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Human Trafficking: Addressing The International Criminal Industry In The Backyard

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HUMAN TRAFFICKING: ADDRESSING THE INTERNATIONAL CRIMINAL INDUSTRY IN THE BACKYARD

Sarah King

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Human trafficking is a modern phenomenon with ancient roots; it is a degrading institution that generates billions of dollars annually; it is an international problem that sits in our own backyards. Because human trafficking raises, among many issues, questions of international law, human rights violations, global economic concerns and matters related to organized crime, a discussion on human trafficking could take many forms. This paper will attempt define human trafficking in a modern context; discuss the interplay between international, national, and state specific human trafficking laws; and provide analysis on where we need to go as part of an international community to address the many problems associated with this longstanding and devastating industry.

BACKGROUND

Trafficking Defined

To understand the phenomenon of human trafficking and the myriad of problems that it presents, both for its victims and the communities from which and to which they are trafficked, one must of have a clear understanding what human trafficking is. The United States Department of Justice characterizes human trafficking, or trafficking in persons, as

“a form of modern-day slavery. Traffickers often prey on individuals who are poor, frequently unemployed or underemployed, and who may lack access to social safety nets, predominantly women and children in certain countries. Victims are often lured with false promises of good jobs and better lives, and then forced to work under brutal and inhuman conditions.”¹

The Protocol to Prevent and Suppress Trafficking in Persons, Especially Women and Children, attached to the United Nations Convention Against Transnational Organised [sic] Crime, provides a more expansive definition:

“‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring, [sic] or receipt of persons, by means of 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 the minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour [sic] or services, slavery or practices similar to slavery, servitude or removal of organs”²

Other national and international groups provide similar definitions. Common to all of these definitions of human trafficking are the elements of force and coercion that are inflicted upon the victims.

Human trafficking should not be confused with human smuggling, which is something quite separate and distinct. This paper will not comment extensively on the subject of human smuggling; however, a brief comparison on how the international community defines human smuggling as opposed to human trafficking is useful to this

¹ U.S. Dep’t of Justice, *Fight Trafficking in Persons*, http://www.usdoj.gov/whatwedo/whatwedo_ctip.html (last visited Feb. 4, 2008).

² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

discussion. The Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime defines smuggling as:

The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, or illegal entry of a person into a State Party of which their person is not a national or permanent resident³

While there are several differences between smuggling and trafficking, the major difference is that smuggling implies an explicit, mutually beneficial arrangement between two parties, where one party benefits financially or materially and the other party benefits via his or her illegal entry into a state of which she is not a national or permanent resident; whereas, trafficking definitions imply that there is a clear victim, who has been forced against her own will into a situation that he or she either did not choose or did not understand. Discussions on smuggling, and the laws against it, illustrate the legal differences between smuggling and trafficking; however, distinctions between these laws are not the primary focus of this paper.⁴ For our purposes, we need only to understand that trafficking laws are enacted and enforced with the idea that there is a clear victim.

Although human trafficking or trafficking in persons is a plague that has recently attracted the attention of the United States government and the international community, human trafficking is an old industry that has its roots in a long history of international slave trade. Throughout global history, people have been taken from their homes and countries to be sold into lives that are no longer their own and into lands that are far from their homes. Kofi Annan, former Secretary General to the United Nations, once described the journey of those taken from Africa to be brought as slaves to America in the following way "...the

³The Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex III, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

⁴ See Tom Obokata, *Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors under International Human Rights Law*, 17 INT'L J. REFUGEE L. 394, 396-98 (2005).

⁵ See Tom Obokata, *Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors under International Human Rights Law*, 17 INT'L J. REFUGEE L. 394, 396-8 (2005).

New World for them held only the promise of a life of unremitting toil on the plantations, as the disposable chattels of fellow human beings.”⁶ From ancient civilizations in Egypt, the Middle East, and Greece to not so distant American history, the phenomenon of slavery has been regarded as a right, as destiny, as a necessary evil, and even as a prudent business decision.⁷

Slavery in America was supposed to have been abolished in America by the 13th Amendment to the United States Constitution, and in the British Empire by an 1807 Act of Parliament.⁸ Across the world, countries have declared themselves free from the scourge of inhumanity, where people are bought and sold in public forums. However, the fact that slavery is no longer legal, or even morally acceptable, does not mean that the practice of slavery is gone. In fact, slavery, in the modern form of trafficking in humans, is an industry that continues to thrive affecting millions of people and generating billions of dollars in profits.⁹

Currently:

According to the United States Department of Health and Human Services Department of Children and Families (DCF), there are between 600,000 and 800,000 victims trafficked across international borders.¹⁰ The Department of State estimates that between 14,500 and 17,500 of these 600,000 to 800,000 victims are trafficked into the United States.¹¹

Victims of human trafficking generally fall into two major categories: 1) those who are trafficked for the purpose of sexual exploitation, and 2) those who are trafficked for the purpose of labor exploitation. Sexual trafficking is the exploitation of victims in the forms of prostitution, live shows, stripping, and other forms of commercial sexual activities.¹² The exploitation of victims for labor includes, among other forms

⁶ Kofi Annan, Address by H.E. Mr. Kofi Annan to both Houses of Parliament, London (May 8, 2007), *available at* http://www.unodc.org/unodc/en/about-unodc/speeches/speech_2007_05_08.html.

⁷ *See id.*

⁸ Antonio Maria Costa, Op-Ed., *It's Time to Fight a New War on Slavery: Human Trafficking*, INT'L HERALD TRIBUNE, Mar. 20, 2007, at 6.

⁹ *See id.*

¹⁰ U.S. Dep't of Health & Human Servs., *Fact Sheet: Human Trafficking*, http://www.acf.hhs.gov/trafficking/about/fact_human.html (last visited Feb. 4, 2008).

¹¹ *See id.*

¹² *See id.*

of forced labor, migrant work, often on farms or in fields, domestic servitude, and work in sweatshops.¹³

Traffickers usually target the most vulnerable parts of society.¹⁴ The findings section of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) cites that the majority of the victims targeted are women and children, whose societal and economic positions leave them more susceptible to the schemes of traffickers and the false promises of a better life abroad.¹⁵ Women in particular are offered relatively well-paying jobs working as nannies, maids, restaurant workers, and models, among other occupations.¹⁶

While these women see an opportunity for a career or a life outside of the destitute situations in which they currently live, what they actually often get is a nightmarish trap of false promises. Most victims who are trafficked into the United States come from Central America, Asia, and Eastern Europe. These victims from foreign countries face not only the hardships of their situation, be it forced labor or sexual enterprise, but they are also confronted with the helplessness of being in a foreign country, where they do not understand the laws or speak the language.¹⁷

Beyond the language barrier and the fear of being in an unfamiliar location, trafficked persons are often subjected to brutal forms of coercion, such that they are afraid to disobey their captors.¹⁸ The captors of these trafficked persons use abuse, which can be physical, mental and emotional; starvation; and maltreatment to control their victims.¹⁹ Combined with the unfamiliar surroundings and fear of their current situation, many times threats alone of the abovementioned abuses are enough to deter these women and children from any attempt at disobeying or running away from their captors.

One particular form of coercion used by captors is called “debt bondage,” or “bonded labor.” In this scheme, a captor tells his or her victim that the victim has assumed a debt as a result of passage to a new country or initial expenses of beginning labor; therefore, the captor tells

¹³ *See id.*

¹⁴ 22 U.S.C. § 7101(b) (2000).

¹⁵ *See id.*

¹⁶ *See id.*

¹⁷ U.S. Dep’t of Health & Human Servs., *supra* note 9.

¹⁸ 22 U.S.C. § 7101(b) (2000).

¹⁹ *See id.*

the victim that before the victim is free to go on his or her own, the victim must pay off the debt owed to the captor.²⁰ Debt bondage is specifically addressed in the TVPA, where it is defined as

...the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.²¹

Victims trapped in debt bondage schemes, where they have little hope of ever obtaining freedom, exemplify the plight of trafficked persons.

COMPARISON OF INTERNATIONAL, UNITED STATES NATIONAL, AND STATE LAWS

International

Human trafficking has been recognized at an international level, and some attempts have been made to address it. The last decade has seen large leaps forward in the work toward addressing the international trafficking of humans. In the past human trafficking was addressed internationally, only in passing, by groups that addressed international trade or organized crime. In 1999, the United Nations Office on Drugs and Crime (UNODC), created the "Global Programme against Trafficking in Human Beings (GPAT)."²² This group focuses specifically on the criminal element of human trafficking and the role of organized crime internationally.²³ Through data gathering and analysis, the GPAT attempts to aid nations party to it, in the creation of effective measures to

²⁰U.S. Dep't of State, Office to Monitor and Combat Trafficking in Persons, *The Facts about Human Trafficking for Forced Labor*, available at <http://www.state.gov/g/tip/rls/fs/2005/50861.htm> (last visited Feb. 4, 2008).

²¹ 22 U.S.C. § 7102 (2000)

²²UNODC and human trafficking, 2008, <http://www.unodc.org/unodc/en/human-trafficking/index.html>.

²³ See *id.*

combat human trafficking.²⁴ The GPAT has three primary focuses: 1) data collection; 2) assessment; and 3) technical cooperation.²⁵

The GPAT's data collection and assessment goals are closely related.²⁶ The GPAT collects data on topics ranging from cross-national trafficking routes to the volume of persons being trafficked.²⁷ This data is centralized in one database.²⁸ The GPAT then moves to the assessment stage where the centralized data is analyzed and reported on annually. The countries involved in the GPAT are then assessed under three categories related to trafficking: 1) smuggling routes and forms of exploitation of trafficked people; 2) cooperation among law enforcement, prosecution and judiciary; and 3) government efforts to respond, including recent legislative reforms.²⁹ After assessing where each country stands on these three main areas, the GPAT assembles a collection of "best practices" which serve as guidelines for the other countries to follow.³⁰ Finally, based on the collective assessments, both recent and past, several countries from Africa, Asia, Europe, and Latin America, are involved with GPAT in technical cooperation projects.³¹

Recently, these projects have taken the form of participation in The United Nations Global Initiative to Fight Human Trafficking ("UN.GIFT"). UN.GIFT was formed in 2007 with the aim of providing a framework for countries all over the world to work together to address the truly international problem of human trafficking.³² Its goals are to build awareness; broaden the knowledge base of data, facts, and statistics on global trafficking; and increase technical assistance to countries combating human trafficking.³³ UN.GIFT is multi-faceted, in that it addresses eradication of the human trafficking problem, support for those

²⁴ *See id.*

²⁵ UNODCCP, *United Nations Office for Drug Control and Crime Prevention, Global Programme against Trafficking in Human Beings, An outline for action*, (1999),

²⁶ *See id.*

²⁷ *See id.*

²⁸ *See id.*

²⁹ *See id.*

³⁰ *See id.*

³¹ ³¹ UN.GIFT, 2007, *Global Initiative to Fight Human Trafficking* (2007), http://www.ungift.org/index.php?option=com_content&task=view&id=229&Itemid=737.

³² *See id.*

³³ *See id.*

of who have already fallen victim to human trafficking, as well as prosecution of those who commit human trafficking crimes.³⁴

In recent years, as illustrated by UN.GIFT, the United Nations has shifted its approach to addressing the issue of human trafficking. As previously discussed, for much of its history, human trafficking was considered a problem that was a subset of something else. Although it does have its origins in the Convention against Transnational Organized Crime, the Protocol to Prevent and Suppress Trafficking in Persons, Especially Women and Children ("the Protocol") represents a large step forward by the international community to attempt to collectively acknowledge and address several of the many facets of human trafficking.

The Protocol is divided into three parts. The first part of the Protocol sets out the purpose and scope of the Protocol, and it provides for criminal sanctions. The second part outlines protections for trafficked persons, and the last part discusses prevention, international cooperation, and other relevant matters.³⁵

The definition of trafficking, as provided in the first section of this paper, is expansive and descriptive.³⁶ While there are certain factors that indicate trafficking, there is no one set, specific situation that is inclusive of all trafficking cases, which caused difficulty in the negotiations over the Protocol. As with any international covenant, many debates were raged about the wording of the protocol, what it should protect, and who specifically it should protect.³⁷ Ultimately, the signatories agreed to extend protection to "persons;" however, the Protocol directs a specific focus at women and children.

Further, the negotiators of the Protocol found difficulty finding a balance for when the Protocol should apply.³⁸ Countries debated its

³⁴ *See id.*

³⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, (Protocol Part of The United Nations Convention against Transnational Organized Crime) Annex II, pgs 31–39, Jan. 8, 2001.

³⁶ *See id.*

³⁷ Janice G. Raymond, *Guide to the New UN Trafficking Protocol, to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*. (2001). http://action.web.ca/home/catw/readingroom.shtml?x=33647&AA_EX_Session=58004fe9074011e40c76ec2cb1fb26ed.

³⁸ *See id.*

scope of both on issues of consent and issues of international involvement.³⁹ Ultimately, the Protocol's language makes an attempt draw the line on consent consistent with the lines that differentiate between smuggling and trafficking; where force or deception has been used, consent cannot be truly presumed valid.⁴⁰

An additional point of contention arose with the question of whom the Protocol would govern and how often. There were concerns that the Protocol might invade too far into affairs that were entirely national.⁴¹ The concern was related to the fact that trafficking can occur entirely within one country's own borders (where smuggling cannot). To truly effect change on all trafficking cases, this international covenant would be invasive on what could, sometimes, be an entirely national issue. Ultimately, the Protocol was deemed to be relevant only in trafficking cases where there was an international component.⁴²

This aspect of the Protocol makes the national section of this paper particularly relevant. It is obvious that there will be some cases of trafficking where no international borders are crossed. In these cases if there are no purely national laws against human trafficking, it is entirely foreseeable that victims (and their traffickers) in an intra-national context could fall through the cracks.

As discussed earlier, part of the problem with addressing trafficking as a subset of violence against women or other crimes is that, often times, the victims of trafficking, especially the international victims, have very specific needs, which may be overlooked without special attention. The second part of the Protocol attempts to deal specifically with the needs of the trafficking victims.⁴³ Notably, the Protocol treats all persons subjected to trafficking as victims of a crime, not criminals themselves.⁴⁴ Signatories to the Protocol are asked to protect the victims from re-victimization and provide them with support, as well as addressing the factors that cause trafficking to occur in the first place.⁴⁵

³⁹ *See id.*

⁴⁰ *See id.* at 5–7.

⁴¹ *See id.*

⁴² *See id.* at 14.

⁴³ *See id.* at 14–16.

⁴⁴ *See id.* at 6; *see also* Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, G.A. Res. 55/25, Annex II, at 35, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

⁴⁵ *See id.*

The Protocol acknowledges that when discovered, victims of trafficking may have urgent health and safety needs, and that victims should be afforded basic protections and accommodations.⁴⁶ At a minimum, the Protocol requires countries to allow for confidentiality and includes some provisions for housing and medical care. Often the Protocol requires cooperation from the victim, usually for law enforcement purposes, in exchange for the above listed protections and allowances.⁴⁷

Related to these concerns, is a question about the legal status of victims. If the Protocol applies, then we know we have a case of international trafficking. As discussed earlier in the paper, this often leaves the victim in a very precarious and unique situation.⁴⁸ In all likelihood, not only has the person been the victim of extreme mental and, or physical trauma, but they are also very likely to be uncertain about their own legal status. Articles 7 and 8 of the Protocol address the question of victims' legal statuses as well as possible "repatriation" or "refoulement."⁴⁹

The issue of legal status has been so contentious, that debates about it are still ongoing. Countries had many views, but often came down on two sides. Some nations tend to be hesitant to grant legal status to these victims—sometimes with the underlying belief that it will encourage more illegal migration.⁵⁰ Whereas, on the other side, nations from which citizens were being trafficked (i.e. the victims' homelands) were, generally, looking for as much protection as could possibly be afforded to the victims.⁵¹

Because of this distinct dichotomy in views, the resulting agreement in the Protocol was not very strong for either side. Currently, states are required only to "consider" laws, which would allow trafficked persons to remain in their states either temporarily or permanently in

⁴⁶See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, G.A. Res. 55/25, Annex II, at 33–34, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

⁴⁷See *id.*

⁴⁸See *supra* text accompanying note 12.

⁴⁹See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, G.A. Res. 55/25, Annex II, at 34–35, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

⁵⁰See *id.*

⁵¹See *id.*

“appropriate cases.”⁵² States must also agree to “accept and facilitate the repatriation of their own nationals.”⁵³ Finally, Article 8(2) makes it clear, that it remains absolutely possible for a state to involuntarily return a victim to the victim’s native land.⁵⁴ This Article 8(2) is another section of the Protocol, where comparison to the national laws is so crucial. If victims of trafficking do not have assurances that they will not be returned to a situation as bad, or worse, as the one they were taken from; they will continue to be re-victimized, they may never be able to escape from their captors, and this horrific cycle could remain forever in place.

The last section of the Protocol provides that all signatory states must engage their law enforcement, make efforts to secure their borders, and share their information from human trafficking investigations.⁵⁵ According to the Protocol, states that have ratified have a duty to cooperate only with each other; cooperation with other non-party states is simply encouraged.⁵⁶ The part of the last section of the Protocol relating most to the plight of victims is brief but important. Article 10 of the Protocol specifies that Governments and NGO’s should cooperate using social methods for research and prevention of the situations that encourage trafficking.⁵⁷ Thus, Article 10 directly addresses the root causes of trafficking. Although Article 10 appears with some brevity, the fact that it exists represents the international community’s willingness to address more than just the effects of trafficking and to, begin opening dialogue to the key issues behind human trafficking.

While it is important that the international community recognizes human trafficking as a large and distinct problem facing many states, it is clear that legislation, which attempts to uniformly address human trafficking, will not adequately cover all of the individualistic issues that arise in the context of human trafficking. To make any efficient strides, it

⁵² *See id.*

⁵³ *See id.*

⁵⁴ ANN D. JORDAN, ANNOTATED GUIDE TO THE COMPLETE UN TRAFFICKING PROTOCOL, at 25, http://www.globalrights.org/site/DocServer/Annotated_Protocol.pdf?docID=2723#search=%22%22Annotated%20Guide%20to%20the%20Complete%20UN%20Trafficking%20Protocol%22%22.

⁵⁵ *See* Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, G.A. Res. 55/25, Annex II, at 35–37, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

⁵⁶ *See id.*

⁵⁷ *See id.*

will be important for countries to take initiative to address human trafficking as it individually applies to each state.

The National Perspective

The United States has, in the last several years, taken notable steps in the fight against human trafficking. While the human trafficking battle is a large one, the United States Government took a significant step forward in 2000, by passing The Victims of Trafficking and Violence Protection Act of 2000 [TVPA].⁵⁸ The TVPA begins with a series of findings related to the international trafficking of women and children, describing many of the horrific circumstances that victims encounter.⁵⁹ The act's stated purpose is "to ensure just and effective punishment of traffickers, and to protect their victims."⁶⁰ The steps the act takes toward the punishment of traffickers and the protection of victims set noteworthy precedent; however, the first, and perhaps biggest, step that the TVPA takes is recognizing human trafficking, acknowledging its existence within the borders of the United States and further working to acknowledge human trafficking victims on a national scale.

The TVPA is broken down into sections that separately, as well as cumulatively, establish a task force and a committee to prevent trafficking at its roots; develop methods for finding and prosecuting serious traffickers; and, especially important, set up a series of protections, which were previously non-existent.⁶¹

The first step the TVPA takes is working to establish where the United States and the international community stand currently, in terms of trafficking statistics.⁶² The TVPA establishes a task force charged with researching the steps being taken, both internationally and within the United States, to combat human trafficking, gather and organize data on human trafficking, facilitate cooperation between countries, and implement other forms of research aimed at understanding and combating the human trafficking industry.⁶³ The TVPA also takes some steps to address the roots of the trafficking industry, by examining the economic

⁵⁸ 22 U.S.C. § 7101 (2000).

⁵⁹ *See id.*

⁶⁰ *See id.*

⁶¹ *Id.* §§ 7103, 7104, 7105, 7106, 7107, 7108, 7109.

⁶² 22 U.S.C. § 7103 (2000).

⁶³ *See id.*

motivation behind the trafficking.⁶⁴ This section of the TVPA looks at the economic situations, which create incentives for traffickers and vulnerability for trafficking victims; this section also lays out programs to be instituted in an effort to provide alternatives to trafficking.⁶⁵ Significantly, the TVPA recognizes that combating human trafficking is an international effort and the TVPA establishes both guidelines for minimum standards and actions that will be taken in the event governments outside of the United States fail to meet these standards.⁶⁶

The last two parts of the TVPA outlines the means to punish traffickers and protect their victims.⁶⁷ The TVPA begins by criminalizing trafficking in and of itself, and giving the authorization to increase punishment and sentencing guidelines, if appropriate, in the future.⁶⁸ As discussed above, recognizing trafficking as a crime distinct from other types of kidnapping and abuse is a necessary step toward effectively addressing it.

Hand-in-hand with recognizing trafficking as a crime, is considering the treatment of the victims of that crime. The TVPA acknowledges that that people who have been trafficked are indeed victims, and purports to extend to victims all benefits, which would be extended to refugees, instead of treating them as criminals or illegal aliens.⁶⁹ This section goes on to make assurances that while victims of trafficking are in the custody of the United States Government, they should be housed in appropriate facilities, given any necessary medical care, and be provided protection, for themselves and their families if necessary. Also, the information of these victims is to be kept private.⁷⁰

There are several forms of relief available for victims of human trafficking in the United States. Victims may be afforded continuous presence in the United States, or in some situations, victims may be

⁶⁴ 22 U.S.C. § 7104 (2000).

⁶⁵ *See id.*

⁶⁶ 22 U.S.C. §§ 7106, 7107 (2000).

⁶⁷ 22 U.S.C. §§ 7105, 7108, 7109 (2000).

⁶⁸ 22 U.S.C. §§ 7108, 7109 (2000).

⁶⁹ 22 U.S.C. § 7105 (2000).

⁷⁰ *Id.*

eligible for one of two visas, which are known as 1) the “U-Visa” and 2) the “T-Visa.”⁷¹

Continuous presence (for immigration purposes) is sometimes available to those victims who may be witnesses against the traffickers, but who lack legal status.⁷² This special relief for witnesses is temporary and can only be petitioned for by a federal law enforcement agency on a victim’s behalf. The U-Visa was not designed specifically for victims of trafficking, but as victims may often have been subjected to abuse, they may also qualify for this type of relief.⁷⁴

Pursuant to the TVPA, in January of 2002, the United States announced the implementation of the T-Visa.⁷⁵ This visa was specifically designed for victims of trafficking who suffer “extreme hardship involving unusual and severe harm, if returned to their home countries” and who have cooperated with the investigation of the crime to which they were victims.⁷⁶ This visa allows victims to remain in the United States and apply for permanent residency after three years with T-Visa status.⁷⁷ Along with the U-visa, the T-Visa addresses the previous concerns that victims of trafficking were treated like the criminals after they were found or rescued.

Before the implementation of these systems that recognize victims of human trafficking as victims and allows victims to remain in the United States with protection, the victims of trafficking faced a bleak fate. Prior to the introduction of the T-Visa, when a victim of trafficking was discovered, she was most often an illegal alien, who was eligible to

⁷¹ *See id.* International Rescue Committee, Trafficking Victims Protection Act of 2000, http://www.theirc.org/media/www/trafficking_victims_protection_act_of_2000.html (last visited Feb. 1, 2008).

⁷² International Rescue Committee, Trafficking Victims Protection Act of 2000, http://www.theirc.org/media/www/trafficking_victims_protection_act_of_2000.html (last visited Feb. 1, 2008).

⁷³ *See id.*

⁷⁴ *See id.*

⁷⁵ 22 U.S.C. § 7110 (2000); Attorney General of the United States, Address at News Conference Regarding Human Trafficking (Jan. 24, 2002).

⁷⁶ John Ashcroft, Attorney General of the United States, Address at News Conference Regarding Human Trafficking (Jan. 24, 2002), <http://www.usdoj.gov/archive/ag/speeches/2002/012402newsconferenceregardinghumantrafficking.htm>.

⁷⁷ *See id.*

be deported.⁷⁸ Victims of trafficking were in a particularly vulnerable position prior to the T-Visa, because many times “help” would come in the form of an arrest and a deportation. Often victims are sent back to a home where they are stigmatized, ostracized, and even re-trafficked.⁷⁹

These initial steps have positioned the United States to take an integrated approach to human trafficking, both respecting the victims and the ordeal that the victims have inevitably been through and recognizing the inherent crime that has been committed.

State

Although trafficking has not been addressed by all of the 50 states, several states have begun to enact laws. While there are some universal similarities between all of the provisions so far enacted across the United States, this section of the paper will focus specifically on Florida. The Florida law is an exceptionally relevant case study because Florida is, in large part, located on an international border; there are major cities in Florida, which are attractive destinations for trafficking; and Florida law is fairly representative of the types of laws that have been enacted in states around the country.

If trafficking can be prosecuted as a federal crime, the question might be raised; what is the need for any kind of state law against human trafficking? However, it is often the case that local and state agents, not federal agents, first make contact with human traffickers and their victims.⁸⁰ By creating local and state-specific laws, state officials are better prepared to closely observe signs of trafficking and have a better perspective on how to respond to incidents of human trafficking.⁸¹ Prior to the enactment of specific human trafficking laws in Florida, charges against traffickers in Florida could be brought only for a variety of other crimes that the traffickers may have committed incident human trafficking, including kidnapping, battery, and false imprisonment among

⁷⁸ Administration for Children & Families, Fact Sheet: Certification for Victims of Trafficking, http://www.acf.hhs.gov/trafficking/about/cert_victims.html (last visited Feb. 2, 2008).

⁷⁹ Stephanie Richards, *State Legislation and Human Trafficking: Helpful or Harmful?* 38 U. Mich J.L. Reform 447, 452 (2005)

⁸⁰ See Terry S. Coonan, *Human Rights in the Sunshine State: A Proposed Law on Human Trafficking* 31 Fla. St. U. L. Rev. 289, 293 (2004).

⁸¹ See *id.* at 294.

a few others.⁸² However, not all cases of trafficking involve elements that are easily prosecuted under these collateral crimes. Additionally, while a trafficker might be convicted on a battery charge, a battery conviction does little to address the wider offense of human trafficking.⁸³

It is helpful to look at the evolution of human trafficking laws in Florida and analyze how the overall perspective on human trafficking is evolving. When the Florida human trafficking law was originally enacted in October of 2004 it read in its entirety:

- (1) As used in this section, the term:
 - (a) “Forced labor or services” means labor or services obtained from a person by:
 - 1. Using or threatening to use physical force against that person or another person; or
 - 2. Restraining or confining or threatening to restrain or confine that person or another person without lawful authority and against her or his will.
 - (b) “Human trafficking” means transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport
- (2) Any person who knowingly engages in human trafficking with the intent that the trafficked person engage in forced labor or services commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.⁸⁴

The very existence of this statute was an important step towards combating human trafficking; however, this first version of the statute did little more than acknowledge the existence of human trafficking. This first version exemplifies the kind of law that criminalizes the act of human trafficking with little regard for the consequences to the victims. Also, it is notable that the definition provided for trafficking is somewhat narrow in comparison to others, both nationally and internationally. The above statute provides no description of the kinds of things that might constitute forced labor or services, or ways in which a person might be forcibly restrained (even by force other than physical); thus, the

⁸² *See id.* at 297.

⁸³ *See id.*

⁸⁴ Fla.Stat. Annotated § 787.06 (amended 2006).

conceivable result is that many victims may be excluded from the purview of this legislation.⁸⁵ The statute also does not make it clear that it was intended to protect victims against coercion by other means (not just physical).

If a victim of human trafficking sought to use this law for protection from his or her captors, he or she would likely have had a very difficult time doing so. There is no mention of protection for victims anywhere in the text of the statute. For example, a victim, governed only by this statute, would likely be treated as illegally residing in this country and faced with deportation if discovered. While returning the trafficked person back to her home might sound like a reasonable outcome, there will almost certainly be situations where sending this person back will threaten his or her safety, both because of the situation that he or she left behind and the life experiences into which that person has been forced. For example, consider a person who had been forced into prostitution being returned to a small conservative village or tribal town where discovery of that fact would result in the victim being imprisoned or worse.

However, Florida law did not stagnate on the 2004 version of the human trafficking law. Within the last two years, the Florida legislature amended the human trafficking statute to address many of the problems discussed above.⁸⁶ The amended statute is a five-page, comprehensive outline of major issues discussed throughout this paper.⁸⁷

The first section of the amended statute broadens the definition of human trafficking to resemble the definitions provided by the United Nations and the United States Department of Justice.⁸⁸ The definition section also notes that there is more than one reason people are trafficked.⁸⁹ Specifically, the Florida Statute points out that trafficking of victims occurs both for sexual trafficking and labor trafficking.⁹⁰ The definition then goes on to elaborate on the many kinds and the details of both labor and sexual trafficking.⁹¹ The aforementioned definition is not

⁸⁵ *See id.*

⁸⁶ *See* Fla. Stat. § 787.06 (2006) (amending Fla. Stat. § 787.06 (2004)).

⁸⁷ *See id.*

⁸⁸ *See id.*; *see also* 22 U.S.C. § 7101 (2000); UNODC and Human Trafficking, <http://www.unodc.org/unodc/en/human-trafficking/index.html>.

⁸⁹ Fla. Stat. § 787.06(1).

⁹⁰ *See id.*

⁹¹ *See* Fla. Stat. § 787.06.

all-inclusive, but does illustrate many examples of the ways in which victimization occurs as a result of human trafficking.

The second major concern, not addressed in the first version of the statute, is the fact that there are many ways “traffickers instill fear in their victims.”⁹² Examples in the statute of coercion and threats include, among other techniques, isolation and confiscation of passports and visas.⁹³ This broadens the definition of trafficking, such that a captor does not have to physically abuse his victims to be guilty of trafficking. Further, we begin to see how the needs and concerns of the victim are acknowledged immediately.⁹⁴ Whereas, the 2004 statute was focused almost entirely on the penal and criminal aspects of human trafficking, this amended version takes into account the human element.

This incorporation of the human element is furthered by the next addition to the statute, which specifically states that although the intent of the statute is to punish perpetrators, it is equally intended to protect their victims.⁹⁵ The statute does not simply state protection of victims as a general goal, but goes on to detail some of the ways in which the State plans to accomplish this protection goal.⁹⁶

Additionally, a state specific law has value in its ability to address both local concerns and the local system of government.⁹⁷ Because local law enforcement are likely to be the first point of contact when human trafficking rings and their victims are encountered, it is important that local enforcement agencies and governments have some level of awareness, both of the legal situation and of the trauma that human trafficking victims may have endured.

CONCLUSION

Every time that legislation is written, or ideas are discussed, about how to fight human trafficking, a step is taken forward. As countries and states make independent acknowledgments that human trafficking is a problem, both within and across their borders, it becomes more and more

⁹² See Fla. Stat. § 787.06(1)(c).

⁹³ See Fla. Stat. § 787.06.

⁹⁴ See *id.*

⁹⁵ See *id.*

⁹⁶ See *id.*

⁹⁷ See Coonan, *supra* note 79, at 294.

possible to fight against human trafficking—as it is nearly impossible to eradicate a problem that “doesn’t exist.”

On the international, national, and state (in the context of the United States context) scale, the laws and principles that are being created have begun to address, not just the idea of human trafficking, but the specific problems presented by the human trafficking that happens every day. Human trafficking is now regularly acknowledged as a separate and distinct crime that no longer requires vague laws on kidnapping or abuse for its prosecution. The victims of this crime now have a place in the human trafficking discussion. As discussed throughout this paper, the danger has existed that victims would be viewed as a mere side effect of the problem, or somehow an integral part of the trafficking crime, as opposed to being recognized as the victims of a vicious and greedy industry. Much of the legislation and recent discussion has taken steps to ensure that people who have already suffered so much at the hands of traffickers, do not suffer further when they enter the legal systems of the countries into which they are forced to enter.

While progress is important, so is the recognition that there is still a long way to go. Estimates of the scope of human trafficking from the United Nations, governments, and non-governmental organizations range from 800,000 people shipped and traded annually, as if they were goods not people, to 2.5 million people reported as trafficked and enslaved, and as many as 12.3 million people in forced labor situations.⁹⁸ The overwhelming scale at which human trafficking still occurs worldwide is in itself indicative of the work that remains in the fight against human trafficking.

The work that has been accomplished in the arena of human trafficking has addressed many important concerns, but it is important that, as the work develops, it remains centered around the people affected by trafficking. The women and girls and men and boys that fall victim to this crime should not be allowed to get lost in the prosecution of the criminals who perpetrate the crimes. As it stands, international agreements continue to allow states to send unwilling victims back to the countries from which the victims were taken.⁹⁹ The TVPA protects

⁹⁸ Elisabeth Rosenthal, *UN Fund Set to Combat Human Trafficking*, INT’L HERALD TRIBUNE, Mar. 26, 2007, available at 2007 WLNR 5791452.

⁹⁹ GLOBAL RIGHTS, ANNOTATED GUIDE TO THE COMPLETE UN TRAFFICKING PROTOCOL, 21, 23–24, http://www.globalrights.org/site/DocServer/Annotated_Protocol.pdf?docID=2723.

victims only if they participate in the prosecution of their former captors, and sometimes assailants.¹⁰⁰ If a victim of trafficking is unwilling to relive his or her ordeal in a courtroom or is too frightened to confront the trafficker, the victim risks losing protections from immigration laws.

It is undeniable that laws on the books are the first step to prosecuting human traffickers; however, simply writing them will not eliminate the crime. While there are certainly steps that remain to be taken, the laws as they are currently written could help victims across the world. Many countries have laws and principles that, in theory, will effectively combat human trafficking; however, enforcement of those laws is something entirely different. While trafficking is almost universally recognized as a crime, prosecution of those who perpetrate it is often marginal and sentences given for those convicted many times do not reflect the severity of the conviction.¹⁰¹ Governments must take steps to educate the public, law enforcement, lawyers, judges and every constituency that these crimes affect about the harm that trafficking causes, and about what these specific persons and agencies should and must do to address human trafficking in a meaningful way. The question is not whether there are holes or gaps in what has been done so far to combat human trafficking, but instead, how do you keep the victims of human trafficking from falling through the holes and gaps that do exist.

¹⁰⁰ See 22 U.S.C. § 7105(b)(1) (2000).

¹⁰¹ Rosenthal, *supra* note 97.