provide more adequate protection and assistance for the victims and serve as a model for other countries and for state and local legislation.⁴¹²

In 1999, the United States had three bills pending at the federal level that would provide social services to victims of sexual trafficking.⁴¹³ The salient provisions of these bills were largely included in the new Victims Protection Act. The first bill (H.R. 1356) that was introduced into Congress was called the Freedom from Sexual Trafficking Act of 1999. H.R. 1356 proposed to "severely punish persons in the United States convicted of sexual trafficking, including the recruitment, harboring, transporting, purchasing and selling of the trafficking victim."⁴¹⁴ This bill sought to punish the traffickers as if they had committed a crime as serious as rape.⁴¹⁵ In addition, non-humanitarian U.S. assistance would be withheld from foreign countries that failed to meet minimum standards for the elimination of sexual trafficking.⁴¹⁶ The bill also proposed to treat the victims as victims, and not as criminals.⁴¹⁷ It would provide safe havens for the defenseless victims and "humanitarian assistance through the Department of Health and Human Services to help [the] women through counseling and appropriate medical treatment as a result of their exploitation."⁴¹⁸

H.R. 1356 was revised into H.R. 3244 and was passed by a nearly unanimous vote in the House and unanimous vote of the Senate Committees. H.R. 3244 is the predecessor of the Victims Protection Act of 2000 which was signed by

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ *The Sex Trade Hearing, supra* note 1, at 63 (Protection Project report by Dr. Laura J. Lederer).

⁴¹⁴ *Id.* at 3 (statement of Rep. Christopher H. Smith).

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

President Clinton on October 28, 2000. On October 6, 2000 the House overwhelmingly approved the bill⁴¹⁹ (one vote short of unanimous), and on October 11, 2000 the Senate unanimously approved H.R. 3244 which was proposed by Senator Paul Wellstone, and is now called the "Victims of Trafficking and Violence Protection Act of 2000" ("Victims Protection Act" or VPA). This is the national law women have been waiting for to help prevent trafficking, protect victims, and effectively prosecute traffickers.

Earlier in 1999, a second bill was introduced in the Senate (S 600) and in the House (H.R. 1238) by Senator Wellstone, Democrat of Minnesota, and Representative Louise Slaughter, Democrat of New York, called The International Trafficking of Women and Children Victims Protection Act of 1999.⁴²⁰ This legislation would create the Interagency Task Force to Monitor and Combat Trafficking within the Office of the Secretary of State.⁴²¹ This bill would appropriate twenty million dollars per fiscal year for the years 2000 and 2001 from the Department of Health and Human Services Office of Refugee Resettlement to be spent on domestic assistance to victims.⁴²² Assistance would be administered through non-governmental organizations whenever possible.⁴²³ These provisions were also incorporated into the Victims Protection Act.

A third bill was introduced in the House (H.R. 357) and called The Violence Against Women Act of 1999.⁴²⁴ It was an omnibus package designed to reauthorize and enhance the programs initiated by The Violence Against Women Act of 1994.⁴²⁵ Similar legislation was proposed in the Senate and addressed the needs of battered immigrant women.⁴²⁶ This bill would amend portions of The Immigration and Nationality Act.⁴²⁷ Provisions of both these bills were also incorporated into the Victims Protection Act.

The Victims Protection Act, which incorporates the most important provisions of each of the three bills that preceded its adoption, is—for our own country and for other countries engaging in the savage and cruel practice of sexual exploitation—a "wake up call"⁴²⁸ to end violence against women.

⁴¹⁹Schmitt & Brinkley, *supra* note 346.

⁴²⁰*The Sex Trade Hearing, supra* note 1, at 64 (Protection Project report by Dr. Laura J. Lederer).

⁴²¹*Id.*

⁴²²*Id.*

⁴²³*Id.*

⁴²⁴*Id.*

⁴²⁵*Id.*

⁴²⁶*Id.*

⁴²⁷*Id.*

⁴²⁸*The Sex Trade Hearing, supra* note 1, at 3 (statement of Rep. Christopher H. Smith).

*C. Victims Protection Act**1. Strengths of the Victims Protection Act-*

The Victims Protection Act is the most significant human rights legislation of this Congress,... [and it] challenges the largest manifestation of modern-day slavery worldwide."⁴²⁹ This new law is tough on sex traffickers and generous to victims of trafficking. Its aim is to prevent trafficking, protect the victims, and effectively prosecute the perpetrators by establishing an entirely different economic and social approach to the problem of trafficking. It punishes the traffickers, not the victim; it prevents the crime from spreading by establishing international programs to educate women about trafficking; and it rewards the victims who are willing to cooperate with the prosecution of the perpetrators by offering them a permanent residency status in the United States and the right to work during their stay in the United States.

2. Weaknesses of the Victims Protection Act

While the Victims Protection Act has the potential to do much good, there is no guarantee that it will be enforced. There is also no guarantee that the victims who agree to assist in the prosecution of the perpetrators will be adequately protected, or that their families abroad will be protected. While high-minded and laudable, the far-reaching international programs for cooperation and re-education are numerous and complex to administer. Huge amounts of money have been allocated for the implementation of these international programs, but the funding may still be inadequate for the accomplishment of the goals of these programs. One cannot be certain that money sent to foreign nations will be properly administered for its intended purpose. The administration of these many programs is not described in any detail, and it is uncertain how the programs' goals will ever be accomplished given the differences in cultures and societies involved in this internationally coordinated effort.

There is also the remote possibility that some women, eager to leave their country and gain permanent residency status in the United States, may fraudulently claim to be victims of trafficking in order to profit from the generosity of the new law. To avoid this abuse, the elements of the crime need to be clearly demonstrated before victims of trafficking can actually receive the benefits of permanent residency in the United States.

The main weakness in the law is the absence of an enforcement arm to insure that the law is carried out in the United States and abroad. Establishment

⁴²⁹Lobe, *supra* note 215 (quoting Sen. Brownback).

of an enforcement agency could be done easily in the United States, as it was done for the Civil Rights Laws in the South. However, establishing an enforcement arm in foreign countries without appearing to intrude on the sovereignty of nations may prove very difficult and, perhaps, inadvisable.

The other serious problem with the law is that it does not set up a direct economic solution to the sex trafficking problem. Prosecution of the sex trafficker and the international crime organizations should result in a more significant financial burden on both. Making a claim for tax evasion for undeclared income might be a greater disincentive to the leaders of international organized crime and their agents than the threat of twenty years in prison.

3. Provisions of the Victims Protection Act

(a) One Clearly Defined Crime

The Victims Protection Act establishes one specific law prohibiting sex trafficking. Therefore, it will no longer be necessary to sue under several statutes. The Victims Protection Act clearly defines trafficking as a crime that includes all the elements of forcible rape.⁴³⁰ Sex trafficking also "involves violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion."⁴³¹

(b) Increased Penalties

The very special feature of the Victims Protection Act, which indirectly proposes an economic solution to the crime of sex trafficking, is the establishment of a severe penalty in order to strengthen the prosecution and punishment of traffickers.⁴³² The law increases the penalties for involuntary servitude, peonage and other existing crimes from ten to twenty years and provides for life imprisonment if the violations include kidnapping, aggravated sexual abuse or an attempt to kill.⁴³³ The Victims Protection Act directs the Sentencing Commission

⁴³⁰22 U.S.C. § 7101(9) (2000).

⁴³¹*Id.* § 7101(10). Compare these definitions to **The Coalition to Abolish Slavery and Trafficking**, which defines trafficking as:

The recruitment and [or] transportation of persons by others using violence or the threat of violence, abuse of authority or dominant position, deception or other forms of coercion, for the purpose of exploiting them sexually or economically for the profit or advantage of others, such as recruiters, procurers, traffickers, intermediaries, brothel owners, and other employers, customers, or crime syndicates.

<http://www.trafficked-women.org/trafficking.html> (last visited Nov. 13, 2001).

⁴³²22 U.S.C. § 7109 (2000).

⁴³³18 U.S.C. §§ 1581, 1583, 1584.

to amend the Sentencing Guidelines applicable to sex trafficking so that they are "sufficiently stringent to deter and adequately reflect the heinous nature" of the offense.⁴³⁴ Traffickers may also be forced to make full restitution⁴³⁵ to their victims, paying them the salary they would have earned for their months or years of involuntary service. Damages for emotional distress may also be included.

(c) Shelters for Women

The Victims Protection Act enhances protection for women who are victims of violence, and allocates funds to increase financing for shelters to protect victims of domestic violence.⁴³⁶ Victims of sex trafficking violence may use these shelters for protection. As inadequate as battered women shelters may be, a shelter properly financed is much better than a prison cell where victims of sex trafficking have typically been detained pending deportation.

(d) T Visas for Permanent Residency Status

The Victims Protection Act also addresses the immigration concerns of sex trafficked women. In a separate category, victims of "severe forms of trafficking" are eligible for a special new "T" visa permitting them to stay in the country at least through the duration of their captors' prosecution and, perhaps, even permanently.⁴³⁷ Five thousand T visas,⁴³⁸ which provide permanent residency status, may be issued yearly to aliens or non-immigrants who are victims of severe abuse, who choose to remain in the United States, and who are willing to assist in the prosecution of their perpetrators.⁴³⁹ The Interagency Task Force will also provide effective assistance to victims in the United States. Victims are eligible for benefits and services "under any Federal or State program or activity funded or administered by any official or agency/*⁴⁴⁰ These victims, who are sometimes illegal aliens, are nonetheless eligible for these benefits and services to the same extent as an alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act.⁴⁴¹

⁴³⁴22 U.S.C. § 7109.

⁴³⁵18 U.S.C. § 1593.

⁴³⁶42 U.S.C. § 10419.

⁴³⁷22 U.S.C. § 7105(c)(3).

⁴³⁸8 U.S.C. § 1184(n)(2).

⁴³⁹22 U.S.C. § 7105(c)(3).

⁴⁴⁰*Id.* § 7105(b)(1)(A).

⁴⁴¹*Id.* § 7105(b)(1)(B).

(e) Enhanced Benefits for Victims of Severe Forms of Trafficking

Victims are eligible to receive expanded and enhanced benefits and services if they are "victims of severe forms of trafficking," who are defined as people held against their will "for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."⁴⁴² For example, while they are in the custody of the federal government, victims of severe forms of trafficking shall "not be detained in facilities inappropriate to their status as crime victims."⁴⁴³ This provision enables victims to be treated like victims and not criminals or illegal aliens. They shall receive necessary medical care, other assistance, and protection if the victim's safety is at risk or if there is danger of recapture by a trafficker.⁴⁴⁴ Other assistance includes taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals from traffickers as well as ensuring that the names of trafficked persons and their family members are not disclosed to the public.⁴⁴⁵ Victims of severe forms of trafficking shall have access to information about their rights and will be provided with translation services.⁴⁴⁶ These enhanced benefits are provided to sex trafficking victims without regard to their immigration status. Therefore, a victim's status as a legal or illegal alien will be irrelevant to her ability to receive ordinary and enhanced benefits.

(f) Permanent Residency Status

Under the statute, "federal law enforcement officials may permit an alien individual's continued presence in the United States, if after an assessment, it is determined that such individual is a victim of a severe form of trafficking and a potential witness to such trafficking."⁴⁴⁷ Witnesses and their families must be assured of adequate protection. Unless protection is provided to the witness in the United States and to her family abroad, the Victims Protection Act is likely to fail. This enhanced benefit of continued presence in the United States is given to the victim in order to effectuate prosecution of the traffickers. During the period the in which the alien victim is in lawful temporary resident status in the United States, she will be granted authorization to engage in employment in the United States and be provided with an employment authorized endorsement or

⁴⁴²*Id.* § 7102(8), (13).

⁴⁴³*Id.* § 7105(c)(1).

⁴⁴⁴*Id.*

⁴⁴⁵*Id.*

⁴⁴⁶*Id.* § 7105(c)(2).

⁴⁴⁷*Id.* § 7105(c)(3).

appropriate work permit.⁴⁴⁸ In order to accomplish these important goals and provide these enhanced benefits, certain sections of The Immigration and Nationality Act will be amended.⁴⁴⁹

(g) Training for Immigration Officials

The Victims Protection Act also provides for the training of government personnel to identify victims of severe forms of trafficking and to protect rather than punish those victims.⁴⁵⁰ This training of immigration officials is an essential part of the protection of trafficked women.

(h) Funds Appropriated for Program Enforcement

The Victims Protection Act also earmarks almost \$94.5 million to fund overseas projects and programs to fight human trafficking. Under the provision to reauthorize The Violence Against Women Act, the law allocates \$3.3 billion to increase financing for shelters for victims of domestic violence and for law enforcement officials who investigate domestic abuse. The law also allocates additional aid to state and local governments to pay for domestic abuse specialists in rural areas,⁴⁵¹ as well as for new financing for the provision training, education and security on college campuses.⁴⁵² It calls for continued financing for the national domestic violence hot line,⁴⁵³ which receives 13,000 calls a month.

(i) International Cooperation

Recognizing that trafficking is a serious transnational crime, the Victims Protection Act focuses on the bilateral and multilateral cooperative work that the United States must do with other nations to abolish the trafficking industry. The United States must "urge the international community to take strong action in multilateral [fora] to engage recalcitrant countries in serious and sustained efforts to eliminate trafficking and protect trafficking victims."⁴⁵⁴

The unique feature of the Victims Protection Act is its expression of American willingness to work with other nations to eradicate the global problem of sex trafficking. The law codifies the establishment of an Interagency Task

⁴⁴⁸8 U.S.C. § 1101(a)(15)(T)(i).

⁴⁴⁹See *id.* § 1101(a)(15); *id.* § 1184.

⁴⁵⁰22 U.S.C. § 7105(c)(4).

⁴⁵¹42 U.S.C. § 13971(a).

⁴⁵²20 U.S.C. § 1152.

⁴⁵³42 U.S.C. § 10416(f).

⁴⁵⁴22 U.S.C. § 7101(24).

Force⁴⁵⁵ chaired by the Secretary of State and designed to monitor and combat worldwide human trafficking.⁴⁵⁶ The Interagency Task Force seeks to establish minimum standards for the elimination of trafficking⁴⁵⁷ and to provide assistance to foreign countries to meet those minimum standards.⁴⁵⁸ This assistance includes the drafting of laws to prohibit and punish acts of trafficking; the investigation and prosecution of traffickers; the creation and maintenance of facilities, programs, projects, and activities for the protection of victims; and the expansion of exchange programs and international visitor programs for governmental and non-governmental personnel to combat trafficking.⁴⁵⁹ Funding shall be made available to carry out these laudable goals. The purpose of the international programs is to build consensus abroad about the dangers of sex trafficking and to try to change deep-seated anti-feminist values that have developed in countries plagued by poverty and inadequate education. This consensus building is a long and arduous process in the modification of reprehensible cultural and social values. It is a necessary step to achieve the main goal, which is the eradication of sex trafficking.

The Interagency Task Force provides economic and social assistance to foreign nations, to women in foreign countries, and to women in the United States. Assistance to victims in other countries is provided in order to insure their "safe integration, reintegration, or resettlement."⁴⁶⁰

The Interagency Task Force is dedicated to the prevention of trafficking and addresses the problem from a global economic perspective. It will "establish international programs that enhance economic opportunity for potential victims of trafficking."⁴⁶¹ These initiatives include the establishment of micro-credit lending programs, training in business development, skills training, job counseling, programs to promote women's participation in economic decision making; programs to keep girls in elementary and secondary schools and to educate persons who have been victims of trafficking; the development of educational curricula regarding the dangers of trafficking; the provision of grants to non-governmental organizations to accelerate and advance the political, economic, social, and educational roles and capacities of women in their countries; and a specific effort to increase public awareness and information about the dangers of trafficking.⁴⁶²

⁴⁵⁵*Id.* § 7103(a).

⁴⁵⁶*Id.* § 7103.

⁴⁵⁷*Id.* § 7106(a).

⁴⁵⁸*Id.* § 2152(d).

⁴⁵⁹*Id.*

⁴⁶⁰*Id.* § 7105(a).

⁴⁶¹*Id.* § 7104.

⁴⁶²*Id.*

The Interagency Task Force also prevents trafficking by imposing political and economic consequences on foreign nations engaging in trafficking. The Interagency Task Force is required to write annual reports on the status of other nations' efforts to curb human trafficking.⁴⁶³ The publication of these reports may have a political and social impact on the countries that suffer the humiliation of being cited as non-compliant. The United States has tried to combat other crimes like piracy of intellectual property by posting annual reports on pirates. Placing a nation on a Priority Watch List for piracy has marginally reduced the huge volume of pirated goods.⁴⁶⁴ Basically, this endeavor has not been very successful. Perhaps the posting of annual reports of the unauthorized sale of human beings will be more effective in reducing the incidence of trafficking.

The President of the United States is empowered, but not required, to impose economic sanctions against countries that are cited in the annual Interagency Task Force report for failing to meet minimum standards.⁴⁶⁵ Starting in 2003, the U.S. government will have the authority to withhold some foreign aid from countries that are not making reasonable efforts to eliminate trafficking.⁴⁶⁶ The Victims Protection Act contains cautionary language regarding vulnerable populations and the negative effects on women of imposing sanctions on whole nations,⁴⁶⁷ or withholding non-humanitarian and non-trade related assistance,⁴⁶⁸ or withholding funds for educational and cultural exchange programs.⁴⁶⁹ Sanctions are drastic solutions that are fraught with many problems directly affecting the very women who need protection. Sanctions may be effective in reducing criminal activity, but the negative side effects of this remedy may outweigh the benefits. Sanctions oppress women, children and poor people in the sanctioned country.

Why is this law better than those that have preceded it? The Victims Protection Act offers permanent residency to victims willing to testify. By imposing twenty years to life as a penalty, the new law makes sex trafficking much riskier than the traffic of illegal drugs. The permanent residency feature offered to women in exchange for their willingness to testify will greatly increase the cost of engaging in the sex slave trade industry and decrease the benefit. If enforced, the Victims Protection Act should finally end the irony of punishing the victim for the act of being trafficked.

⁴⁶³*Id.* § 2151(f)(1).

⁴⁶⁴See Susan Tiefenbrun, *Piracy of Intellectual Property in China and the Former Soviet Union and Its Effects Upon International Trade: A Comparison*, 46 *BUFF. L. REV.* 1 (1998).

⁴⁶⁵22 U.S.C. § 7107(d)(1).

⁴⁶⁶*Id.*

⁴⁶⁷*Id.* § 7107(d)(5)(B) ("The President shall exercise the authority . . . to avoid significant adverse effects on vulnerable populations, including women and children.").

⁴⁶⁸*Id.* § 7107(d)(1)(A)(i).

⁴⁶⁹*Id.* § 7107(d)(1)(A)(ii).

The Victims Protection Act has extraterritorial reach. Its effectiveness depends on international cooperation, and countries that do not cooperate may suffer serious economic and political consequences. This law protects foreign citizens who are forced into performing prostitution and other forms of slave labor in the United States. But will this law have extraterritorial reach upon U.S. citizens engaging in sex trafficking in countries where trafficking is legal or inadequately enforced? In France, for example, the French Penal Code applies France's laws to its citizens even when they perpetrate the criminal act in a country where the same act is legal.⁴⁷⁰ Recently, Amnon Chemouil became the first French citizen to be tried under France's new law against child sex tourism, even though he committed the act in a less developed nation where child sex tourism is legal.⁴⁷¹ Every year thousands of sex tourists go to underdeveloped countries such as Thailand, Brazil and the Philippines for sexual encounters. There are laws against sex with minors in these countries, but they are rarely enforced.⁴⁷²

"Recognizing that sex tourists usually originate in wealthy, industrialized nations, many Western countries, including Canada, have adopted anti-sex tourism legislation," but these laws, under which sex tourists can be prosecuted at home for committing crimes abroad, usually lack an enforcement arm.⁴⁷³ Canada's 1997 law against sex tourism "stipulates that criminal charges can proceed only if the government of the country where an offense was committed requests the intervention of Canada's justice minister."⁴⁷⁴ The French law allows courts to try "sexual aggression committed abroad" even if the acts are not considered criminal in the country where they were committed.⁴⁷⁵ Unlike the Canadian law, the French law against child sex tourism will reach its citizens who commit illegal acts abroad, but the law requires high standards of evidence and due process.⁴⁷⁶ In the Chemouil case the French prosecutors had a videotape that Mr. Chemouil had made of his own sexual acts with a minor.⁴⁷⁷ Faced with this incontrovertible evidence, Mr. Chemouil eventually confessed and was given a seven year sentence.⁴⁷⁸ This case of extraterritorial reach sets a precedent which the United States might adopt in order to help end the sexual exploitation of women.

⁴⁷⁰ See Mario Vargas Llosa, *Crossing the Moral Boundary: Letter*, N.Y. TIMES, Jan. 7, 2001, at Editorial Desk.

⁴⁷¹ *Sex Tourism*, NAT'L POST (Canada), Jan. 22, 2001, at A15.

⁴⁷² *Id.*

⁴⁷³ *Id.*

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.*

V. CONCLUSION

The recently adopted Victims Protection Act is a sex trafficking crime law with three main purposes: 1) to prevent both here and abroad the perpetration of a crime that is nothing less than a contemporary form of slavery, 2) to protect victims of sex trafficking and forced prostitution, 3) and to prosecute traffickers severely. The Victims Protection Act is a milestone in the universal movement towards the establishment of women's human rights. Unlike the international conventions that preceded it, the Victims Protection Act focuses on an economic and transnational solution to the problem of trafficking. It allocates funding for the establishment of programs requiring international cooperation in order to raise the educational and occupational opportunities for women abroad and to alter deep-seated anti-feminist values in foreign countries. The challenge is to make certain that the new U.S. law, unlike the international conventions that preceded it, will be enforced effectively in the United States and will have an impact on other countries. It will hopefully set a legislative example abroad, and persuade other countries to prevent trafficking before it begins, and then to severely punish perpetrators in the countries of source, transit and destination.

It is unclear whether the Victims Protection Act can actually crack the underground international organized crime networks supporting the traffickers. Can it provide adequate witness protection to the victim in the United States and to her threatened family abroad? It is very difficult to provide protection for families overseas; however, if effective witness protection is not provided for the victim's family in the foreign land, it is highly doubtful that even the lure of permanent residency in the United States will persuade the victim to assist in the prosecution of the sex trafficking perpetrator.

The sex traffickers are protected by international crime networks, facilitated by corrupt officials and their indifference to human tragedy, and enabled by legal systems and policies that perpetuate lenient penalties for trafficking. Sex trafficking is an international crime that can only be eradicated by changing basic values about women's worth, by changing pernicious cultural practices that deprive women of their human rights, and by changing the economics of criminal activity. This three-pronged program for change can only be accomplished by transnational and interdisciplinary cooperation among nations.

The international reach of the new U.S. Victims Protection Act is evidenced by its provisions for the safe reentry of victims wherever possible, by the establishment of a systematic reeducation program for women abroad in a policy endeavor to change society's values about women's worth, and by the imposition of economic sanctions on countries that do not comply with minimum standards of law enforcement with respect to human rights violations and sex trafficking of women. These laudable efforts at international cooperation by the United States may be deemed intrusive on the sovereignty of nations and a glaring example of

America's hegemonic sense of superiority. Nevertheless, these transnational efforts may be effective in changing the current economic balance of the sex industry's profitability. By increasing the financial burden and risk on countries where sex trafficking originates, the U.S. law may help to reduce the benefits of the trafficking industry. If traffickers lose more than they gain by the risk of life imprisonment, the severe penalty risk should lower the incentive of commercial gain and dissuade traffickers from the temptation to engage in the sex trade industry. Even if the law is effectively enforced only in the United States, traffickers will be discouraged from sending women from other countries to the United States for the illegal purpose of forced prostitution.

By increasing the penalty for sex trafficking, the Victims Protection Act may result in an *indirect* negative economic consequence to traffickers. Will this cost to traffickers sufficiently deter the crime of sex trafficking? Probably not. A more *direct* economic burden must be found to accomplish deterrence or, more optimistically, eradication of the crime. Linking the perpetrator to the crime of tax evasion by following the money trail in the sex trade industry is a possible approach that has proven to be successful in the prosecution of international organized criminals. Legalization of prostitution and regulation of brothels might help at least to keep accurate accounts of revenue earned from sexual activity. But legalization of prostitution and the regulation of brothels will not by themselves reduce the incidence of sex trafficking. Moreover, some of the very countries that have legalized or regulated prostitution are those into which the highest numbers of foreign women are being trafficked. Holland and Germany, which recognize prostitution as work and as an economic sector, are two countries that experience higher rates of women illegally trafficked into the country for prostitution.⁴⁷⁹ Moreover, countries that legalize prostitution tend to censor discussion of anti-trafficking legislation that relates to forced prostitution.⁴⁸⁰ These countries prefer to limit anti-trafficking legislation to forced labor issues.⁴⁸¹ It is also interesting to note that in France, where prostitution is legal and procuration is a crime, there is a low incidence of sex trafficking. Therefore, it is not absolutely clear that legalization and regulation of prostitution will ameliorate the problem of sex trafficking.⁴⁸² In any case, the deregulation of

⁴⁷⁹RAYMOND, *supra* note 173, at 8.

⁴⁸⁰*Id.* at 7.

⁴⁸¹*Id.*

⁴⁸²See Vanessa von Struensee, *Globalized, Wired, Sex Trafficking in Women and Children*, 7 MURDOCH U. ELECTRONIC J.L., n. 77 (June 2000), at <http://www.murdoch.edu.au/elaw/issues/v7n2/struensee72.html> (discussing Janice G. Raymond, *Prostitution as Violence Against Women: NGO Stonewalling in Beijing and Elsewhere*, 21 WOMEN'S STUD. INT'L F. 1, 1-9 (1998)). Ms. Struensee notes:

Prostitution victimizes all women The philosophy that prostitution is a human right has been advanced, in international forums such as Beijing, by drawing

prostitution constitutes a radical change in the policy of the United States and is unlikely to occur in the near future.

The increase of sex trafficking worldwide implies the loss of women's human rights and the continued marginalization of women's roles in society. The failure to deter sex trafficking will have a devastating effect on the very nature of relations between men and women in society. The proliferation of this crime and its unacceptable justification as an economic benefit reach to the core of human injustice and must be eradicated.

distinctions between forced and free, adult and child, third world and first world prostitution, and between prostitution and trafficking. These distinctions are then used to make some forms of prostitution acceptable and legitimate, revising the harm that is done to women in prostitution into a consenting act and excluding prostitution from the category of violence against women. The sex industry thrives on this language and these dissensions, Raymond argues.

Id. (discussing Raymond, *supra*).