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Redefining the Slave Trade: The Current Trends in the International Trafficking of Women

Fara Gold¹

I. Introduction

International news reports detailing maltreatment of women, sexual exploitation, and violent acts of torture against women and young girls have become all too familiar. The American viewing public has grown to expect the evening news to regularly feature an investigative reporter dressed head to toe in traditional Afghan garb, barely revealing the full extent of oppression of women at the hands of the Taliban. It has become rather commonplace to read an expose about sexual slavery in Thailand or systematic rape in Bosnia. Yet it is only when news reports turn to national victimization that Americans sit up and take notice. As such, sexual slavery, or forced prostitution, is not just an Asian or European phenomenon, but an American epidemic as well. The trafficking of women is an international crisis that has infiltrated the borders of the United States, affecting both suburban areas like Bethesda, Maryland and urban areas like Los Angeles.²

This comment focuses on international forced prostitution through the trafficking of women, as opposed to “voluntary” prostitution (although even the term “voluntary” is contentious because most women who engage in prostitution do so as a result of their own particular financial and societal situations³. They may voluntarily choose to engage in prostitution, but external factors leave prostitutes no other option. Furthermore, once they have “chosen” a life of prostitution, they may fear the threat of violence if they attempt to change their lifestyle.) This comment distinguishes international trafficking from prostitution within the United States based on the fact that trafficking victims are transported across international borders, either through coercion or fraudulent representations of a better life.⁴ I do not in any way intend to

¹ B.A., Emory University (2000), J.D., University of Miami School of Law (2003). Many thanks to Professor Donna Coker for her continued guidance and for giving me this opportunity, through the written word, to be an advocate for those without a voice – and to the Editorial Staff of UMICLR for allowing me to see it in print. Finally, to UM, my gratitude for three years of lessons learned both in the books and on the “Bricks.”

² Amy O’Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*, CTR. FOR THE STUDY OF INTELLIGENCE (Nov. 1999), at <http://usinfo.state.gov/topical/global/traffic/report> [hereinafter CSI].

³ *Id.*

⁴ *Id.*

diminish the plight of prostitutes living in the United States that have not been victimized by international traffickers. However, this comment focuses on individuals who have developed the twenty-first century's slave trade, the victims thereof, and some possible solutions to rectify the horrors of trafficking.

This comment will begin by briefly describing the history of forced prostitution in the international context, and will then examine the evolving international definition of trafficking of women.⁵ It will then further discuss the process by which women are trafficked and the methods used by the traffickers. There will be specific focus on legislation and legal recourse available in the United States for those who have survived, but there will also be mention of the international response. The comment will end with a description of the aspirations of both U.S. policy makers and non-governmental organizations for future efforts to curtail trafficking through the effective prosecution of perpetrators.

II. History and Development of Forced Prostitution

Sexual exploitation can be traced to the beginning of United States history when the masters of plantations in Southern colonies raped their African slaves. More recent examples include rape, used as a weapon of war in religious conflicts against both Muslim and Tutsi

⁵ Trafficking in persons is defined as “[t]he recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs.” *Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on the Work of its First to Eleventh Sessions, Annex II: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. GAOR 55th Sess. Agenda Item 105, at 54-55, U.N. Doc. A/55/383 (2000). [hereinafter *Organized Crime*].

women.⁶ Sexual exploitation becomes trafficking when the abuse involves forcefully⁷ moving women from one location to another.⁸

Trafficking can be viewed as a point on a sexual violence continuum that is based on prevalence, seriousness, and gravity of harm. Low-level psychological violence that the majority of women experience such as sexual harassment exists at one end of the continuum, and serious physical violence that few women experience such as sex-related murder is at the other end. It is a matter of debate as to where on the continuum trafficking should fall. Yet as more is understood about prostitution and trafficking, it is also understood that those engaged in prostitution are considered more vulnerable to violent physical attack.⁹ This may place trafficking at the higher end of the continuum. Better understanding of prostitution and trafficking is in large part due to the conversion in beliefs from the view that prostitution is an act of moral corruption to a more evolved view of forced prostitution as a crime and a severe example of sexual violence.

Trafficking actually finds its roots in state-regulated prostitution.¹⁰ In fact, it was the tradition of the Roman Empire to enslave the spoils of their victory, namely the women of their conquered territory, into a system of legalized prostitution. Since the institution itself was legal, there was no reason to question the treatment of prostitutes.

It was not until the Victorian Era in Great Britain that the abuses of prostitution were challenged by Josephine Butler, who engaged in the rescue of women and girls from prostitution and advocated against the

⁶ See Diane Johnson, *Trafficking of Women into the European Union*, 5 *NEW ENG. INT'L & COMP. L. ANN.*, (1999), at www.nesl.edu/annual/vol5/johnson.htm, citing Penny Venetis, *International Sexual Slavery*, 18 *WOMEN'S RTS. L. REP.* 263, 268 (1997).

⁷ While "force" connotes behavior such as kidnapping, it seems that force in this context may also be viewed in hindsight. For example, it is not until a woman has no choice but to live in servitude after she willingly enters the United States for better opportunities that "force" can truly be recognized. To that end, degrees of force extend from forced prostitution due to financial constraints to continual forced prostitution because of fear of violence against loved ones.

⁸ See Johnson, *supra* note 6 at, citing Trinjr Kootstra, *Background Study on Basic Principles for a Code of Conduct Within the Member States of the European Union to Prevent and Combat Traffic in Women*, DUTCH FOUNDATION AGAINST TRAFFICKING IN WOMEN, (Nov. 22, 1996) at 6.

⁹ See *RETHINKING VIOLENCE AGAINST WOMEN* (R. Emerson Dobash & Russel P. Dobash eds. 1998) at 57.

¹⁰ Kathleen Barry, *FEMALE SEXUAL SLAVERY* (1979) at 14 [hereinafter Barry].

mistreatment of women, as she publicly denounced the Contagious Disease Acts.¹¹ These Acts formalized and legalized the sexual enslavement of women.¹² The Acts were designed to protect the health of military men by subjecting any woman who was identified as a prostitute by the "Morals Police"¹³ to a "surgical examination," consisting of an invasive pelvic procedure involving crude instruments.¹⁴

Such random and rampant maltreatment of women not only led to physical violation and ensuing emotional distress, but also caused those women who refused to submit to the examinations to be forced to leave their homes and work.¹⁵ Consider the most drastic case of Mrs. Percy, who supported her family by working in a musical theater on a military base. Her 16-year old daughter accompanied her to work each evening and at the end of the night, a military officer escorted them home. Percy and her daughter were arrested for public prostitution. The Morals Police ordered them to submit to a medical examination. Despite Mrs. Percy's protests and letters to the local newspaper, the police continued to harass her, eventually forcing the theater company to fire her and forcing her out of her home. In desperation and with no other apparent choice, Mrs. Percy committed suicide by drowning herself in a nearby canal.¹⁶

The Contagious Disease Acts were eventually repealed, but international trafficking continued. It reached its peak when red light districts developed.¹⁷ Women were isolated and sexual slavery became a prosperous business.¹⁸ Today, international trafficking has become so pervasive that President Clinton announced that such violence against women is regarded as a "human rights violation, an impediment to a

¹¹ See Barry, *supra* note 10, at 15.

¹² While the Acts did not necessarily promote trafficking, they embodied earlier notions of enslavement and control. The basic difference between the Acts and modern day trafficking appears to be that the Acts were legal and supported by the government whereas modern day trafficking is illegal and underground. Although one may question whether governments, before the recent Victims of Trafficking and Violence Protection Act of 2000, by doing little to solve the problem, were implicitly allowing it to continue.

¹³ Such a designation could be made at the whim of those with authority, despite a lack of proof. See Barry, *supra* note 10, at 15.

¹⁴ See *id.*

¹⁵ *Id.*

¹⁶ See *id.* at 17-18.

¹⁷ See *id.*

¹⁸ See *id.*

nation's development, and an obstacle to a woman's full participation in democracy."¹⁹

III. The Evolution of Trafficking

The definition of human trafficking has been a source of controversy for various government bodies and non-governmental organizations. The 1949 Convention on the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others²⁰ denounced prostitution, but since the primary focus of the convention was prostitution itself and not trafficking, the term trafficking was never defined. Under the terms of the convention, state parties, "agree to punish any person who, to gratify the passions of another; procures, entices, or leads away, for purposes of prostitution, another person."²¹ Yet there was no distinction between coercive and non-coercive practices employed in prostitution,²² as is illustrated by Article 2, which requires state parties to sanction any person who runs or finances a brothel.²³ As noted in the introduction, the distinction between forced prostitution and "voluntary" prostitution is a divisive issue. Those who view "voluntary" prostitution as a moral issue are reluctant to support legislation that does not distinguish between women who are trafficked and women who choose a life of prostitution. A convention without the support of all of its members is only as strong as its weakest member. Without a distinction between forced prostitution as a result of trafficking and prostitution in general, the Suppression Convention was of little use to the campaign against trafficking.

The core elements in the dispute over the definition of trafficking involve first, whether coercion should be an element, second, whether crossing international borders is a necessity, and third, whether trafficking should include forced labor and marriage as well as other

¹⁹ Presidential Memorandum to the Attorney General (March 11, 1998) (on file with The University of Miami International & Comparative Law Review).

²⁰ Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, article I, July 25, 1951, 96 U.N.T.S. 271 [hereinafter Suppression Convention].

²¹ *Id.*, article I, at 274.

²² See Kinsey Dinan, OWED JUSTICE: THAI WOMEN TRAFFICKED INTO DEBT BONDAGE IN JAPAN (Regan E. Ralph, Joseph Saunders, & Malcolm Smart eds. 2000) at 49.

²³ Suppression Convention, *supra* note 26, article 5 at 274.

forms of sexual slavery.²⁴ Different groups have adopted different definitions. For example, some groups focus on the word coercion and the presence of force to define trafficking, whereas other organizations purposely omit coercion, allowing for a broader definition. According to the International Organization for Migration (IOM), trafficking does not require coercion, and as such, trafficked persons do not only include forced prostitutes, but also migrant workers.²⁵ Yet according to Human Rights Watch, “a key defining element of the human rights abuse of ‘trafficking in persons’ is the coercive and slave-like nature of the practice.”²⁶ Thus, prosecution for trafficking became difficult because the nations involved disagreed as to whether coercion is a necessary element.²⁷ The question remained as to whether prostitution of any sort should be considered sexual exploitation, and if so, does this further take away control from women who willingly choose to engage in prostitution.²⁸

A. Definitions of Trafficking and Coercion

The term “trafficking” has been used repeatedly to refer to the movement of human beings, especially when associated with prostitution or slavery. However, there had not been a legal instrument that specifically defined trafficking until 2000.²⁹ This new definition accounts for trafficking as applied to all labor sectors, in instances where coercion is present.³⁰

²⁴ See Becki Young, *Trafficking of Humans Across United States Borders: How United States Laws Can be Used to Punish Traffickers and Protect Victims*, 13 GEO. IMMIGR. L.J. 73, 75 (1998).

²⁵ See *id.* at 76, citing International Organization for Migration, *Trafficking of Women to Countries of the European Union: Characteristics, Trends and Policy Issues* (1996) at 2 (paper submitted to the Vienna Conference on Trafficking in Women for Sexual Exploitation, on file with Young).

²⁶ Dinan, *supra* note 22, at 49.

²⁷ UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, December 15, 2000, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49, Commentary[hereinafter Protocol]. The question remains whether prostitution of any sort should be considered sexual exploitation, and if so, whether women who willingly choose to engage in prostitution can be considered “coerced.” Distinguishing prostitution that results from trafficking from other prostitution also hinders prosecution.

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Dinan, *supra* note 22, at 49-50.

The definition developed as a result of the UN Convention Against Transnational Organized Crime, which was adopted by the United Nations General Assembly in November 2000. The definition was supplemented by the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, which was ratified by eighty countries in Palermo, Italy in December 2000.³¹ That Protocol defined international trafficking as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.³²

The Organized Crime protocol focuses on sexual exploitation as a whole, unlike the 1949 Convention, which focused solely on prostitution. However, there was great debate about the phrase "other forms of sexual exploitation."³³ All of the delegates agreed that involuntary forced participation in prostitution would constitute trafficking, but a majority of governments rejected the idea that voluntary, non-coercive participation by adults in prostitution constitutes trafficking.³⁴ As such, in order to ensure the maximum number of signatures, a compromise was reached to leave the phrase ambiguous.³⁵

³¹ UNITED NATIONS OFFICE FOR DRUG CONTROL AND CRIME PREVENTION, at http://www.odccp.org/odccp/crime_cicp_signatures_trafficking.html

³² Organized Crime, *supra* note 5, at 54-55.

³³ See Global Alliance Against Traffic In Women, *Commentary on Definition of Trafficking in the UN Protocol*, at <http://www.inet.co.th/org/gaatw/SolidarityAction/HRSLetter.htm> [hereinafter GAATW Commentary].

³⁴ See *id.*

³⁵ See *id.*

The Global Alliance Against Traffic in Women (GAATW), an NGO based in Bangkok, Thailand,³⁶ was critical of the new protocol and some of the negotiating strategies of the delegates thereto. In a press release dated October 18, 2000, GAATW joined seven other NGO's as part of the Human Rights Caucus by praising the Protocol's strong law enforcement provisions, but showing disappointment because the Protocol does not require governments to provide any services to trafficked persons.³⁷ The press release also criticized "some countries, led by the Philippines, Belgium, the Vatican, and several NGO's, [that] insisted that the trafficking definition include all sex work, whether voluntary or forced, despite the fact that such a definition would break consensus."³⁸ GAATW further criticized those countries for diverting attention from the real issues.³⁹

Human Rights Watch ("HRW") takes a similar view, without taking a position on prostitution per se. HRW denounces laws and policies, including the 2000 Protocol, which fails to distinguish between prostitutes and victims of forced trafficking. It asserts that trafficked victims should not be treated as criminals but rather as victims who deserve "temporary care and maintenance"⁴⁰ as prescribed by international human rights standards.⁴¹

Considering the difficulty in prosecution because of definitional differences, it seems that GAATW and Human Rights Watch are correct to be critical of those who include voluntary sex work in their definition of trafficking, as long as "voluntary" is synonymous with the word "consensual." The very essence of forced prostitution as a result of trafficking invokes the idea of coercion and submission. By including all sex work as part of the definition, the above-mentioned countries are further perpetuating the myth that sexual exploitation is about sexuality rather than violence and control.

³⁶ See *Mission Statement*, Global Alliance Against the Traffic in Women, at <http://www.inet.co.th/org/gaatw/about.html>.

³⁷ See *UN Trafficking Protocol: Lost Opportunity to Protect the Rights of Trafficked Persons*, GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN: HUMAN RIGHTS CAUCUS PRESS RELEASE, available at <http://www.inet.co.th/org/gaatw/SolidarityAction/PressRelease.htm> [hereinafter GAATW Press Release].

³⁸ *Id.*

³⁹ See *id.*

⁴⁰ Human Rights Watch, *GLOBAL REPORT ON WOMEN'S HUMAN RIGHTS* (Sarah Lai & Regan Ralph eds. 1996) at 198.

⁴¹ *Id.*

GAATW, The Foundation Against Trafficking in Women, and the International Human Rights Law Group define a trafficked person as “a person who is recruited, transported, purchased, sold, transferred, received, or harboured [in accordance with the definition of trafficking] without consent.”⁴² That definition distinguishes between adults who freely agree to travel within or across borders and are fully informed about the type and conditions of work or services they are expected to perform, as opposed to those adults who do not consent at all or whose apparent, implied, or express consent is vitiated by force, coercion, or deception. The definition further respects the rights of women to make informed decisions about their lives, including the decision whether to work in exploitive conditions.⁴³

This argument again supports the contention that if there can ever be an eradication of forced prostitution, the definition of trafficking must be based on coercion. Coercion or force includes obtaining or maintaining through act or threat the labor, services, or other activities of a person by physical, legal, psychological, or mental force. It also entails a person’s reasonable belief that she has no viable alternative but to perform the work, service, or activity. Coercion can also include threats of physical harm to the victim as well as the victim’s family.⁴⁴

Free will and informed consent should play no part in the definition of trafficking. After all, the only way to help a victim and rid society of such a horrific ill is if the victims have actually been victimized, as compared to choosing a lifestyle deemed amoral by some. Victimization does not occur with informed consent, but rather with some form of coercion. This is not to say that women who engage in prostitution within the United States have not fallen victim to financial and societal forces beyond their control. To some extent, all prostitutes are severe victims of sexism that still exists within our culture. Yet solutions to trafficking must focus on trafficking as such. Attempts to include consensual prostitution in any definition of trafficking may be well-intentioned, but are not helpful. Another school of thought views “voluntary” prostitution as a moral issue. Morality should not play a role when defining international trafficking. Victims of international trafficking are victims of specific individuals. Until trafficking is defined

⁴² Global Alliance Against Traffic in Women, *Human Rights Standards for the Treatment of Trafficked Persons*, at <http://www.inet.co.th/org/gaatw/SolidarityAction/SMR99.htm> [hereinafter HR standards].

⁴³ See *id.*

⁴⁴ See CSI, *supra* note 2, at Definitions.

with better clarity, and the definition is widely accepted, the individuals responsible will not be properly prosecuted.

B. Trafficking: Human Rights Issue or Immigration Issue?

The Human Rights Caucus also criticized the unwillingness of governments to distinguish between trafficking and smuggling. Failure to make that distinction allows governments to treat victims of trafficking in much the same way they would treat undocumented migrants, i.e. trafficking victims would face detainment and deportation.⁴⁵ This distinction has also been the source of controversy when defining international trafficking. It calls for the identification of trafficking as separate from smuggling and immigrant rights. As the United States State Department points out, distinctions regarding trafficking in women, alien smuggling, and irregular migration are sometimes blurred when the INS is predisposed to believe that all illegal workers have arrived in the United States through smuggling rather than trafficking. Since there is an overall belief that most immigrants are willing participants instead of victims, the focus is on deportation rather than help for the exploited victims.⁴⁶

Despite the pervasive myth among INS officers that trafficking and smuggling are synonymous, and although both result in illegal aliens entering the United States, there is a huge definitional difference, and as such, a difference in the way in which a smuggled worker and a trafficked victim should be treated. Coercion, yet again, plays the central role. Trafficked women are forced against their will to cross international borders to perform services to which they did not agree. On the other hand, the Protocol Against Smuggling of Migrants by Land, Sea, and Air defines smuggling as “the procurement in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”⁴⁷

Coercion or force is not an element of smuggling. Smuggling indeed involves willing participation, where the smuggled person’s sole purpose is to cross international borders and remain in the destination country. Unlike smugglers, traffickers have taken advantage of the unequal status of women and girls in the source countries as well as the

⁴⁵ See *GAATW Press Release*, *supra* note 37.

⁴⁶ See *CSI*, *supra* note 2, at chapter XI.

⁴⁷ U.N. Convention Against Transnational Organized Crime; Protocol Against Smuggling of Migrants by Land, Sea, and Air, December 15, 2000, article 3.

countries to which they will eventually be trafficked. This unequal status can be seen through the lens of stereotypes, which view women as property, commodities, servants, and sexual objects. Traffickers have further exploited the demand for cheap labor and sex tourism. They view their victims as highly profitable, low risk, expendable, reusable commodities. Smuggling also involves short-term monetary profit for the smugglers and long-term work prospects for the smuggled immigrants. Trafficking usually involves long-term economic gain for the traffickers and long-term servitude for the trafficked prostitutes.⁴⁸

United States policy makers have struggled to determine whether to view international trafficking as an alien smuggling issue or a human rights. To help decipher the meaning of trafficking, The President's Interagency Council on Women, chaired by the Secretary of State, has formulated a more specific, yet broader definition of trafficking in women and children than that adopted by the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons:

Trafficking is all acts involved in the recruitment, abduction, transport, harboring, transfer, sale or receipt of persons; within national or across international borders; through force, coercion, fraud or deception; to place persons in situations of slavery or slavery-like conditions, forced labor or services, such as forced prostitution or sexual services, domestic servitude, bonded sweatshop labor or other debt bondage.⁴⁹

Thus, the United States government views trafficking of women as the use of force and deception to transfer women across borders so they may be exploited, sexually or otherwise.

IV. The Method to the Madness: The Process of Trafficking

Specific instances of trafficking include Latvian women threatened and forced to dance nude in Chicago, Thai women brought to the U.S. for the sex industry but then forced to be virtual sex slaves, Korean-Chinese women held as indentured servants in the Commonwealth of the Northern Mariana Islands, and Mexicans brought to the U.S., and then enslaved, beaten, and forced to peddle trinkets in

⁴⁸ See CSI, *supra* note 2, at Chapter I.

⁴⁹ *Id.* at Definitions.

New York City.⁵⁰ Other cases involve Canadian women transported to Seattle, and then to Las Vegas, where they were forced to work as prostitutes,⁵¹ and an organized conspiracy to force Canadian girls to prostitute themselves in Hawaii, California, and Washington.⁵² A raid of a factory in the El Monte neighborhood of Los Angeles, California revealed seventy Thai women who had been trafficked to the United States and were being held in slave-like conditions. The women had been promised lucrative jobs as seamstresses, but instead were confined to a barbed-wire compound when they arrived in El Monte. The women could not leave and were forced to work long hours in unbearable conditions to pay off their supposed debt from travel.⁵³ This section details how such atrocities take place.

A. The Sources of Trafficking

The average age of a trafficked woman in the U.S. is about 20 years old.⁵⁴ However, it is quite possible that many of the victims were initially trafficked at a much younger age, and worked in cities or countries overseas before being shipped across American borders.⁵⁵ Women trafficked to the U.S. are used primarily in the sex industry which includes prostitution, peep and touch shows, and massage parlors that offer a variety of sexual services. Yet victims have also been used as maids and servants in hotels, and have been forced to peddle trinkets in subways and metro and bus stations, as well as work in sweatshops.⁵⁶

According to the U.S. State Department, the primary source countries for the United States are Thailand, Vietnam, Mexico, Ukraine, and the Czech Republic.⁵⁷ There have also been instances in which women have been trafficked from the Philippines, Korea, Malaysia, Latvia, Hungary, Poland, Brazil, and Honduras.⁵⁸

Trafficked women often come from cultures where girls are not as appreciated as much as boys, and as such, are not afforded education or an opportunity to work.⁵⁹ In fact, in some cultures, the sale of a virginal daughter may be a family's only chance to earn a large amount

⁵⁰ *See id.*

⁵¹ *See Young, supra* note 24, at 78.

⁵² *See id.* at 78-79.

⁵³ *See id.*, at 78.

⁵⁴ *See CSI, supra* note 2, at Chapter II.

⁵⁵ *See id.*

⁵⁶ *See id.*

⁵⁷ *See id.*

⁵⁸ *See id.*

⁵⁹ *See Johnson, supra* note 6, at Part I.

of money.⁶⁰ Besides the inferior treatment of girls within their home countries, many have been trained to be subservient, and are therefore socialized into a life where they would expect to live in extreme servitude and self-sacrifice.⁶¹

Traffickers are able to capitalize on a woman's unemployment and low social status to entice her to come to U.S. cities with high pay and a better way of life.⁶² For example, Nigerian women's rights organizations report that hundreds of Nigerian women hoping to escape from poverty and discrimination in Nigeria voluntarily moved, believing that they were responding to job offers for domestic workers or waitresses. Instead, they were forced to prostitute themselves, incur tremendous debt, and endure brutal conditions.⁶³

For the most part, source countries are poorer and offer fewer opportunities for than do the countries of destination. As such, it is often the case that women willingly leave their home countries for better opportunities in a new place.⁶⁴ The problem develops when the woman becomes a pawn of the traffickers. She no longer has her independence, but has entered the new country under duress and through manipulation.

It would therefore seem quite simple to place the blame on the traffickers and the country of destination, but the source countries can play a role in the eradication of trafficking as well. Therefore, a discussion of source countries cannot be complete without mention of the role source countries can play to help their female citizens. The last part of this comment will examine the practices that the source countries can implement to effectively aid women who would likely be trafficked.

B. The Traffickers

GAATW defines a trafficker as "[a] person, who, or an entity that, intends to commit, is complicit with, or acquiesces to any act," that is found within the definition of trafficking.⁶⁵ To be deemed a trafficker one must have the requisite *mens rea* of intent to be deemed a trafficker, or at a minimum act neglectful i.e. the person or entity knew or should

⁶⁰ See *id.*

⁶¹ See *id.* at part II-B.

⁶² See CSI, *supra* note 2, at Chapter III.

⁶³ See Human Rights Watch, World Report 2001 on Women's Human Rights: Trafficking, at www.hrw.org/wr2k1/women/women5.html. [hereinafter 2001 HR Report].

⁶⁴ See CSI, *supra* note 2 at chapter III.

⁶⁵ See *H R Standards*, *supra* note 42.

have known that his activity was likely to cause injury, but acted anyway.⁶⁶

For the most part, traffickers are not individuals trying to earn a profit from abducting women in their home country for sale into prostitution in a foreign nation. Instead, the trafficking of women is inextricably linked to world of organized crime.⁶⁷ In fact, U.S. law enforcement may often allow smaller instances of trafficking in favor of trying to prosecute larger organized crime networks.⁶⁸ Russian mail-order bride companies reveal trafficking ties to organized crime, in which all of the women sent as brides to the United States have ties to the Russian Mafia.⁶⁹

Organized international trafficking is highly involved with large networks of recruiters, document forgers and providers, escorts, financiers, corrupt officials in both source countries and countries of destination, and brothel operators.⁷⁰ Criminal networks have developed throughout the world. Chinese Triads, the Japanese Yakuza, Thai networks, and Russian organized crime are the biggest, most involved trafficking conglomerates and supply forced prostitutes to a variety of countries of destination in both the Western and Eastern Hemispheres.⁷¹

The U.S. State Department defines an organized criminal group as “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.”⁷² A state trafficking report released in 2000 found that crime rings and loosely connected criminal networks trafficked between 45,000 and 50,000 women and children into the United States annually.⁷³ Although the nucleus of a crime ring may be made up of an extended family, more often loosely associated crime rings often perpetrate trafficking. As each ring is responsible for a different level of the process, it makes it even more difficult for authorities to detect the illegal activities and apprehend the “ringleader.”⁷⁴

⁶⁶ *See id.*

⁶⁷ *See Young, supra* note 24, at 79.

⁶⁸ *See CSI, supra* note 2, at chapter XI.

⁶⁹ *See Young, supra* note 24, at 79.

⁷⁰ *See CSI, supra* note 2, at appendix II.

⁷¹ *See id.*

⁷² *Id.* at definitions.

⁷³ *See* 2001 HR Report, *supra* note 63.

⁷⁴ *See CSI, supra* note 2, at chapter VI.

Despite the fact that most trafficking occurs via large organized crime syndicates,⁷⁵ most of the major trafficking cases prosecuted in the United States within the last decade have tended to involve smaller crime groups, loosely connected criminal networks, smuggling rings, and corrupt individuals who victimize women from their home countries.⁷⁶ This discrepancy may be a testament to the lack of law enforcement and ability to prosecute within the United States.

Yet the American government still uses a broad definition for “traffickers.” The definition encompasses a broader spectrum of crime affiliation and therefore, may better suit the traffic rings that operate in the United States.⁷⁷ Without such a broad definition, it is arguable that the prosecution rate may even be lower than it already has been due to the lack of prosecution of large crime rings.

— Furthermore, the U.S. government is correct to note that smaller crime rings by no means indicate that the brutality and terror of trafficking is any less severe. Technology has made size irrelevant, as crime rings are now able to establish commercial and business-like structures, furthering concealing their illicit activities and deceiving law enforcement.⁷⁸

C. Means of Enticement

Victim blaming is a common practice when examining any type of violence against women. Domestic violence often leads to the question why a wife stayed so long with her abusive husband. A survivor of rape may be asked why she trusted the man who ultimately attacked her. Along the same lines, trafficking victims are faced with an array of judgments because they agreed to go with the traffickers in the first place, or because they did not flee the country of destination, or even because they chose to engage in voluntary prostitution at some point in their lives.⁷⁹

This blaming is misplaced because traffickers use a variety of means and methods to entice their victims and keep them in the country of destination as sexual slaves. These methods are based on systems of fraud and deception. Women are often forcibly abducted, procured through organized crime, recruited by phony employment agencies, or

⁷⁵ See *id.* at definitions.

⁷⁶ See *id.*

⁷⁷ See *id.*

⁷⁸ See *id.*

⁷⁹ See *id.* at chapter XI.

trafficked into the United States through falsified marriages.⁸⁰ Traffickers typically lure women with false promises of jobs as waitresses, nannies, models, factory workers, or exotic dancers.⁸¹ Many women apply for jobs through what appear to be reputable employment agencies, but in actuality, the agencies are unlicensed and unregulated. Yet falsified contracts allow the women to believe the jobs for which they are applying are real.⁸²

Recruiters also target beauty contest winners who are eager learn about work offers, and even rely on word of mouth to prey on women who might be vulnerable to someone who seems to be offering financial support and an opportunity for a better life.⁸³

For example, a Japanese syndicate recruits American women through seemingly legitimate show-business advertisements placed in American newspapers by West Coast talent agencies. Before departure, the recruit is given a pre-paid plane ticket and a contract specifying salary. Yet upon arrival, a new agent greets the woman, informing her that he has bought out her contract. The agent then confiscates her papers and forces her into prostitution.⁸⁴

Conning a woman by feigning friendship is an easy way to procure victims. Young women will often readily respond to recruiters who profess their love for them. Once an agent has lured a woman, he can prey on her affection to the degree that she acquiesces to his demands to join a brothel or to walk the streets. If the woman refuses to meet his demands, the trafficker may resort to rape or torture, ensuring that she will be forced into the life of a prostitute.⁸⁵

Traffickers have not ignored the technological explosion of the new millennium, as the computer boom now offers a new medium for recruitment. Ironically, with the further development of computers and the advent of the Internet, it would seem that law enforcement officials would be able to better track traffickers, but instead the offenders are

⁸⁰ See Lan Cao, *Illegal Traffic in Women: A Civil Rico Proposal*, 96 YALE L.J. 1297, 1299 (1987).

⁸¹ See *id.* at 1299-1300.

⁸² See *id.*

⁸³ See CSI, *supra* note 2, at chapter III.

⁸⁴ See Cao, *supra* note 80, at 1300, citing Oppenheimer, *Japanese Mafia's Recruiting of American Women Probed*, CHI. TRIB., Mar. 14, 1982, section 1 at 6. This example seems like "reverse trafficking," given the fact that most research reveals that the United States is more likely a country of destination rather than a source country.

⁸⁵ See Barry, *supra* note 10, at 5.

abusing the Internet as a new way to attract potential victims, rather than just through traditional advertising.⁸⁶

Although trafficking is about control, domination, and exploitation, the trafficker's main goal is to make a profit. Therefore, like with any other business, economics plays a big part in the decisions made by traffickers. First, on the supply side, adverse socioeconomic conditions make it simple to lure women into forced prostitution or marriage. Many of these women live in rural areas where they have little education and are viewed as inferior to their male counterparts. As many agents of trafficking are local people familiar with local customs and traditions, they strategically prey on certain familial and financial situations. In fact, as they are aware of local conditions including weather patterns, the agents will recruit during a poor harvest when financial straits are particularly dire.⁸⁷

As if the supply side argument is not disturbing enough, the demand side reveals that the growth of sex tourism has, not surprisingly, accelerated forced trafficking. The local demand for sex shows and prostitution in countries of destination is equally as important. Furthermore, in countries such as Thailand and India where the rate of HIV among the population is quite high, traffickers have begun recruiting girls as young as ten from remote regions so as to ensure their health and cleanliness.⁸⁸

No matter what the method employed for recruitment may be, the traffickers pay for false travel documents and transportation, with the expectation that the money will be repaid with profit from the victim's services.⁸⁹ This debt is the tie that binds the women to their lives of servitude. In fact, from the moment of recruitment, the slave-like practices begin. Women trafficked from Thailand have described being bought and sold by agents, brokers, and employers. They know their own purchase price, and understand that the purchaser demands strict obedience, and will ensure such behavior through coercive tactics. The height of objectification is illustrated by the women's belief that it is the employer's ultimate right to resell the women at the employer's discretion.⁹⁰

⁸⁶ See CSI, *supra* note 2, at Chapter III.

⁸⁷ See Lai, *supra* note 40, at 196.

⁸⁸ See *id.* at 197.

⁸⁹ See CSI, *supra* note 2, at Chapter III.

⁹⁰ See Dinan, *supra* note 22, at 51-52.

D. The Physical Practice of Transporting the Victims

False employment contracts may be used to lure women away from their homes, yet it is barely the beginning of the web of deception, woven by false document after false document, used first to cross international borders and then to keep those women within the destination country's borders for a lengthy period of time. Women are brought into the United States through a combination of fraudulent means which may include presenting imposter passports or bypassing inspection at the point of entry. The easiest and most efficient method for a trafficker is simply to have trafficked victims overstay their legally issued tourist visas.⁹¹

Corruption remains a strong theme throughout the trafficking process. Where it is easy to overstay a legitimate visa, it may be just as easy to obtain fraudulent visas, whether it a student (F1), fiancée (K1), or entertainer visa (P1, P3).⁹² Traffickers often illegally purchase the requisite form needed to apply for a student visa by collaborating with corrupt officials in university systems to secure visas for applicants.⁹³ Fraudulent job letters, employment records, and bank statements are also used to help support a visa application in an effort to convince consulate officers that the woman will indeed return to her home country. Yet ultimately, it is the trafficked woman who will do the convincing during her visa interview, and therefore, the agents must coach the woman to answer the questions correctly.⁹⁴ This behavior is illustrated by an incident that occurred in Prague. A Czech crime ring acquired visas by bribing a Czech Foreign Service employee working in the Consular Section of the U.S. Embassy in Prague. The women were coached as to what to put in their applications and the visas were then granted.⁹⁵

Yet maintaining control is preferential, as the recruiters do not want to rely on the skills of their victims to achieve their own objectives. Therefore, in an effort to maintain control, the recruiter usually will force the woman to hand over her passport, as she believes that the travel agency or recruiter will handle all of the logistics, including obtaining and securing legitimate travel documents.⁹⁶

Traffickers also abuse the travel agency referral program to traffic large numbers of women into the United States. This program

⁹¹ See CSI, *supra* note 2, at Chapter IV.

⁹² See *id.*

⁹³ See *id.*

⁹⁴ See *id.*

⁹⁵ See *id.*

⁹⁶ See *id.*

was originally designed to help overburdened and overworked embassies to expedite the visa process, by allowing travel agencies to refer visa applicants.⁹⁷ Yet recruiters use the crowded embassies to their advantage, as the embassies did not have the staff or the time to fully investigate applicants.⁹⁸

In some cases, travel agencies are innocent parties to the fraud, as many agencies, especially in Asia, face bankruptcy, and are tempted to cut corners by failing to investigate all of the applicants' information.⁹⁹ On the flip side, some travel agencies are central parties to the fraud, manufacturing false documents to gain a bigger profit.¹⁰⁰ The American Embassy in Seoul, Korea uncovered an example of this abuse, when it discovered that a trafficking ring had used the travel agency referral program to obtain visas for 91 fraudulent applicants, most of whom were young, single girls.¹⁰¹

Once the women are recruited and the false documents secured, the victims must then be transported across American borders. It is often easier for a woman to enter the United States accompanied by a man of Anglo descent who can then pretend to be her husband or boyfriend. These agents are commonly referred to as "jockeys," and are used heavily by Asian trafficking rings.¹⁰² Jockeys go to extreme lengths to ensure entry into U.S. cities. They may target ports of entry where they believe border officials will not be familiar with Asians or they may take night flights or enter on holidays when fewer immigration officers are on duty. In fact, jockeys may even go as far as to actually marry the victims so they may answer immigration questions.¹⁰³

Entry without inspection is more common when women are trafficked into the United States from Mexico, Central America, and South America. In these cases, the victims are transported by bus, van, or U-haul,¹⁰⁴ as was the case for one 22-year old Chinese girl who was kidnapped in China. She was then brought to California on a Taiwanese fishing trawler without documentation. Once in Los Angeles, she was forced to work as a prostitute, and was repeatedly raped and tortured.¹⁰⁵

⁹⁷ *See id.*

⁹⁸ *See id.*

⁹⁹ *See id.*

¹⁰⁰ *See id.*

¹⁰¹ *See id.*

¹⁰² *See id.*

¹⁰³ *See id.*

¹⁰⁴ *See id.*

¹⁰⁵ *Id.*, citing an interview with an Assistant United States Attorney, Los Angeles, California, February, 1999.

Whereas recruiters are called “jockeys” during Asian transport, Latin American recruiters are termed “coyotes.” Coyotes commonly lead trafficked women across the southern border of the United States on foot, charging almost \$1,500 per person for their services, which will later be added to the woman’s debt.¹⁰⁶ Mexican traffickers have used coyotes to lead victims across the Mexican hills on foot for eleven days before cars took the girls to Houston and then to Florida, where they were forced to prostitute themselves.¹⁰⁷

Finally, when all else fails, traffickers have been reported to use desperate measures to ensure passage across American borders. Recruiters have submitted twenty or thirty visa applications in the hopes of five or six making it through the interview and approval process.¹⁰⁸ Traffickers have also sent trafficked women on international flights that make connections in U.S. airports. Once in the U.S., the women will be met by members of the traffic ring, and conveniently miss their connections out of the country to what should have been their final destination.¹⁰⁹

E. Ensuring Continued Slavery

Once the traffickers have brought their victims to their final destination, they again employ coercive and deceptive tactics to guarantee that the women will not try to escape or flee from their lives of servitude. Debt bondage is a common method used, where women are forced to work without pay until they pay off their high debts. These debts have accrued as a result of travel, where the trafficker may include everything from airfare to doctored papers to the price of services from a jockey or coyote. The initial debt is calculated from the amount the employer had to pay the supplier in order to “hire” the woman.¹¹⁰

The trafficked women can usually expect to have incurred some sort of debt in their travels. After all, many of them travel freely with the recruiters. The women may expect to reimburse loans for their plane tickets and pay for services rendered. However, many victims believe that their actual debts are often arbitrary, based on the whim of the trafficker and employer. Indeed, employers have usually augmented debts with random expenses, fines, and dishonest account keeping.¹¹¹

¹⁰⁶ *See id.*

¹⁰⁷ *See id.*

¹⁰⁸ *See id.*

¹⁰⁹ *See id.*

¹¹⁰ *See Dinan, supra note 22, at 54.*

¹¹¹ *See id.*

Yet the women have no choice but to stay in debt bondage. As all of their papers and money have been confiscated, the women have no place to stay and no money to find housing.¹¹² Victims cannot risk reporting their condition to local authorities, for fear of deportation; they would likely be treated as illegal aliens, rather than victims of horrific crimes.¹¹³ As one Thai woman explained, she would never try to escape because she knew that she had overstayed her visa and her trafficker had her passport. Without her documents, she was sure she would be arrested and jailed.¹¹⁴

The fear of action by local authorities is oppressive, yet the wrath of a brothel owner or trafficker who learned of a victim's actions could prove to be deadly.¹¹⁵ To risk leaving a brothel or other home of forced prostitution is to risk one's own life or the lives of loved ones.¹¹⁶ Survivor accounts reveal the plight trafficked women suffered to pay off their accrued debt, or else risk repercussions from a trafficker who would retaliate with physical and mental abuse, rape, or imprisonment.¹¹⁷ Women kept in servitude may also be threatened with resale if they do not pay off their debt. Resale means their debt will further accrue, eliminating any chance of earning money to send to their families.

Besides the routine violence, women are also exposed to serious health risks, including infertility. Often source countries embody traditions that revere marriage and procreation. As such, families may shun their infertile daughters or wives once they return home, despite their victimization abroad.¹¹⁸ Trafficked women also have a high risk of contracting sexually transmitted diseases, namely AIDS and Hepatitis B.¹¹⁹ The risk of these diseases is not only increased due to increased amounts of sexual contact with multiple partners, but also through the use of shared needles. It is common practice for women in brothels to use the same needle to inject themselves with contraceptives.¹²⁰

¹¹² Johnson, *supra* note 6, at Part IIB.

¹¹³ *See id.* In Japan, for example, authorities will expedite deportation procedures without offering to help women seek legal redress in the form of compensation, back pay, or damages. Officials from the Thai Embassy, like the Japanese officials, offer no aid in seeking legal redress. Dinan, *supra* note 22, at 5.

¹¹⁴ *See* Dinan, *supra* note 22, at 35.

¹¹⁵ *See* Johnson, *supra* note 6, at Part IIB.

¹¹⁶ *See* CSI, *supra* note 2, at Chapter III.

¹¹⁷ *See id.*

¹¹⁸ *See* Johnson, *supra* note 6, at Part IIB.

¹¹⁹ *See id.*

¹²⁰ *See id.*

Women are also at risk for disease through forced shared needle use with their clients. As one survivor reported:

Once a Yakuza member took me out for the night. He brought me to a hotel room and first injected himself with heroin and then tried to force me to inject. I refused and struggled. He beat me until I was almost dead. Then he took a rubber band out and strapped it around my arm and was just about to inject me when he passed out. I didn't dare tell anybody what happened or seek medical help for my injuries.¹²¹

While the poor treatment of trafficked victims undoubtedly takes an emotional and physical toll on the women individually, trafficking has also had severe societal implications and consequences. It has specifically contributed to the increased transmission of AIDS and HIV, especially as some trafficked women are required by their employers to engage in unprotected sex. The INS uncovered a situation in which at least one trafficker was purchasing HIV-positive females because he found them to be cheap labor, since he believed their lives had no purpose.¹²²

Traffickers thus keep trafficked women in indentured servitude through debt bondage, retaining immigration documents, threatening them with violence, denying them medical attention, forcing them to abort pregnancies, raping them, mentally and physically abusing them, and keeping them imprisoned.¹²³ All of these tactics violate international rights¹²⁴ protected by the UN International Covenant on Civil and Political Rights ("ICCPR") including the right to life,¹²⁵ the right to freedom from cruel and degrading treatment,¹²⁶ the right to liberty and security of the person,¹²⁷ and the freedom of movement.¹²⁸

¹²¹ Dinan, *supra* note 22 at 35.

¹²² See CSI, *supra* note 2, at Chapter I.

¹²³ See CSI, *supra* note 2, at Chapter III.

¹²⁴ See Dinan, *supra* note 22, at 55.

¹²⁵ See U.S. RATIFICATION OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS, at 296, art. 6 (Hurst Hannum & Dana D. Fisher, eds. 1993) [hereinafter U.S. RATIFICATION].

¹²⁶ See *id.*, art. 7.

¹²⁷ See *id.* at 297, art. 9.

¹²⁸ See *id.* at 298, art. 12.

V. Government Support and Legal Redress

International trafficking of women is a pervasive problem for both the countries involved and the women who are victimized. Yet proper penalties for perpetrators remains beyond the world's grasp. Trafficking is a multifaceted, complex problem that does not lend itself to simple solutions.

Poor legal redress seems to exist due to three overlapping problems. First, the myth still exists that victims are voluntary participants in the trafficking process, and therefore, do not deserve any sort of compensation, but rather should be brought to justice along with the traffickers themselves. As a result, there is confusion among policymakers and government officials as to whether to treat trafficking as an immigration issue or a human rights issue. As long as there are officials who believe that trafficked persons are willing participants, those women will be treated as illegal aliens, rather than crime victims. Second, as explained above, crime rings are complex structures, making it very difficult for federal prosecutors to gather the evidence necessary to convict. Corrupt officials further make it difficult for the prosecutors to achieve success. Finally, at best, the laws and covenants that do exist provide a utopian ideal that has so far proven impossible to live up to. Existing laws on trafficking are sources of controversy, as courts and legislatures often disagree about their interpretation, intent, and construction.

A. Instruments of the United Nations

Covenants and conventions offer hope, but even though powerful nations promise to preserve essential rights, these agreements lack teeth, because little enforcement power support them. The United Nations has ranked trafficking in women as one of the greatest human rights violations in the world.¹²⁹ As such, its members have created a variety of instruments, which ideally should protect women and girls from the evil of trafficking. The International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social, and Cultural Rights ("ICESCR") were designed to do just that. But as previously pointed out, there have been numerous egregious violations of the ICCPR, as the traffickers use any means necessary to keep their victims in bondage.

The ICESCR provides specific rights that state parties must recognize and guarantee. The Covenant recognizes "the right to work, which includes the right of everyone to the opportunity to gain his living

¹²⁹ See Cao, *supra* note 84, at 1298.

by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”¹³⁰ Article 7 further recognizes the right of everyone to the enjoyment of just and favorable conditions of work, including fair wages, a decent living, healthy working conditions, and “rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”¹³¹ Yet traffickers violate these rights as they assign arbitrary debts, excessive hours, and little compensation to the women they “employ.” Despite the healthy working condition guaranteed by the ICESCR, trafficked women continue to have their health and safety placed in jeopardy, as they are routinely denied access to medical attention and health care, and are forced to perform sexual acts without contraceptives, increasing their risks of contracting AIDS and other sexually transmitted diseases.¹³²

Although these violations are widely known and highly documented, there is still little redress for the victims. Furthermore, much of the strength of the covenants has been diluted, as many nations have adopted various reservations and derogations, making enforcement quite difficult among states. These covenants guarantee rights for individuals, but the obligations remain with the state parties as a whole. Therefore, a trafficking ring usually cannot be found as having violated a provision of the ICCPR, but rather the source country or country of destination would be held responsible. In order for traffickers themselves to be responsible under the covenants, the United States, for example, must implement specific legislative policies. However, the overarching American belief that human rights abuses occur in other countries, but not within American borders, has hindered the development of such legislation.¹³³

Trafficking of women has also been recognized as a form of discrimination against women, because although men have been trafficked, it is primarily a gender-based crime. The United Nations Committee on the Elimination of All Form of Discrimination Against Women (CEDAW) defines discrimination and obligates ratifying state parties to “undertake a series of measures to end discrimination against women in all forms including:” incorporating the principle of equality of men and women in their legal system, abolishing all discriminatory laws, establishing tribunals “to ensure the effective protection of women

¹³⁰U.S. RATIFICATION, *supra* note 125, at 317, art. 6 (1).

¹³¹ *Id.* at art. 7.

¹³² See Dinan, *supra* note 22, at 55-56.

¹³³ See Young, *supra* note 24, at 81.

against discrimination,” and ensuring elimination of all acts of discrimination against women.¹³⁴

In support of the notion that discrimination against women includes trafficking, in 1992, CEDAW explained that the general prohibition against gender discrimination: “[i]ncludes gender-based violence, that is, violence which is directed against a woman because she is a woman or which affects women disproportionately. It includes acts which inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion, or other deprivations of liberty.”¹³⁵

CEDAW further explained that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and to provide compensation.”¹³⁶

While this commentary seems promising, CEDAW faces even bigger problems than the ICCPR and ICESCR. While the international covenants have enforcement power, albeit weak power, CEDAW entirely lacks any means of enforcement, rendering it nothing more than an idealistic wish list.

B. Legal Mechanisms Available Within the United States

There have been various suggestions for legal redress within the United States, where federal law and constitutional provisions can be employed. The Thirteenth Amendment to the United States Constitution prohibits slavery of any type: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”¹³⁷

This amendment seems to circumvent the debate as to whether the trafficked woman entered the United States through coercion or of her own volition. Under the Thirteenth Amendment, it does not matter why the woman originally entered the U.S., it only matters if at the time of prosecution, she was being held without consent. If a person wants to stop work, yet is forced to continue to do so, then the work is involuntary and her purported consent has been vitiated.¹³⁸

¹³⁴ *Convention on the Elimination of All Forms of Discrimination Against Women*, G.A. Res. 34/180, U.N. GAOR, U.N. Doc. A/34/46, available at [gopher://gopher.un.org/00/ga/cedaw/convention](http://gopher.un.org/00/ga/cedaw/convention).

¹³⁵ See Dinan, *supra* note 22, at 55.

¹³⁶ *Id.*

¹³⁷ U.S. CONST. amend. XIII.

¹³⁸ See CSI, *supra* note 2, at Definitions.

Defense attorneys for traffickers have argued that a person cannot be enslaved if they are not under physical constraint. Because many trafficked women are only held through debt and fear, and because psychological force does not qualify as holding a person against her will, these attorneys argue that there was no forced slavery, and therefore, no Thirteenth Amendment violation.¹³⁹

Yet the U.S. Supreme Court, in *United States v. Kozminski*,¹⁴⁰ defined involuntary servitude for purposes of criminal prosecution as

[A] condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or legal coercion – a definition which encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.¹⁴¹

Therefore, it appears that U.S. law recognizes mental coercion, such as a victim's fear that her family could be killed at the hands of a trafficker, as well as legal coercion, which includes deportation and debt bondage. However, according to an official at the U.S. Department of Justice, this definition hinders prosecutors because they are unable to reach those traffickers that use "more subtle, but no less heinous forms of coercion that wrongfully keep the victim from leaving his or her labor or services."¹⁴²

The Mann Act¹⁴³ also provides a legal outlet for prosecutors, although it is a law that is somewhat antiquated and, as a result, not

¹³⁹ *Id.*

¹⁴⁰ 487 U.S. 931 (1988).

¹⁴¹ *United States v. Kozminski*, 487 U.S. 931 (1988).

¹⁴² Michael Candes, Note, *The Victims of Trafficking and the Violence Protection Act of 2000: Will It Become the Thirteenth Amendment of the Twenty-First Century?*, 32 U. MIAMI INTER-AM. L. REV. 571, 585 (2001), citing *International Trafficking in Women and Children: Prosecution, Testimonies, and Prevention: Hearings on International Trafficking of Women and Children before the Subcomm. on Near Eastern and South Asian Affairs, of the Comm. on Foreign Relations, U.S. Senate*, 106th Cong. 80 (2000) (Statement of William R. Yeomans, Chief of Staff, Civil Rights Division United States Department of Justice),

available at <http://www.usinfo.state.gov/topical/global/traffic/00040501.html>.

¹⁴³ 18 U.S.C. § 2421.

widely used.¹⁴⁴ The Mann Act was known as the White Slave Traffic Act at its inception in 1910. Its purpose, at that time, was to forbid transporting a woman or girl across state lines for “immoral purposes.”

The Mann Act was eventually amended to encompass all individuals, rather than just girls and women. The words “immoral purpose” were also changed to “any sexual activity for which any person can be charged with a criminal offense.”¹⁴⁵

As such, the current version of the Mann Act states that anyone who knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than five years, or both.¹⁴⁶

It further punishes any individual who “persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce. . .to engage in prostitution.”¹⁴⁷ Despite these changes, traffickers have not been zealously prosecuted under the Act, possibly because prosecutors view the law as outdated or because it has rarely been applied to international cases and there is no movement to change precedent.¹⁴⁸

Trafficking cases may also be prosecuted under laws addressing involuntary servitude and slavery,¹⁴⁹ collection of credit through extortion,¹⁵⁰ recruiting, smuggling, and transporting aliens,¹⁵¹ or harboring for prostitution.¹⁵² Yet using these laws in any combination with the Mann Act has drawn criticism, because a mixture of laws often makes it difficult to prove all of the elements. As such, there is support for the implementation of a comprehensive American trafficking law, which would allow for easier prosecutions. It would act as a model for other countries, and provide protection for victims.¹⁵³

¹⁴⁴ *See id.*

¹⁴⁵ Michael Conant, *Federalism, the Mann Act, and the Imperative to Decriminalize Prostitution*, CORNELL J.L. & PUB. POL’Y, 99,99 (1996).

¹⁴⁶ Young, *supra* note 24, at 85, *citing* 18 U.S.C. § 2421 (1994).

¹⁴⁷ *Id.*, *citing* 18 U.S.C. § 2422 (1994).

¹⁴⁸ *Id.* at 86.

¹⁴⁹ *See* 18 U.S.C. §1581.

¹⁵⁰ *See* 18 U.S.C. § 894.

¹⁵¹ *See* 8 U.S.C. §1324.

¹⁵² *See* 8 U.S.C. §1328.

¹⁵³ *See* CSI, *supra* note 2, at Chapter XI.

Where criminal prosecutions have not proven adequate, trafficked victims may try to win damages from their traffickers through private civil actions. In fact, civil actions may benefit victims far more than criminal prosecutions, because the women may be able to recover compensation, restitution, and damages proportionate to the gravity of harm they have suffered and the seriousness of the traffickers' legal violations.

The Racketeer Influenced and Corrupt Organizations Act ("RICO")¹⁵⁴ acts as a sort of catalyst, allowing plaintiffs to bring private actions alleging violations of other laws, which for trafficking purposes, could include the Mann Act. To plead a RICO claim, a plaintiff must prove the existence of two specific elements: first, that she has been injured from the operation of an enterprise affecting interstate or commerce, and second, that the operation constitutes a pattern of racketeering.¹⁵⁵ According to the statute, a pattern of racketeering exists when there have been at least two violations of federal offenses from an enumerated list within ten years before the filing of the complaint. These offenses are termed "predicate acts," and include kidnapping and interstate transportation of women for prostitution, as described under the Mann Act.¹⁵⁶ The difficulty that often arises with civil RICO is establishing the link or nexus between the legal violation and the pattern of racketeering. The enterprise, i.e. trafficking, must be a separate entity that is conducted via acts that constitute a pattern of racketeering.¹⁵⁷ Therefore, while it may be simple to show a violation of the Mann Act, the link to organized crime must also be shown, which is difficult given the convoluted, underground practices of trafficking crime rings.¹⁵⁸

In an effort to acknowledge that the trafficking of women continues to be a rampant human rights violation, and in recognition that the current legal approaches are not sufficient, the United States State Department released its Trafficking in Person Report in July 2001. Secretary of State Colin Powell announced that the report will make it "abundantly clear that trafficking is going on all over the world, in both developed and developing countries, even within the United States. It happens in countries where the government violates human rights and in countries where the government's human rights record is generally

¹⁵⁴ See 18 U.S.C. §1961 (1982).

¹⁵⁵ See Cao, *supra* note 84, at 1308.

¹⁵⁶ See *id.* at 1309, *citing* 18 U.S.C. §1961(1)(5) (1982).

¹⁵⁷ See *id.* at 1310.

¹⁵⁸ See Young, *supra* note 24, at 87.

excellent.”¹⁵⁹ Powell further told of a plan with bipartisan support from Congress and President George W. Bush, in which the United States, in partnership with the NGO community, will take action against trafficking within the United States and throughout the world. He announced the creation of a new interagency task force, whose sole duty is to “to identify what more needs to be done to safeguard the vulnerable, to punish the traffickers, to care for their victims, and to prevent future trafficking.”¹⁶⁰

It is the hope of the State Department that the new task force will aim to fulfill the tasks set forth in the Victims of Trafficking and Violence Protection Act of 2000.¹⁶¹ The Act calls for the government to prohibit trafficking and punish acts of trafficking, as well as provide commensurate punishment and attempt to deter and eliminate trafficking altogether.¹⁶² Specifically, the purpose of the Act is “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”¹⁶³

By passing this Act, Congress took steps to strengthen Supreme Court’s decision in *Kozminski*. Although that decision laid a foundation for prosecution of trafficking, it was still not strong enough to cover all forms of coercion. As the Act itself states, statutes outlawing involuntary servitude were “interpreted to criminalize only servitude that is brought about through use or threatened use of physical or legal coercion, and to exclude other conduct that can have the same purpose or effect.”¹⁶⁴ As a result, the Act attempted to rectify this problem by prohibiting subtle methods often employed by traffickers, including threatening to harm the victim’s family or loved ones, restraining the

¹⁵⁹ Secretary Colin Powell and Others, *Release of the 2001 Trafficking In Persons Report*, REMARKS AT SPECIAL BRIEFING, July 12, 2001, at <http://www.state.gov/g/inl/rls/rm/index.cfm?docid=4071>.

¹⁶⁰ *Id.*

¹⁶¹ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 (2000). [hereinafter Trafficking Act].

¹⁶² See Human Rights Watch, *Memorandum of Concern: Trafficking of Migrant Women for Forced Prostitution into Greece*, at <http://www.hrw.org/backgrounder/eca/greece/index.htm>; See also http://www.hrw.org/backgrounder/eca/greece/greece_memo_greece.htm#_Toc520092594, n.13, citing Trafficking Act [hereinafter Memorandum of Concern].

¹⁶³ Trafficking Act *supra* note 172, at §102(a).

¹⁶⁴ *Id.* at § 101(b)(13).

victims without physical violence or injury, or threatening dire consequences by means other than the expected outright violence.¹⁶⁵

The Act widened the scope of *Kozminski* in general by broadly defining the term "coercion." As previously mentioned, the definition of this word has been the source of much controversy. By broadly defining coercion, the United States Congress is finally allowing federal prosecutors to charge alleged traffickers with a tangible crime that brings substantial penalties.

As it is defined in §103(2) coercion is defined not only as "threats of serious harm to or physical restraint against any person,"¹⁶⁶ but also, as "any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person,"¹⁶⁷ as well as "the abuse or threatened abuse of the legal process."¹⁶⁸

Therefore, the Act does not require prosecutors to prove physical harm or threats of physical force, allowing the government to prosecute the trafficker for a multitude of offenses.¹⁶⁹ Because the Act is relatively new, interpretation remains to be seen. For example, the term "severe forms of trafficking in persons" may be interpreted as either "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,"¹⁷⁰ 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."¹⁷¹ If this provision is interpreted narrowly, all victims of trafficking will not be included, and many traffickers will avoid prosecution. Such a narrow interpretation may deem the Act ineffective.¹⁷²

As previously noted, much of the problem with eradicating trafficking is that in cases where the traffickers are brought to justice, the victims are often left homeless and in dire financial straights. It is all too common for the victim to be detained and then deported back to her home country.¹⁷³ The Act attempts to change this with the creation of the

¹⁶⁵ See Candes, *supra* note 142, at 588, citing Trafficking Act.

¹⁶⁶ Trafficking Act, *supra* note 172, at §103(2)(A).

¹⁶⁷ *Id.* at §103(2)(B).

¹⁶⁸ *Id.* at §103(2)(C).

¹⁶⁹ See Candes, *supra* note 153, at 589.

¹⁷⁰ Trafficking Act, *supra* note 172 at §103(8)(A).

¹⁷¹ *Id.* at §103(8)(A).

¹⁷² See Candes, *supra* note 153, at 593.

¹⁷³ See CSI, *supra* note 1, at Chapter XI.

“T” visa,¹⁷⁴ which allows the victim to stay in the United States once she is free from the control of her trafficker. Under the “T” category, up to five thousand trafficked victims each year are eligible for up to three years of non-immigrant status and employment authorization.¹⁷⁵ A victim qualifies for a “T” visa if she “is or has been a victim of [a] severe form of trafficking” as defined in §103(8), is physically present due to that trafficking, has complied with requests for help in the investigation or prosecution of traffickers or has not reached the age of 15, and would suffer extreme hardship upon removal.¹⁷⁶ The victim’s spouse and children, and if the victim is under twenty one years old, the victim’s parents, are also eligible for derivative “T” status if the Attorney General deems that it is necessary to avoid extreme hardship to the victim.¹⁷⁷

As previously noted, the Act calls for the creation of an interagency task force to monitor and combat trafficking.¹⁷⁸ Among its various obligations, the main purpose of the task force is to “[m]easure and evaluate progress of the United States and other countries in the areas of trafficking prevention, protection, and assistance to victims of trafficking, and prosecution and enforcement against traffickers, including the role of public corruption in facilitating trafficking.”¹⁷⁹

Despite the progress made by the Act in the area of prosecution and the hope that the interagency task force will curtail trafficking, it is all too likely that this task force will confront many of the same obstacles trafficking currently presents to prosecution. Victims have been taken from their homes and brought to new countries where the language and culture are different. Aside from fear of the traffickers’ wrath and the risk of deportation, victims are scared in general and unwilling to contact authorities. One prosecutor has noted that the FBI needs more ethnic Chinese and Spanish speaking agents, who are familiar with various dialects and cultural mannerisms so the agents may work undercover,¹⁸⁰ gathering evidence and saving the women from the dreaded task of reporting their victimization *sua sponte*. Infiltrating a brothel or other such sex institution proves even more difficult because if a female agent

¹⁷⁴ See Candes, *supra* note 153, at 594, *citing* Trafficking Act, §107(e)(1); 8 U.S.C. §1105(a)(15)(T)(2000).

¹⁷⁵ National Immigration Project of the National Lawyers Guild, Chapter 3, §3.132 [hereinafter NLG].

¹⁷⁶ Candes, *supra* note 153, at 594.

¹⁷⁷ NLG, *supra* note 175.

¹⁷⁸ Trafficking Act, *supra* note 161, at §105.

¹⁷⁹ *Id.* at §105(d)(2).

¹⁸⁰ See CSI, *supra* note 2, at Chapter XI.

was sent to work undercover, she would have to pretend to be a victim, thereby risking her own health and safety.¹⁸¹

The lack of cooperation from law enforcement agents hinders effective prosecution as well. Police complicity or, at the very least, officers ignoring violations, is all too common. According to one documented incident occurring in Greece, a trafficker was detained, but the Romanian victim was never found. The police reported that the trafficker said the women had been sent back to Romania. The International Organization for Migration pointed out the fact that police had such detailed information but still failed to locate the woman raised a reasonable suspicion of police complicity. The IOM further warned that the "police should never rely on statements of traffickers, but should conduct a thorough independent investigation of allegations of trafficking."¹⁸²

As previously noted, it is common for officials to view trafficked women as willing participants in their own plight. As a result, the traffickers evade punishment and instead, the women are quickly deported back to their home countries without redress. As they head back to their country, the women take not only the effects of post-traumatic stress, but valuable eyewitness testimony as well.

VI. Possibilities for the Future

The eradication of trafficking must first begin with a commitment to education. The Trafficking Act, for example, has committed itself to the "development of educational curricula regarding the dangers of trafficking," and, "has allotted grants to nongovernmental organizations to accelerate and advance the political, economic, and educational roles and capacities of women in their countries."¹⁸³ In that vein, education must commence first in source countries to make women and girls aware of the potential threat of traffickers. The Thai government, for example, has premised its education on the idea that trafficking can occur even if a woman migrates for the purpose of consensual sex work, as forced prostitution may occur once she reaches her point of destination.¹⁸⁴ The Thai government's efforts to raise public awareness have consisted of large-scale information campaigns about the

¹⁸¹ *See id.*

¹⁸² *See* Memorandum of Concern, *supra* note 162.

¹⁸³ Trafficking Act, *supra* note 161, at §106(a)(4-5).

¹⁸⁴ *See* Dinan, *supra* note 22, at 188.

dangers of the sex industry abroad, yet it has failed to offer strategic tips on travel safety.¹⁸⁵

Human Rights Watch has further criticized the Thai government's practice of denying passports to women and girls deemed "potential victims." While this policy may stop trafficking to some extent, it is an invasion of privacy and severely limits women's freedom of movement and independence.¹⁸⁶ The GAATW agrees:

Anti-trafficking measures must not, in the name of "protecting" all women from harm, deprive any woman of any of her human rights as the principles of non-discrimination and the universality of human rights norms are fundamental and non-derogatory. States have a duty to ensure that all procedural and substantive rights are protected.¹⁸⁷

Equally important for eliminating trafficking is the education of law enforcement and government officials. They must be enlightened as to the effects of victimization, the plight of trafficked women, and techniques of deception employed by traffickers. The U.S. State Department suggests that more experienced consular officials should conduct visa interviewing, sacrificing expeditious processes for clarity and thoroughness.¹⁸⁸ Yet INS workers have revealed that there is no means to track tourist visas and it is virtually impossible to validate student visas that have been issued by universities throughout the United States.¹⁸⁹

GAATW and other NGO's have focused heavily on the need for victim assistance. Trafficked women lack the financial means to return to their home country, and it is likely that without proper documentation, the women may be imprisoned or placed in detention centers. Reintegration services are necessary to allow the women to return home to a place of adequate support where there will be little risk of repeated abuse and exploitation.¹⁹⁰

At present, despite the fact that the Trafficking Act provides for assistance in foreign countries to develop resettlement and reintegration

¹⁸⁵ See *id.* at 188-189.

¹⁸⁶ See *id.* at 189.

¹⁸⁷ See GAATW Commentary, *supra* note 39.

¹⁸⁸ See CSI, *supra* note 2, at Chapter XI.

¹⁸⁹ See *id.*

¹⁹⁰ See *Human Rights Standards for the Treatment of Trafficked Persons*, *supra* note 49.

plans,¹⁹¹ there are few funds allocated for the benefit of trafficked victims. Victims' advocates point out that there are unique circumstances that must be considered when formulating help and constructing shelters. The victims often feel better when they are housed together, as they have shared common experiences. Furthermore, they may need to live in shelters where specific languages are spoken, a necessity lacking in most domestic violence and rape shelters. NGO's advocate that victims would be best served in special shelters designed specifically to meet their needs, staffed with social workers and doctors trained to handle the aftermath of trafficking.¹⁹²

Overall, victims need to feel empowered after a situation in which control was stripped from them. The ability to file private civil actions, obtain proper medical attention, and receive proper repatriation will slowly allow a victim to regain power in her own life. Such assistance will not only benefit the victims themselves, but will assist in the prosecution of traffickers. Putting victims in witness relocation programs would give trafficked women a new start and the ability to aid in the prosecutions of their traffickers. Officials also believe that trafficked women who are waiting to be material witnesses at trial should be permitted to work, thereby lessening the economic hardship they already face.¹⁹³ The United States may consider following the example set by the governments of Belgium and the Netherlands, which grant temporary residence to trafficking victims as incentives to stay in the country, press charges, and testify at trial.¹⁹⁴

Even though the Trafficking Act provides for more punishment for traffickers, prosecutors still complain that traffickers are not subjected to penalties that fully account for their human rights violations. Many of the laws under which they are prosecuted have jail term limits, and as such traffickers usually spend no more than five years in prison.¹⁹⁵ Heightened sentencing guidelines could rectify this problem, although recently U.S. federal courts have done little to brighten the situation.

*U.S. v. Castaneda*¹⁹⁶ involved the sentencing of Castaneda, a trafficker who owned a nightclub in Saipan, Commonwealth of the Northern Mariana Islands, and recruited waitresses and singers from the Philippines. Although the women signed a booklet that prohibited them

¹⁹¹ See Trafficking Act, *supra* note 161, at §107.

¹⁹² See CSI, *supra* note 2, at Chapter XII.

¹⁹³ See *id.* at Chapter XII.

¹⁹⁴ See Johnson, *supra* note 6, at Part III(A)(2)(b).

¹⁹⁵ See CSI, *supra* note 2, at Chapter XI.

¹⁹⁶ 239 F.3d 978 (2001).

from engaging in prostitution, they were forced to line up for selection by male customers to accompany them to private VIP rooms, where the women were made to provide sexual services. Castaneda was convicted for violating the Mann Act. The lower court increased Castaneda's sentence under the Federal Sentencing Guidelines by using the "vulnerable victim" enhancement. A vulnerable victim is defined as "one 'who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to criminal conduct.'"¹⁹⁷ However, the United States Court of Appeals for the Third Circuit reversed the trial court's decision, arguing that the victims were no more vulnerable than other person engaged in prostitution.

Judge Silverman's dissent made the important distinction between those women who willingly engage in prostitution and those who are forced to do so:

[I]t is difficult to understand how the majority can equate a woman who is intentionally tricked into leaving her home in a foreign country on a promise of a legitimate job, and then forced to provide sexual services with a professional prostitute who willingly agrees to travel across state lines for purposes of prostitution.¹⁹⁸

Judge Silverman correctly depicted the deepest flaw that exists in the government's response to the trafficking phenomenon. Because lawmakers, officials, and judges cannot clearly see the vulnerability and deception that distinguishes trafficking of women with voluntary prostitution, it seems unlikely that the entire international community will ever reach an effective solution to end trafficking. Until then, governments will adopt powerless covenants, and NGO's will formulate standards for states to adopt, with only the hope of eventually helping some of the thousands of women trafficked each year. Elizabeth Andersen, Executive Director of the Europe and Central Asia division of Human Rights Watch, sums up the current state of international trafficking quite succinctly: "trafficking victims . . . are treated like

¹⁹⁷ *Id* at 980.

¹⁹⁸ *Id* at 983.

criminals. Meanwhile, the real criminals are going free. The government's response to this issue punishes the wrong people."¹⁹⁹

¹⁹⁹ Memorandum of Concern, *supra* note 162.