



The Modern Day Slave Trade: How the United States Should Alter the Victims of Trafficking and Violence Protection Act in Order to More Effectively Combat International Sex Trafficking

Paper by Melissa R. Holman

Copyright (c) 2009 Texas International Law Journal; Melissa Holman

Updated 2013

Trafficking in Human Beings: Modern Slavery

Workshop 2-3 November 2013

Pontifical Academies of Sciences, Pontifical Academy of Social Sciences, and World Federation of the Catholic Medical Associations

I. Introduction

“...[T]he injustice, the outrage of human trafficking, must be called by its true name – modern slavery. It is barbaric and it is evil and it has no place in the civilized world”. [FN1]

To many, the worldwide slave trade is a problem found only in history books. However, the truth is that human beings are still being enslaved on a massive scale. Often, the victims are women and children held captive for the purposes of sexual slavery. According to the U.S. Department of State, approximately 560,000 women and children are trafficked across international borders each year and forced into the commercial sex trade. [FN2] This is a conservative estimate, and some non-governmental organizations (NGOs) put the number well into the millions. [FN3] When sex-trafficking figures are cumulated over the years, the scope of the problem becomes even more evident. For example, over the last thirty years, sex trafficking alone has resulted in the victimization of approximately thirty million Asian women and children. [FN4] One official working for UNICEF described the trafficking of women and children across Asia as “the largest slave trade in history”. [FN5]

Of the millions of women and children trafficked across international borders, many find themselves sold into brothels. [FN6] While some of these brothels operate illegally, many do not. That is, many women are trafficked into brothels that are owned and operated with state approval. This begs the question: is there a link between legalized prostitution and the trafficking in persons for sexual exploitation? This article will argue that legalized prostitution and sex trafficking are inexorably linked. It will also argue that states that practice legalized prostitution are condoning violence against women, because even women in highly regulated prostitution systems suffer rape, violence, mental abuse, and emotional trauma.

In recent years, the international community has grown more aware of the problem of international sex trafficking. The United Nations has addressed the issue with several treaties and protocols. [FN7] Individual nations have adopted domestic legislation to combat the problem. [FN8] This article, however, will focus on the United States’ response to the sex trafficking crisis – namely, the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA). This U.S. legislation is significant because it is the first law passed by any body that will lead directly to the punishment of those countries that do not adequately combat international sex trafficking. Thus, the law has the potential to play a very significant role in the fight to end international sex trafficking.

The VTVPA was the first federal legislation directed at ending international sex trafficking. [FN9] The statute provides for increased law enforcement on American soil and also increased pressure on foreign nations to implement stricter policies against sex trafficking. [FN10] Nations are assigned to one of four tier groups based on their compliance with the VTVPA’s minimum standards, which require that nations have laws against sex trafficking, punish sex traffickers, and make serious efforts to end trafficking. [FN11] Under the VTVPA, the U.S. will cease providing non-humanitarian, non-trade-related aid to countries that are not in compliance with the minimum standards and are not actively trying to achieve compliance. [FN12] However, the VTVPA makes no reference to prostitution and does not consider whether a country has legalized prostitution when determining its compliance with the minimum standards.

Although the VTVPA is a significant step in the right direction, this paper will argue that by ignoring the issue of legalized prostitution, the VTVPA has seriously impinged its potential efficacy. By turning a blind eye to the legalized sex industry, the VTVPA ignores one of the largest motivating factors behind the global

trade in persons. Additionally, the VTVPA fails to punish countries that practice state-sponsored violence against women in the form of legalized prostitution. Although the VTVPA was amended in 2008 to require foreign governments to make serious and sustained efforts to reduce the demand for commercial sex acts, this requirement has not been enforced. The VTVPA should go further and be amended so that its minimum standards require countries to have strongly enforced anti-prostitution laws. More importantly, any country in violation of this minimum standard should not be able to achieve Tier 1 status.

Part II of this article provides an overview of the scope of international sex trafficking. It also discusses the role that different states play as source, transit, and/or destination countries. Part III of the article provides an overview of the international response to sex trafficking, with particular focus on relevant U.N. conventions and protocols. Part IV discusses the U.S. response to sex trafficking. This section focuses primarily on the VTVPA and its relevant provisions. Finally, Part V discusses the link between sex trafficking and legalized prostitution. This section argues that any legislation that does not specifically address the legal sex industry will be inherently ineffective in combating international sex trafficking. It also discusses the reasons why the legalization of prostitution does not effectively protect women.

II. International Sex Trafficking Is a Grave and Growing Problem

The VTVPA defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act”. [FN13] It is one subset of human trafficking, which also includes trafficking for labor or forced servitude. [FN14] Sex trafficking can easily be considered one of the most dire human rights abuses facing the world today. While it is hard to pinpoint the exact number of people trafficked across international borders each year, the U.S. government’s estimate puts the number somewhere between 600,000 and 800,000. [FN15] This figure does not include victims who are trafficked domestically for sexual exploitation or forced labor. [FN16] If included, these victims would raise the tally to between two and four million. [FN17] Of the people trafficked across international borders, the majority are women and children who are trafficked for purposes of sexual exploitation. [FN18] Currently, human trafficking is the third-most profitable criminal activity, surpassed only by drugs and weapons trafficking. [FN19] Each year, an estimated \$9.5 billion is generated through all human trafficking, with at least \$4 billion attributed to the brothel and prostitution industries. [FN20] Some observers speculate that, within ten years, human trafficking will surpass drugs and weapons trafficking to become the most profitable criminal activity in the world. [FN21]

International sex trafficking is not limited to poor and undeveloped areas of the world – it is a problem in virtually every region of the globe. Countries with large (often legal) sex industries create the demand for trafficked women, while countries where traffickers can easily recruit provide the supply. [FN22] Generally, economically depressed countries provide the easiest recruitment for traffickers. [FN23] In such nations, women are often eager to leave the country in search of better employment opportunities. [FN24] Traffickers exploit this fact and often trick victims into thinking they will be going abroad to work as nannies or models. [FN25] As illustrated below, the regions that produce the most sex trafficking victims are the former Soviet republics, Asia, and Latin America.

The collapse of the Soviet Union and the economic depression that followed created a pool of millions of women who could be easily recruited by traffickers. [FN26] It is estimated that over the last ten years, hundreds of thousands of women have been trafficked from Central and Eastern Europe into prostitution throughout the world. [FN27] Some observers report that women from Russia and the Ukraine are the most popular and valuable women in the sex industry today. [FN28] In the Ukraine alone, over 100,000 women have been forced into the international sex trade during the last ten years. [FN29]

Asia has also been heavily affected by global sex trafficking. Many Asian countries have large sex tourism industries, resulting in Asia being a significant player on both the demand and supply sides of international sex trafficking. [FN30] Around 225,000 people are trafficked out of South Asia each year. [FN31] Japan provides the largest market for Asian trafficking victims, with approximately 150,000 non-Japanese women currently working as prostitutes. [FN32] In Thailand, where one-third of Thai prostitutes are minors, some estimates put the number of prostitutes working in the country as high as 2.8 million. [FN33]

Latin America and Caribbean countries serve as source, transit, and destination markets for trafficking victims. [FN34] According to some reports, there are approximately 70,000 Brazilians, 50,000 Colombians, and 50,000 Dominicans who have been trafficked into Europe to work in the sex industry. [FN35] Additionally, 1,700 women from Latin America are trafficked each year to Japan. [FN36]

Though trafficking victims often come from poor countries, these women and children frequently find themselves being trafficked into some of the most prosperous nations in the world. Traffickers are in the business of making money, so it is of little surprise that they would traffic women into wealthy nations where they are able to charge higher rates for their commodity. Some of the largest destination countries in the sex

trafficking market are the United States, Canada, the Czech Republic, Germany, Hungary, the Netherlands, Greece, Spain, and Portugal. [FN37] The majority of these countries either have no laws against prostitution, or rarely enforce the laws they do have. [FN38]

In the United States, the government estimates that approximately 50,000 women and children are trafficked into the country each year. [FN39] In the Netherlands, it is estimated that roughly 80% of the women working in the legalized sex industry have been trafficked against their will from other countries. [FN40] The Czech Republic contains over 860 brothels, and the sex industry has turned into a hundred-million dollar business for the organized crime networks involved. [FN41] In Spain, organized crime rings are purported to make over \$600 per prostitute per day, and over 20% of Spanish men report they have visited a prostitute at least once. [FN42]

III. The International Response to Sex Trafficking

Though international sex trafficking has been on the rise in recent years, it is not a newly observed phenomenon. The first international treaties designed to combat the problem date back over one hundred years. As discussed below, the treaties and protocols passed over the last century often disagreed as to whether the definition of “sex trafficking” should encompass trafficking for “voluntary” sex work in addition to involuntary sex work.

A. Background

The possibility of a slave trade in women and girls first came to the international community’s attention in 1877, during the first congress of the International Abolitionist Federation at Geneva. [FN43] During that congress, a story surfaced claiming that dozens of women sent to Austria and Hungary under the pretext that they would be working as governesses for wealthy families were actually being sent to work in brothels. [FN44] The allegations sparked an international outcry, and countries began to launch investigations into their own sex industries. A few years after that first congress, Belgian authorities broke up a sex trafficking ring in Brussels, and a local police chief was convicted for his involvement. [FN45]

The issue burst to the forefront again in 1885, when the famous British muckraker W.T. Stead published a graphic account of sex trafficking in the *Pall Mall Gazette*. [FN46] The article discussed the sex trafficking situation in London in lurid detail. [FN47] The public outcry from the article was overwhelming, and many nations began to seriously consider creating an international agreement designed to prevent sex trafficking. [FN48] In 1888, England created the British National Vigilance Association, which was formed with the sole purpose of ending sex trafficking within the country. [FN49] Its secretary, William Alexander Coote, advocated for the formation of similar groups in countries all across Europe. [FN50] Around this same time, countries began to form small agreements with one another to prevent the trafficking of women across state lines. For example, the Netherlands entered into agreements with both Austria-Hungary and Belgium to monitor and reduce trafficking between the countries. [FN51]

B. The First International Treaties to Combat Sex Trafficking

The idea of an international treaty to combat sex trafficking gained new momentum in 1895, when the International Prison Conference went on the record demanding that an international commission be formed to study sex trafficking. [FN52] As a result of this recommendation and the continued efforts of Mr. Coote, arrangements were made for a first international congress. [FN53]

The first international congress gathered to oppose white slave traffic was held in London in June 1899. [FN54] 120 delegates from various nations attended the congress, where resolutions were adopted to create a permanent organization to be known as the International Congress. [FN55] In 1904, the International Congress passed the first comprehensive agreement designed to address white slave traffic: the “International Agreement for the Suppression of the White Slave Traffic” (“Agreement”), signed in Paris on May 18, 1904. [FN56] The Agreement provided that signatory countries would keep a close watch on areas where women and children could be trafficked, particularly railway stations and ports of embarkation. [FN57] It also focused on immigration issues and addressed what should be done with trafficking victims when discovered. [FN58] Furthermore, the Agreement established an authority within each of the signatory nations that would be charged with the duty of centralizing all information about sex trafficking within that particular country and sharing such information with the authorities in the other signatory countries. [FN59] The Agreement was signed by the United Kingdom, Germany, Belgium, Spain, Denmark, France, Italy, the Netherlands, Portugal, Russia, Sweden, Norway, and Switzerland. [FN60]

In 1949, the newly formed United Nations assumed the duties previously held by the International Congress. [FN61] Thus, the responsibility for maintaining and enforcing the Agreement fell upon the United Nations and its member states. [FN62] The U.N., deciding to update the Agreement to modernize its approach

to sex trafficking, amended and signed the “International Agreement for the Suppression of the White Slave Traffic” at Lake Success, New York, on May 4, 1949. [FN63] The amended Agreement focused more on the punishment of traffickers than the 1904 Agreement. [FN64] Specifically, it stated that “[a]ny person who, to gratify the passions of others, has by fraud or by the use of violence, threats, abuse of authority, or any other means of constraint, hired, abducted or enticed a woman or girl of full age for immoral purposes . . . shall be punished”. [FN65] The amended Agreement required signatory nations to adopt domestic laws that would allow them “to punish such offences in accordance with their gravity”. [FN66]

As illustrated above, the amended Agreement did not condemn sex work in which a woman was a willing participant, but instead endorsed a definition of sex trafficking that only included sex work induced through force. [FN67] This garnered vocal criticism of the amended Agreement. In the years since the 1904 Agreement, increasing numbers of critics had begun to argue that the distinction between voluntary and involuntary prostitution was false. [FN68] As early as 1910, critics argued that regulation was ineffective, and that only the abolition of prostitution could lead to eradication of international sex trafficking. [FN69] Additionally, the original and amended Agreements were “criticized for failing to acknowledge and confront the less visible forms of coercion – economic, cultural, social, and psychological – that could lead a woman into prostitution”. [FN70] States and NGOs began to push for the international community to address all forms of prostitution as human rights violations. [FN71]

Shortly after the signing of the amended Agreement, the U.N. gave voice to its critics by holding a new convention to deal with sex trafficking. The “Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others” (“Convention”) was ratified on March 21, 1950 and took force the following year. [FN72] The Convention was designed to consolidate all the international agreements that had been drafted on the issue of sex trafficking since 1904, and it was the first international instrument of any kind to consider all forms of prostitution to be human rights violations. [FN73] The first sentence of the preamble states that “prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person . . .” [FN74] The Convention goes on to state:

The parties to the present Convention agree to punish any person who, to gratify the passions of another:

1. Procures, entices, or leads away, for purposes of prostitution, another person, even with the consent of that person;
2. Exploits the prostitution of another person, even with the consent of that person. [FN75]

Because it provided that a woman’s consent no longer excused the traffickers and brothel owners who were profiting from her sexual exploitation, this Convention signaled a radical shift in the international community’s approach to sex trafficking. [FN76] It made the crimes listed above, as well as brothel owning, extraditable offenses. [FN77] As of 2003, the Convention had been signed and/or ratified by 79 countries, less than one half of the UN’s 192 member states. [FN78] A few of the many countries notably absent from the list were the United States, Germany, Australia, the Netherlands, Canada, and New Zealand. [FN79]

The United Nations did not address the topic of sex trafficking again for many years. Nonetheless, the problem of sex trafficking continued to increase, particularly during the late twentieth century. [FN80] Technological developments during this time and increased globalization allowed transnational organized criminal activities to expand. [FN81] As a result, in the late 1990s the international community began investigating ways to combat organized crime. [FN82] In 1998, the U.N. General Assembly founded an ad hoc committee to draft the Convention Against Transnational Organized Crime. [FN83] That same year, during a session of the Commission on Crime Prevention and Criminal Justice, “Argentina suggested drafting a new convention against trafficking in minors”. [FN84] Following a suggestion by Greece, the scope of the convention was broadened to include all forms of human trafficking. [FN85] The other member states agreed, and the scope of the convention was expanded to include all trafficking in persons. [FN86] The member states also agreed that the instrument would be implemented as an optional protocol to the U.N. Convention Against Transnational Organized Crime. [FN87]

In 2000, the U.N. General Assembly adopted the “Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children” (known as the “Palermo Protocol”). [FN88] With the Palermo Protocol, the U.N. attempted to answer critics who argued that the “Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others” focused too heavily on the punishment of sex traffickers and not enough on the protection of the victims’ human rights. [FN89] The Palermo Protocol signaled another shift in the U.N.’s treatment of sex trafficking because it no longer defined sex trafficking to include all sex work irrespective of consent. [FN90] Rather, when a victim consents, sex trafficking would only be illegal where the following means had been used: “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". [FN91] Voluntary prostitution was no longer considered sexual exploitation under the Protocol. [FN92]

This new definition allowed countries to be signatories to the Protocol even if they had active, legal sex industries within their borders. However, the Protocol did not prevent countries from criminalizing prostitution in an effort to combat sex trafficking. This definition was seen as a necessary compromise if the Protocol were to be an effective international instrument. [FN93] The compromise appeared to work, and many nations which had not ratified the 1950 Convention chose to ratify the Palermo Protocol. Almost 80 nations signed the Convention at the Signing Conference in Palermo, Italy in 2000. [FN94] Currently, there are 170 signatories to the Protocol, including the United States, Germany, Australia, New Zealand, the Netherlands, and Canada. [FN95]

IV. The United States' Domestic Response to Sex Trafficking: The VTVPA of 2000

The movement against sex trafficking in the U.S. came later than in Europe. The first acknowledgement of a possible domestic sex trafficking industry came in 1906 when the U.S. formed its first national vigilance committee. [FN96] This was the result of strong encouragement by Mr. Coote, who had been instrumental in forming the first national vigilance committee in England. [FN97] The committee uncovered the existence of a sex trafficking industry in New York City and other U.S. cities. [FN98] Largely as a result of the findings uncovered by the committee, the U.S. became a party to the International Agreement for the Suppression of White Slave Traffic in June of 1908. [FN99]

The first domestic U.S. legislation specifically designed to address the problem of sex trafficking was the "White Slave Traffic Act of 1910", more commonly known as the Mann Act. [FN100] The Mann Act was designed to "further regulate interstate commerce and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls". [FN101] Although the law was initially designed to bring the U.S. into compliance with the 1904 Agreement, the vague wording of the statute rendered it largely ineffective. [FN102] For example, the Mann Act prohibited all transport for "immoral purposes", not simply prostitution. This gave law enforcement wide discretion in determining who was breaking the law, and led many to believe that the Act was just another form of Jim Crow. [FN103]

The U.S. did not broach the topic of sex trafficking again until 2000, when it passed the VTVPA.[1] The VTVPA was the first comprehensive federal law specifically designed to protect victims of sex trafficking and to prosecute their traffickers. [FN104] In particular, the VTVPA combats "severe forms of trafficking in persons". [FN105] This is defined as "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age". [FN106] It is notable that, with respect to adult victims, the VTVPA definition only applies to acts where force, fraud, or coercion is involved. This definition is more limited than the one found in the Palermo Protocol, which also forbids commercial sex acts induced through deception, abuse of power, abuse of a position of vulnerability, or through buying a woman from her relatives. [FN107]

The VTVPA aims to attack the issue of sex trafficking in a number of ways. One of its primary goals is to reduce sex trafficking abroad by increasing funding and support for governments and NGOs working to combat the problem.[2] The scope and success of this aspect of the VTVPA will be discussed briefly in Section A. Section B will discuss the enforcement side of the VTVPA and will provide an overview of the Trafficking in Persons Report, the minimum standards countries are required to meet, and the penalties countries may face if they do not make sufficient efforts to combat international sex trafficking. Section C will evaluate the VTVPA's effectiveness.

A. The "Carrot"

The VTVPA authorized the creation of the State Department's Office to Monitor and Combat Trafficking in Persons, which is currently headed by Ambassador Luis CdeBaca. [FN108] In 2003 alone, this office supported more than 240 anti-trafficking programs in over 75 countries. [FN109] Since 2001, the United States has provided more than \$295 million to support anti-trafficking programs in more than 120 countries. [FN110] In 2010 alone, the U.S. government allocated \$85,270,083 to international anti-trafficking programs.[3]

These programs include (1) economic alternative plans for vulnerable groups, (2) education programs, (3) training for government personnel, (4) establishment of safe houses for victims, and (5) medical and psychological counseling services for victims. [FN111] For example, in 2003 the U.S. gave \$500,251 to the NGO World Vision to implement a targeted information campaign at international destination points designed to deter U.S. citizens from participating in sex tourism. [FN112] That same year, the U.S. gave \$150,000 to New York University to "train government officials and journalists on collaborative approaches to combat trafficking in persons in Armenia". [FN113] One government report shows that \$17,731 was given to International Labour Organization to produce a documentary on child trafficking in Burkina Faso, Africa, and show it on national

television, along with \$30,155 for the purpose of producing and disseminating radio and television spots, pamphlets, and placing signs in airports. [FN114]

B. The “Stick”

While the increased aid and support given to foreign countries and NGOs is a significant part of the VTVPA, it is not the most significant aspect for purposes of this paper. Rather, this paper focuses on how the VTVPA penalizes foreign nations that do not do enough to combat international sex trafficking. It is through this enforcement mechanism that the U.S. could effectively pressure foreign nations to adopt stricter anti-prostitution laws.

Under the VTVPA, the U.S. evaluates a country’s efforts to combat sex trafficking by determining how well that nation complies with the minimum standards contained in section 108 of the Act. First, the “government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking”. [FN115] Since the definition of severe forms of trafficking only includes force, fraud, or coercion, countries with legalized prostitution are not in violation of this minimum standard. [FN116]

Next, the government should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault when there is a knowing commission of any severe form of sex trafficking; or when the victim of trafficking is a child; or when the trafficking involves rape, kidnapping, or death. [FN117] Additionally, for the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense. *Id.*

Finally, “the government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons”. [FN118] When deciding whether or not a country has met this standard, the U.S. will look to whether or not the country (1) investigates and prosecutes severe forms of sex trafficking vigorously; (2) protects victims and gives them options other than immediate deportation; (3) works to educate the public about sex trafficking; (4) extradites people accused of sex trafficking; (5) monitors emigration and immigration patterns for evidence of sex trafficking; (6) investigates and prosecutes public officials who participate in or facilitate sex trafficking; (7) adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons; (8) cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons; (9) whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant; (10) whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the above criteria; Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year; and (11) whether the government of the country has made serious and sustained efforts to reduce the demand for commercial sex acts and participation in international sex tourism by nationals of the country.[4] [FN119]

Under the VTVPA, the U.S. State Department is required to create an annual “Trafficking in Person’s Report” (TIP Report) and rate each country’s efforts to combat sex trafficking. [FN120] First, the report must include “a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments fully comply with such standards”. [FN121] These countries will be listed on Tier 1 in the TIP Report. [FN122] Next, the report must provide “a list of those countries, if any, to which minimum standards for the elimination of trafficking are applicable and whose governments do not yet fully comply with such standards but are making significant efforts to bring themselves into compliance”. [FN123] These countries would be classified in the TIP Report as Tier 2 countries. [FN124] The Report must also include a list of countries whose governments do not fully comply with the VTVPA’s minimum standards but are making significant efforts to comply [FN125] and:

I) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;

II) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecutions, and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials, or;

III) the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year. [FN126]

These countries are listed in the TIP Report on the Tier 2 Watch List.[5] [FN127] Finally, the report must include “a list of those countries, if any, to which the minimum standards for the elimination of trafficking apply and whose governments do not fully comply with such standards and are not making significant efforts to bring themselves into compliance”. [FN128] These countries are placed on Tier 3.

The tier placement of countries in the annual TIP Report is significant because Tier 3 countries risk losing all non-humanitarian, non-trade-related foreign assistance. [FN129] The U.S. government will deny such assistance to any government that “does not comply with minimum standards for the elimination of trafficking. . .and is not making significant efforts to bring itself into compliance with such standards”. [FN130] For countries that are not currently receiving non-humanitarian, non-trade-related aid, the U.S. will penalize them under the VTVPA by refusing to provide “funding for participation by officials or employees of such governments in educational and cultural exchange programs for the subsequent fiscal year”. [FN131] The only way a country in Tier 3 can avoid these penalties is through a Presidential waiver. [FN132] Under the VTVPA, the President may issue a waiver if he determines that the provision to the country of such aid would promote the purposes of the VTVPA or is in the U.S. national interest. [FN133] Under the VTVPA, the President is required to exercise his waiver authority when it is “necessary to avoid significant adverse effects on vulnerable populations, including women and children”. [FN134]

C. The VTVPA Has Proven to Be an Effective Tool to Combat Sex Trafficking

Overall the VTVPA, has been a success. The threat of losing aid, combined with the stigma associated with being listed as a Tier 3 nation, has created a climate in which countries are actively working to improve their response to international sex trafficking. For example, in the first TIP Report in 2002, Indonesia was placed on Tier 3. [FN135] The Indonesian government was so concerned about potentially losing its U.S. aid that it immediately created a National Trafficking Commission. [FN136] This move earned Indonesia a spot in Tier 2 the following year, where it has stayed for nine of the last ten years. [FN137]

As another example, Belize was listed in Tier 3 in the 2003 TIP Report. [FN138] The reasons cited for the placement were the fact that the Belize government exercised no direct anti-trafficking efforts and had no laws that specifically prohibited trafficking in persons. [FN139] Within one year of being placed in Tier 3, Belize had drastically reformed its position on sex trafficking. [FN140] The government passed a comprehensive anti-trafficking law, created a national taskforce to monitor and combat sex trafficking, and increased law enforcement efforts against brothel owners and operators. [FN141] In the 2004 TIP Report, Belize was moved up to Tier 2 Watch List. [FN142] By the 2005 TIP Report, Belize was in Tier 2.

Cambodia was listed in Tier 3 in the 2005 TIP Report because it failed to combat severe forms of trafficking, particularly through its failure to convict traffickers and public officials involved in trafficking. [FN143] Over the following year, Cambodia increased its efforts to arrest, prosecute, and convict traffickers; for instance, police raided a large brothel in which many trafficking victims were found. [FN144] The brothel owner was later tried and convicted, and the Cambodian government arrested and prosecuted several police officers in connection with the raid. [FN145] Though Cambodia is still plagued by “corruption at all levels of government and an ineffectual judicial system”, being placed in Tier 3 seems to have motivated the country to increase its efforts to combat sex trafficking. [FN146] As of the 2013 TIP Report, Cambodia was listed in the Tier 2 watch list.

As illustrated through the examples above, the VTVPA has proven to be effective tool at fighting international sex trafficking. Under the VTVPA, there has been a positive impact both domestically and internationally “to reduce trafficking and to deter the crime of sex slavery . . . and the United States is playing an important role to eradicate slavery through legislative example, interagency cooperation, and multilateral efforts”. [FN147] However, the VTVPA falls short in one area: countries with large, legalized domestic sex markets can still be found in Tier 1.[6] As discussed below, the VTVPA could be substantially more effective in combating international sex trafficking if it considered countries with legal sex industries to be in violation of the Act’s minimum standards.

V. The Link Between Sex Trafficking and Legalized Prostitution: Why the U.S. Should Amend the VTVPA to Address Countries with Legalized Prostitution

This section will address the crux of this article’s argument: legalized prostitution increases sex trafficking and does not protect women. Part A discusses the link between legalized prostitution and sex trafficking. Part B of the article addresses the fact that legalization of prostitution does not create a safer working environment for women. Finally, Part C provides two case studies in support of the conclusion that only countries who stringently prohibit prostitution can effectively combat international sex trafficking.

A. Legalized Prostitution Increases Sex Trafficking

1. Legalized Prostitution Increases Demand for Trafficking Victims

The legalization and regulation of the sex industry does not deter sex traffickers. In countries where prostitution is legal or tolerated, there is a greater demand for prostitutes, and thus a greater demand for trafficking victims. [FN148] Customers often want unlimited access to a variety of women who are ethnically and culturally diverse. [FN149] This constant demand for new and different women is one of the primary drives behind the international trade in women. [FN150] The Swedish government, which has been very effective at combating its own trafficking problem, has stated that “international trafficking in human beings could not flourish but for the existence of local prostitution markets where men are willing and able to buy and sell women and children for sexual exploitation”. [FN151]

One of the arguments for legalization in the Netherlands was that it would help to curb the exploitation of migrant workers who had been trafficked there for sexual exploitation. [FN152] However, many argue that legalization has actually increased the traffic of migrant workers. One study in 1999 found that 80% of the women working in brothels in the Netherlands had been trafficked from other countries. [FN153] Within one year after lifting the ban on prostitution, eight different Dutch victim support groups reported an increase in the number of trafficking victims. [FN154] Additionally, the country has had to curb its anti-immigration efforts in order to keep up with the demand for sex workers. In 2000, the Dutch Ministry of Justice actually “argued in favor of a legal quota of foreign ‘sex workers,’ because the Dutch prostitution market demanded a variety of ‘bodies’”. [FN155]

Nonetheless, the Netherlands was listed as a Tier 1 country in the latest TIP Report. [FN156] This is due in large part to the fact that the U.S. does not take the Netherlands’ legalized sex industry into account when evaluating its efforts to combat trafficking. The fact that the Netherlands has anti-trafficking laws on the books and prosecutes traffickers is apparently enough to assure it of a Tier 1 ranking. [FN157] The 2013 TIP Report stated that “the Government of the Netherlands fully complies with the minimum standards for the elimination of trafficking”, despite the fact that the Netherlands has one of the most well-known commercial sex industries in the world. It is unclear how the U.S. can claim that the Netherlands has met minimum standards when there is no indication that the Netherlands has “made serious and sustained efforts to reduce the demand for commercial sex acts”, as is required by the TVTPA. The 2013 TIP Report makes little mention of legalized prostitution in the Netherlands.

Prostitution became legalized in certain areas of Germany during the 1980s. [FN158] By 1993, it was widely acknowledged that 75% of women in Germany’s prostitution industry were foreigners, largely from South America. [FN159] After the fall of the Berlin wall, a large number of women were trafficked into the country from Central and Eastern Europe. [FN160] In 2002, Germany legalized prostitution in all areas of the country, which created an even greater influx of foreign sex workers. [FN161] Many experts believe the large number of foreign women working in the German sex industry suggests these women were trafficked into the country, through a process the German government refers to as “facilitated migration”. [FN162] However, this is a disingenuous label, as it is virtually impossible for impoverished women to “facilitate their migration, underwrite the costs of travel and travel documents, and set themselves up in ‘business’ without intervention”. [FN163] Germany was also listed as a Tier 1 country in the 2013 TIP Report. [FN164]

2. Legalization Actually Increases the Black Market

Some scholars, such as Katri Sieberg, argue that legalization of prostitution reduces the influence of the black market. [FN165] She argues that “if it were legalized, then the government – and not the organized criminals – would control it; and the government could gain from taxing it”. [FN166] Though this argument seems sound in theory, it has not proven accurate. Even in markets where prostitution is legalized, the black market continues to flourish. [FN167] The increase in demand opens up the market for criminal enterprises that traffic victims into the country. [FN168] Legalized prostitution is a trafficker’s best shield, allowing him to legitimize his trade in sex slaves and making it more difficult to identify trafficking victims. [FN169]

For example, after legalizing prostitution, the Dutch government decided it was necessary to pass laws that enabled women from the European Union and former Soviet Bloc countries to obtain working permits as “sex workers” in the Dutch sex industry. [FN170] To receive such a permit, women were required to prove they were self-employed. [FN171] The government thought that such a measure could reduce the number of victims trafficked into the country. However, several NGOs have discovered that traffickers involved in the black market illegally use the work permits to bring foreign women into the Dutch prostitution industry. [FN172] They mask the fact that the women have been trafficked by coaching them to refer to themselves as independent “migrant sex workers”. [FN173] Thus, a measure designed to reduce black market involvement in the sex industry has actually increased it. [FN174]

The argument that governments should legalize prostitution in order to benefit from the tax revenue is not convincing, either. In Germany, lawmakers expected hundreds of millions of euros in tax revenue when

they legalized prostitution. [FN175] However, in keeping with the criminal nature of prostitution, many brothels have refused to pay taxes. [FN176] Additionally, the failure of many criminally run brothels to register with the state has resulted in a budget deficit for Germany, with the government estimating €2 billion in unpaid tax revenue annually from the sex industry. [FN177] In 2004, the government began seeking ways to increase tax collections from prostitutes. [FN178] Thus, Germany is now having to look to some of the most abused and exploited women in the world for its desired tax windfall.

B. Legalizing Prostitution Does Not Reduce Abuse

1. Prostitutes Working in Regulated Environments Still Suffer High Rates of Abuse

One of the most frequently used arguments in favor of legalizing prostitution is that prostitution is a victimless crime. For example, when discussing a high profile prostitution arrest in 2007, American journalist and prominent libertarian John Stossel wrote: "Don't prostitutes own their bodies? Shouldn't they be able to freely contract to use their bodies as they wish? Who was hurt here? This is a victimless crime". [FN179]

Unfortunately, prostitution is not a victimless crime. Prostitutes report high incidences of abuse even in countries where prostitution is legal and regulated. In the Netherlands, where prostitution is legal, 60% of prostituted women reported suffering physical assaults, 70% experienced verbal threats of physical violence, 40% experienced sexual violence, and 40% had been forced into sexual abuse or prostitution by acquaintances. [FN180] In a survey of legal prostitutes in the U.S., 86% reported that they had been subject to physical violence by buyers. [FN181] A survey of legal sex workers in Victoria, Australia (where prostitution is reportedly highly regulated) found that one in five clients still demands unsafe sex. [FN182] In Canada, where anti-prostitution laws are on the books but are seldom enforced, prostituted women and girls suffer a mortality rate 40 times higher than the national average. [FN183] In one international study where 186 prostitutes were interviewed, the women consistently stated that prostitution establishments did little to help them, regardless of whether the brothels were legal or illegal. [FN184] As one victim stated, "The only time they protect anyone is to protect the customers". [FN185]

It is not only the clients who are abusing women. Prostitution exists in legal and illegal environments in largely the same way – prostitutes are controlled and often beaten by pimps and brothel owners who have complete power over the women's finances and well-being. The only difference is that in countries where prostitution is legal, pimps are no longer criminals, but rather operate as third party businessmen and legitimate sexual entrepreneurs. [FN186] In a survey of prostitutes in the U.S., 76% reported that they had been beaten by their pimp. [FN187] A similar study which surveyed 146 prostitutes in five countries found that 80% of the women had suffered physical violence from their pimp. [FN188] During a study of prostitution in Germany, where prostitution is legal, 59% of respondents said they did not feel that legalization made them any safer from rape and physical assault. [FN189]

2. The Act of Prostitution Is Inherently Abusive

A frequently espoused argument in favor of legalized prostitution is that once prostitution is regulated, it will be easier to protect the women's health. [FN190] It is true that in most systems where prostitution is legal, health checks and certification are required for women. [FN191] However, these programs only apply to the prostitutes, not the customers. [FN192] Thus, unbeknownst to either party, customers may be infecting prostitutes with sexually transmitted diseases. Though these programs are allegedly designed to protect women, it is only the customers who are being protected from the risk of STDs.

Countries in which prostitution is legal often implement strict condom policies. [FN193] However, these policies are virtually impossible to enforce. First, men frequently offer to pay more money for sex without a condom. [FN194] In a business where prostitutes are desperate to make as much money as possible, women are frequently willing to forego their health in order to increase their price. As one woman stated, "I'd be one of those liars if I said 'Oh, I always use a condom'. If there was extra money coming in, the condom would be out the window. I was looking for the extra money". [FN195]

Additionally, pimps and customers often pressure prostitutes to have sex without condoms. In a survey of U.S. prostitutes, 45% stated that men had become abusive when asked to wear a condom. [FN196] The women also reported that the vast majority of male customers expected that oral sex be performed without a condom, even though this practice can spread HIV and other STDs. [FN197] Additionally, pimps are usually unconcerned with their employee's health and are primarily interested in increasing their bottom line. Thus, pimps often pressure women to have sex without condoms if a customer will pay more. [FN198]

Even if it were possible to protect a woman from violent pimps and customers and to protect her physical health from disease through the use of condoms, it would still be impossible to protect a prostitute's mental health. This is because the practice of prostitution itself is abusive and can have dire consequences on

a woman's psyche. [FN199] Pimps and traffickers often subject women in prostitution to brutal rapes in order to condition them to prostitution. [FN200] Prostitutes are expected to service many anonymous men per day, and pimps often issue quotas that prostitutes must meet in order to be paid. [FN201] These forms of abuse, along with the torturous effects of some sexual practices, often leave women with serious long-term physical and emotional harm. [FN202] Studies have shown that prostituted women often suffer the same serious psychological injuries as war veterans and torture victims, such as flashbacks, anxiety, and sleep disturbances. [FN203] Melissa Farley, a psychologist who has extensively researched the links between prostitution and post-traumatic stress disorder ("PTSD"), found that 68% of prostitutes in nine different countries met the criteria for a diagnosis of PTSD. [FN204] The rates of PTSD were the same for street prostitutes as they were for prostitutes working in brothels. [FN205] This indicates that it is the intrinsically traumatizing nature of prostitution that causes PTSD, not the environment in which the prostitute works.

C. Lessons From Australia and Sweden

The experiences of Australia and Sweden offer valuable lessons regarding the impact of legalized prostitution on sex trafficking.

The argument that legalization of prostitution reduces the illegal sex trade can perhaps best be refuted by the example of Victoria, Australia. In 1984, the state of Victoria passed legislation to legalize prostitution. [FN206] The legislation was designed to reduce criminal involvement in the industry and to curb unregulated expansion. However, the sex industry has actually grown massively since the legislation passed. [FN207] Ironically, the growth has been primarily in the illegal sector. [FN208] In 1999, unlicensed brothels, which outnumbered the legal sex businesses, had tripled in twelve months to more than 100. [FN209]

Organized crime in the prostitution industry has expanded under the regime of legalized prostitution. [FN210] Often convicted criminals, who are fronted by more legitimate businessmen, operate and run brothels. [FN211] For example, a man named Fred Lelah was arrested and brought to trial in 2000 for selling girls aged 10-15 in his legally operated brothel. [FN212] He had already served two years for the same offense. [FN213]

Along with this black market comes an increase in women illegally trafficked into the area. One study found that brothels in Victoria are earning \$1 million a week from illegal sex trafficking. [FN214] While it is impossible to know the exact number of women trafficked into Victoria, many legal brothels contain such "contract workers" [FN215] who are women trafficked into the country with passports and earnings confiscated until their contracts were worked off, a practice known as debt bondage. [FN216] Additionally, of all the states and territories in Australia, Victoria has the highest reported incidence of child prostitution. [FN217] There is clear evidence of organized, black market commercial exploitation of children in Victoria. [FN218] The government of Victoria has proven to be either unable or unwilling to curb the explosion of sex trafficking in the area. One trafficker, who brought forty Thai women into Victoria and held them in debt bondage until they each had sex with over 500 men, received an 18-month suspended sentence and a fine. [FN219]

The case of Sweden, on the other hand, illustrates how strong laws against prostitution can effectively combat sex trafficking. As part of its campaign to combat human trafficking, Sweden passed aggressive anti-prostitution laws in 1999. [FN220] Prior to this time, prostitution was legal in Sweden. The 1999 laws were unique in that they were enforced against only customers, brothel owners, and traffickers. [FN221] The Swedish lawmakers' goals were to destroy the market, thereby making Sweden less attractive to traffickers. [FN222]

Only two years after implementing the law, there was already a 50% decrease in women selling sex, and a 75% decrease in the number of men buying it. [FN223] As of 2007, there were only between 105 and 130 prostitutes working in Stockholm. [FN224] Additionally, sex trafficking in Sweden has decreased dramatically. [FN225] Currently, Sweden has the least serious sex-trafficking problem of any country in the European Union. [FN226] Swedish police report that an estimated 400 to 600 foreign women are trafficked into the country each year for prostitution. [FN227] By contrast, in Finland, a country half the size of Sweden, there are approximately 10,000 to 15,000 women trafficked into the country each year. [FN228] Sweden's anti-prostitution laws have been so effective in curbing sex trafficking that Norway and Iceland have since adopted similar legislation. [FN229]

Sweden illustrates that countries who diligently enforce anti-prostitution laws can be incredibly effective at reducing illegal sex trafficking. Victoria, Australia, on the other hand, supports the argument that countries endorsing state-sponsored prostitution contribute to the international traffic in women. Thus, VTVPA should be altered to sanction countries such as Australia, which not only indirectly sanction violence against women, but also contribute to the market for trafficking victims.

VI. Conclusion

International sex trafficking is a problem that will not soon disappear. As long as profits are high and victims are plentiful, traffickers will continue the trade in women and children. Therefore, it is imperative that international actors create effective legislation to combat sex trafficking. Though the U.N. initially adopted a definition of sex trafficking that included both consensual and non-consensual sexual exploitation, it has since had to back away from that position for the sake of global consensus. However, the U.S. has no such excuse for refusing to acknowledge that legalized prostitution is an integral part of international sex trafficking. By failing to take a country's policies toward prostitution into account when evaluating that country's placement on the Trafficking in Persons Report, the U.S. is ignoring some of the biggest contributors to the international demand for trafficking victims. Additionally, the U.S. is failing to recognize that so-called consensual prostitutes suffer many of the same abuses and horrors as trafficking victims. Thus, if the U.S. wants the TVTVA to be truly effective in combating international sex trafficking, it must amend the Act so that the minimum standards require nations to have stringently enforced laws against prostitution. The U.S. should also enforce its current requirement that countries must make serious and sustained efforts to reduce the demand for commercial sex acts. Countries that do not attempt to meet these requirements would then be assigned to Tier 3 and would be at risk of losing various forms of U.S. aid.

[FN1]. U.S. President Barack Obama, Address to the Clinton Global Initiative (Sept. 25, 2012), available at <http://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>.

[FN2]. U.S. Dep't. of State, *Trafficking in Persons Report* 15 (2004), available at <http://www.state.gov/documents/organization/34158.pdf> [hereinafter 2004 TIP Report].

[FN3]. *Sex Slaves: Estimating the Numbers*, <http://www.pbs.org/wgbh/pages/frontline/slaves/etc/stats.html>.

[FN4]. S. Huda, Sex Trafficking in South Asia, *Int'l J. of Gynecology and Obstetrics*, 374, 375 (2006).

[FN5]. Asia's Sex Trade is "Slavery", *BBC News*, Feb. 20, 2003, available at <http://news.bbc.co.uk/2/hi/asia-pacific/2783655.stm>.

[FN6]. See, e.g., *Sex Slavery: The Growing Trade*, CNN, Mar. 8, 2001, <http://archives.cnn.com/2001/WORLD/europe/03/08/women.trafficking/index.html> (describing the sale of women and children into brothels in Asia and North America).

[FN7]. See G.A. Res. 55/2, ¶ 9, U.N. Doc. A/RES/55/2 (Sept. 18, 2000) ("We resolve therefore ... [t]o intensify our efforts to fight ... trafficking as well as smuggling in human beings ...").

[FN8]. See, e.g., Sexual Offences Act, 2003, c.42, §57 (Eng.).

[FN9]. Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7101 et. seq. (2000), available at <http://www.state.gov/documents/organization/10492.pdf>.

[FN10]. Id. §§ 7103-04.

[FN11]. Id. §7106.

[FN12]. Id. §7107.

[FN13]. Id. §7102.

[FN14]. U.S. Dep't. of State, *Facts About Human Trafficking* 1 (2004), available at <http://www.state.gov/documents/organization/33216.pdf>.

[FN15]. 2004 TIP Report, *supra* note 2, at 15.

[FN16]. Claire Ribando, CRS Report for Congress, *Trafficking in Persons in Latin America and the Caribbean* 3 (2005), available at <http://www.oas.org/atip/Latin%20America/CRS%20Dec%202005.pdf>.

[FN17]. Id.

[FN18]. 2004 *TIP Report*, *supra* note 2, at 15.

[FN19]. Nat'l Coal. Against Domestic Violence, *Human Trafficking Facts* (2006), available at <http://www.ncadv.org/files/HumanTrafficking.pdf>.

[FN20]. Id.

- [FN21]. Susan Cohen, Ominous Convergence: Sex Trafficking, Prostitution, and International Family Planning, 8 *The Guttmacher Rep. on Pub. Pol'y* 1, 12 (2005).
- [FN22]. See Claire Ribando, *supra* note 16, at 6, 19 (identifying major destination and recruitment countries, and noting the U.S. State Department's position that legal prostitution increases demand).
- [FN23]. Iris Yen, Comment, Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand Through Educational Programs and Abolitionist Legislation, 98 *J. Crim. L. & Criminology* 653, 657 (2008).
- [FN24]. Peter Landesman, The Girls Next Door, *N.Y. Times*, Jan. 25, 2004, available at <http://www.nytimes.com/2004/01/25/magazine/25SEXTRAFFIC.html>.
- [FN25]. *Id.*
- [FN26]. Donna Hughes, The 'Natasha Trade': Transnational Sex Trafficking, *Nat'l Inst. of Just. J.*, Jan. 2001, at 9, available at <http://www.ncjrs.gov/pdffiles1/jr000246c.pdf>.
- [FN27]. *Id.*
- [FN28]. *Id.*
- [FN29]. *Id.* at 10.
- [FN30]. Huda, *supra* note 4, at 375.
- [FN31]. *Id.* at 374-75.
- [FN32]. Coalition Against Trafficking in Women – Asia Pacific (CATW – AP), Facts and Statistics, <http://www.catw-ap.org/programs/research-documentation-publications/facts-and-statistics/> (last visited Jan. 15, 2009).
- [FN33]. *Id.*
- [FN34]. Ribando, *supra* note 16, at 4.
- [FN35]. 2004 *TIP Report*, *supra* note 2, at 227, 230, 233.
- [FN36]. Ribando, *supra* note 16, at 6.
- [FN37]. Hughes, *supra* note 26, at 10.
- [FN38]. See *id.* at 14 (discussing difficulties of enforcement).
- [FN39]. Janice G. Raymond and Donna M. Hughes, *Sex Trafficking of Women in the United States: International and Domestic Trends* 7 (2001), available at http://www.uri.edu/artsci/wms/hughes/sex_traff_us.pdf.
- [FN40]. Coalition Against Trafficking in Women, Comments of CATW in preparation for the United States 2002 Trafficking in Persons Report, <http://action.web.ca/home/catw/readingroom.shtml?x=31742> (last visited Jan. 15, 2009).
- [FN41]. Donna M. Hughes, Don't Legalize: The Czech Republic Proposes a Dutch Solution to Sex Trafficking, *The Nat'l Rev. Online*, May 11, 2004, <http://www.nationalreview.com/hughes/hughes200405110833.asp>.
- [FN42]. Coalition Against Trafficking in Women, Spain: Trafficking, <http://www.catwinternational.org/factbook/Spain.php> (last visited Jan. 15, 2009).
- [FN43]. The Committee of Fifteen, *The Social Evil: With Special Reference to Conditions Existing in the City of New York* 197 (Edwin R.A. Seligman ed., G.P Putnam Sons 2d ed. 1912) (1902).
- [FN44]. *Id.*
- [FN45]. *Id.*
- [FN46]. *Id.* at 199.
- [FN47]. *Id.*
- [FN48]. *Id.*
- [FN49]. The Committee of Fifteen, *supra* note 43, at 199.

[FN50]. Id. (describing how Mr. Stead alleged that during the course of his investigation, he discovered a trafficker who was willing to sell him ten Belgian virgins).

[FN51]. Id. at 199-200.

[FN52]. Id. at 200.

[FN53]. Id.

[FN54]. Id.

[FN55]. The Committee of Fifteen, *supra* note 43, at 200.

[FN56]. International Convention for the Suppression of the White Slave Traffic 84, May 18, 1904, available at http://untreaty.un.org/English/CTC/ch_VII_8p.pdf.

[FN57]. Id. art. 2.

[FN58]. Id. art. 3.

[FN59]. Id. art. 1.

[FN60]. Id. at 84-85.

[FN61]. Edmund Jan Osmańczyk, *Encyclopedia of the United Nations and International Agreements* 2344 (Anthony Mango ed., 3d ed., Taylor & Francis 2003) (1985).

[FN62]. See International Convention for the Suppression of the White Slave Traffic, May 4, 1910, http://untreaty.un.org/English/CTC/ch_VII_10p.pdf.

[FN63]. International Convention for the Suppression of the White Slave Traffic as amended by the Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, and Amending the International Convention for the Suppression of the White Slave Traffic, May 4, 1949, 2 U.S.T. 1999, 30 U.N.T.S. 23.

[FN64]. Id.

[FN65]. Id. art. 2.

[FN66]. Id. art. 3.

[FN67]. Id. arts. 2, 3.

[FN68]. Lin Lean Lim, The Economic and Social Bases of Prostitution in Southeast Asia, in *The Sex Sector: The Economic and Social Basis of Prostitution in Southeast Asia* 1, 15 (Lin Lean Lim, ed., 1998).

[FN69]. The Committee of Fifteen, *supra* note 43, at 205.

[FN70]. Lim, *supra* note 72, at 15.*supra* note 68.

[FN71]. Id.

[FN72]. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, July 25, 1951, 96 U.N.T.S. 271 available at <http://www.unhchr.ch/html/menu3/b/treaty11a.htm>.

[FN73]. United Nations, Multilateral Treaty Framework: An Invitation to Universal Participation: Focus 2001, Rights of Women and Children 58 (2001).

[FN74]. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Mar. 21, 1950, 96 U.N.T.S. 271, available at http://untreaty.un.org/English/CTC/ch_VII_11_a_bp.pdf

[FN75]. Id. art. 1 (emphasis added).

[FN76]. Id. art. 1.

[FN77]. Id. arts. 2, 8.

[FN78]. Gabriella Blum, Bilateralism, Multilateralism, and the Architecture of International Law, 49 *Harv. Int'l L.J.* 323, 346 (2008).

[FN79]. Id.

[FN80]. Natalia Ollus, The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: A Tool for Criminal Justice Personnel, Resource Material Series No. 62, at 16, 20 (2008), available at http://www.ungift.org/docs/ungift/pdf/knowledge/unafei_analysis.pdf

[FN81]. *Id.*

[FN82]. *Id.*

[FN83]. *Id.*

[FN84]. *Id.*

[FN85]. *Id.*

[FN86]. *Id.*

[FN87]. Ollus, *supra* note 81, at 20

[FN88]. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000, available at http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf [hereinafter “Palermo Protocol”].

[FN89]. The Advocates for Human Rights, Stop Violence Against Women (StopVAW), Historical Overview of the UN Perspective on Trafficking, Sept. 1, 2005, http://www.stopvaw.org/Historical_Overview_of_the_UN_Perspective_on_Trafficking.html.

[FN90]. Melissa Ditmore & Marjan Wijers, The Negotiations on the UN Protocol on Trafficking in Persons, 4 *Nemesis* 79, 83-84 (2003), available at <http://www.nswp.org/pdf/NEMESIS.PDF>.

[FN91]. Palermo Protocol, *supra* note 88, at 2, art. 3(a).

[FN92]. Ditmore & Wijers, *supra* note 91 at 79-80.

[FN93]. *Id.* at 79-80.

[FN94]. Ollus, *supra* note 81, at 16, 20.

[FN95]. United Nations Office on Drugs and Crime, <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html> (last visited Jan. 25, 2009).

[FN96]. The Committee of Fifteen, *supra* note 43, at 207.

[FN97]. *Id.*

[FN98]. *Id.*

[FN99]. *Id.* at 208.

[FN100]. *Id.* at 209.

[FN101]. White Slave Traffic (Mann) Act, 18 U.S.C. §§ 2421-2424 (2006).

[FN102]. Unforgivable Blackness, Knockout, [<http://www.pbs.org/unforgivableblackness/knockout/mann.html>], last visited Jan. 23, 2009.

[FN103]. See Eric Weiner, The Long, Colorful History of the Mann Act (National Public Radio) (March 11, 2008) (For example, Jack Johnson, the first African American heavyweight champion, was one of the first to be charged under the Mann Act. He was convicted of transporting his white girlfriend across interstate lines and was sentenced to one year in prison. In 1944, Charlie Chaplin was charged under the Act for producing a baby out of wedlock – many believed the charges were motivated by Chaplin’s leftist political views).

[FN104]. U.S. Dep’t of Health and Human Services, Trafficking Victims Protection Act of 2000: Fact Sheet, available at http://www.acf.hhs.gov/trafficking/about/TVPA_2000.pdf

[FN105]. Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7101 (2000), available at <http://www.state.gov/documents/organization/10492.pdf>

[FN106]. *Id.*

[FN107]. United Nations Convention Against Transnational Organized Crime, *supra* note 91, art. 3(a) at 2.

[FN108]. Victims of Trafficking and Violence Protection Act of 2000 §105(e); Biography of Luis CdeBaca, available at <http://www.state.gov/r/pa/ei/biog/124083.htm>

[FN109]. U.S. Dep’t of State, International Information Programs, U.S. Cooperates with Europe to Combat Sex Trafficking (2005).

[FN110]. Id.

[FN111]. Id.

[FN112]. Officer to Monitor and Combat Trafficking in Persons, U.S. Government's International Anti-Trafficking Programs (2004), available at <http://www.state.gov/g/tip/rls/rpt/34182.htm>

[FN113]. Id.

[FN114]. Id.

[FN115]. Victims of Trafficking and Violence Protection Act of 2000, *supra* note 12, at §108(a) (1), 22 U.S.C. § 7106.

[FN116]. Id. § 103(8)(a), 22 U.S.C. § 7102.

[FN117]. Id. § 108(a)(2), 22 U.S.C. § 7106.

[FN118]. Id. §108(a)(3), at 22 U.S.C. § 7106.

[FN119]. 22 U.S.C. § 7106(b).

[FN120]. U.S. Dep't of State, *Trafficking in Persons Report* 12 (2007), available at <http://www.state.gov/documents/organization/82902.pdf> [hereinafter 2007 TIP Report].

[FN121]. Victims of Trafficking Violence Protection Act of 2000, at §110(b)(1)(A); 2007 TIP Report 12, *supra* note 109 (explaining that minimum standards are applicable to those countries in which there are determined to be 100 or more victims of sex trafficking per year). Generally, a country is only omitted from the TIP report tier rankings if there is not adequate information available to make a determination about the country's compliance with the minimum standards. Id. Such countries are often listed in the "Special Cases" section of the TIP report. Id.

[FN122]. 2007 TIP Report, *supra* note 120.

[FN123]. Victims of Trafficking and Violence Protection Act of 2000, §110(b)(1)(B), 22 U.S.C. § 7107.

[FN124]. 2007 *TIP Report*, *supra* note 120.

[FN125]. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, ch.77, §§ (e) (3) (A) (iii), 117 Stat. 2875, 2883 (2003).

[FN126]. Id.

[FN127]. 2007 *TIP Report*, *supra* note 120, at 27.

[FN128]. Victims of Trafficking and Violence Protection Act of 2000, at §110(b)(1)(C), 22 U.S.C. § 7107.

[FN129]. Id. §110(a).

[FN130]. Id. §110(a)(1) + (2).

[FN131]. Id. §110(d)(1)(A)(11).

[FN132]. Id. §110(d)(4)(5).

[FN133]. Id.

[FN134]. Victims of Trafficking Violence Protection Act of 2000, §110(d)(5)(B). See also Off. Press Secretary, Presidential Determination with Respect to Foreign Governments' Efforts Regarding Trafficking in Persons (2006), available at <http://www.state.gov/g/tip/prsrl/73440.htm> (explaining that the President has generally exercised his waiver power when it is determined that withholding aid would cause the kind of human rights abuses that the VTPA was designed to prevent). For example, in 2006 Iran and Syria were granted a partial waiver so that "certain types of individuals who are influential in Iranian society [may] learn about and be exposed to the United States and its people". Id. The exempted individuals included teachers, professors, journalists, economists, and sports and cultural figures. Id. Additionally, a partial waiver was granted to Zimbabwe so that the U.S. could continue to give "an estimated \$9.376 million in assistance...to support three separate programs that operate in conjunction with the Government of Zimbabwe to combat HIV/AIDS". Id. However, there has also been some indication that political motivations can affect Presidential waivers. Id. In 2006, the President waived all sanctions against Saudi Arabia because over ten billion dollars in foreign military sales (FMS) to Saudi Arabia would have been restricted by sanctions under the Act. A full waiver has been granted in the national interest of providing these military sales in order to advance goals of the Global

War on Terror and U.S. commercial interests. Sanctioning MEPI programs would have removed a key U.S. government tool in promoting democratic reform and human rights in Saudi Arabia. Id.

[FN135]. Johan Lindquist & Nicola Piper, From HIV Prevention to Counter-Trafficking: Discursive Shifts and Institutional Continuities in South East Asia, in *Human Trafficking* 138, 147 (Maggy Lee ed., 2007).

[FN136]. Id.

[FN137]. Id.; see also TIP Reports 2003-2013. Indonesia fell to the Tier 2 Watch List in 2006, but moved back up to Tier 2 the following year.

[FN138]. U.S. Dep't of State, Off. to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report* June 2003 in Country Narratives, Belize (2003).

[FN139]. Id.

[FN140]. U.S. Dep't of State, Off. to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report* June 2004 in Country Narratives, Western Hemisphere, Belize (2004).

[FN141]. Id.

[FN142]. Id. at 39.

[FN143]. U.S. Dep't of State, Off. to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report* June 2005 in Country Narratives (A to Z), Cambodia (2005).

[FN144]. U.S. Dep't of State, Off. to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report* June 2006 83-84.

[FN145]. Id.

[FN146]. Id.

[FN147]. Susan W. Tiefenbrun, Sex Slavery in the United States and the Law Enacted to Stop It Here and Abroad, 11 Wm. & Mary J. Women & L. 317, 386 (2005).

[FN148]. U.S. Dep't of State, The Link Between Prostitution and Sex Trafficking 1 (2004), available at <http://www.state.gov/documents/organization/38901.pdf>.

[FN149]. Gunilla S. Ekberg, Special Advisor, Division for Gender Equality, Ministry of Industry, Employment, and Communications, Sweden, Seminar on the Effect of Legalization of Prostitution Activities (Nov. 5-6, 2002).

[FN150]. Id.

[FN151]. The Link Between Prostitution and Sex Trafficking, *supra* note 140, at 2.

[FN152]. Janice Raymond, Ten Reasons for Not Legalizing Prostitution, Coalition Against Trafficking in Women, in Prostitution, Trafficking, and Traumatic Stress 315, 317 (Melissa Farley ed., 2003).

[FN153]. Id.

[FN154]. Id.

[FN155]. Id.

[FN156]. U.S. Dep't of State, *Trafficking in Persons Report* (2013), available at <http://www.state.gov/g/tip/rls/tiprpt/2013/82806.htm>.

[FN157]. 2007 *TIP Report*, *supra* note 123, at 12-17.

[FN158]. Raymond, *supra* note 155, at 317.

[FN159]. Id.

[FN160]. Id. at 317-318.

[FN161]. Id. at 318.

[FN162]. Id.

[FN163]. Raymond, *supra* note 155, at 318.

[FN164]. U.S. Dep't of State, *Trafficking in Persons Report Country Narratives A-G* (June 12, 2013), available at <http://www.state.gov/g/tip/rls/tiprpt/2013/82805.htm>

[FN165]. Katri K. Steiberg, *Criminal Dilemmas: Understanding and Preventing Crime* 59 (Charalambos D. Aliprantis & Nicholas C. Yannelis eds., 2001).

[FN166]. See *id.* at 62.

[FN167]. *The Link Between Prostitution and Sex Trafficking*, *supra* note 148, at 2.

[FN168]. *Id.*

[FN169]. *Id.*

[FN170]. Raymond, *supra* note 155, at 319.

[FN171]. *Id.*

[FN172]. *Id.*

[FN173]. *Id.*

[FN174]. *Id.*

[FN175]. Hughes, *supra* note 41.

[FN176]. *Id.*

[FN177]. *Id.*

[FN178]. *Id.*

[FN179]. John Stossel, *Defending the 'D.C. Madam': Outlawing Immoral Behavior Doesn't Make It Go Away*, 20/20 (May 1, 2007), [http:// abcnews.go.com/2020/story?id=3105239&page=1](http://abcnews.go.com/2020/story?id=3105239&page=1).

[FN180]. Monica O'Connor & Grainne Healy, *Coal. Against Trafficking In Women*, Eur. Women's Lobby, *The Links Between Prostitution and Sex Trafficking: A Briefing Handbook*, 18 (2006), available at [http:// action.web.ca/home/catw/attach/handbook.pdf](http://action.web.ca/home/catw/attach/handbook.pdf).

[FN181]. *Id.*

[FN182]. *Id.* at 19.

[FN183]. Ekberg, *supra* note 140, at 6.

[FN184]. Raymond, *supra* note 143, at 321.

[FN185]. *Id.*

[FN186]. *Id.* at 316.

[FN187]. Ill. Coal. Against Sexual Assault, *By the Numbers Manual: Prostitution* 83, available at [http:// www.icasa.org/forms.aspx?PageID=475](http://www.icasa.org/forms.aspx?PageID=475).

[FN188]. Raymond, *supra* note 152, at 322.

[FN189]. Melissa Farley et al. *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, in *Prostitution, Trafficking, and Traumatic Stress* 33, 49 (Melissa Farley ed., 2003).

[FN190]. Raymond, *supra* note 152, at 323.

[FN191]. *Id.*

[FN192]. *Id.*

[FN193]. *Id.*

[FN194]. *Id.*

[FN195]. Raymond, *supra* note 152.

[FN196]. *Id.*

[FN197]. *Id.*

[FN198]. *Id.* at 323-24.

[FN199]. Ekberg, *supra* note 149.

[FN200]. Id.

[FN201]. Id.

[FN202]. Id.

[FN203]. Farley et al., *supra* note 189, at 56.

[FN204]. Id.

[FN205]. Id. at 60.

[FN206]. S. Afr. Law Reform Comm'n, Discussion Paper 111: *Trafficking in Persons* 64 (2006), available at <http://www.doj.gov.za/salrc/dpapers/htm>.

[FN207]. Id.

[FN208]. Mary Sullivan & Sheila Jeffreys, Coal. Against Trafficking in Women, Legalising Prostitution Is Not the Answer: The Case of Victoria, Australia 3 (2001), available at <http://action.web.ca/home/catw/attach/AUSTRALIAlegislation20001.pdf>.

[FN209]. Id.

[FN210]. Id. at 10.

[FN211]. Id.

[FN212]. Id.

[FN213]. Id.

[FN214]. Sullivan & Jeffreys, Coal. Against Trafficking in Women, *supra* note 208, at 10.

[FN215]. See id.

[FN216]. Id.

[FN217]. Id.

[FN218]. Id.

[FN219]. Id.

[FN220]. Donna M. Hughes, The Demand for Victims of Sex Trafficking 32 (2005), available at http://www.uri.edu/artsci/wms/hughes/demand_for_victims.pdf.

[FN221]. Id.

[FN222]. Id.

[FN223]. Bureau of Pub. Affairs, U.S. Dep't of State, The Link Between Prostitution and Sex Trafficking 2 (2004), available at <http://www.state.gov/documents/organization/38901.pdf>

[FN224]. André Anwar, Criminalizing the Customers: Prostitution Ban Huge Success in Sweden, *Spiegel Online*, Nov. 8, 2007, <http://www.spiegel.de/international/europe/0,1518,druck-516030,00.html> (last visited June 7, 2008).

[FN225]. Id.

[FN226]. Id.

[FN227]. Id.

[FN228]. Id.

[FN229]. Section 202a of the Norwegian Penal Code; Chapter XXII on Sexual Offences from the General Penal Code of Iceland

[1] The VTVPA was re-authorized in 2003, 2005, and 2008 with broad bi-partisan support. However, it was allowed to lapse at the end of 2011, and was not signed back into law until March 2013. The 2013 re-authorization was passed as an amendment to the broader Violence Against Women Act. See <http://www.nytimes.com/2012/03/22/opinion/the-fight-against-modern-slavery.html>; <http://www.endslaveryandtrafficking.org/trafficking-victims-protection-reauthorization-act>

[2] The VTPA also includes laws focused on tackling the problem of sex trafficking within the United States, and includes victim-protection laws designed to protect victims of trafficking in the U.S. However, this paper focuses on the aspects of the VTPA designed to deter sex trafficking in foreign nations.

[3] U.S. Government Anti-Trafficking in Persons Program Funding, 2010 Fact Sheet. Available at <http://www.state.gov/documents/organization/167319.pdf>

[4] The requirement that governments must make serious effort to reduce the demand for commercial sex acts was added by amendment in the 2008 VTPA re-authorization. See 2008 Re-Authorization, available at: <http://www.state.gov/j/tip/laws/113178.htm>

[5] A 2008 amendment to the TVPA provides that any country that has been ranked Tier 2 Watch List for two consecutive years and that would otherwise be ranked Tier 2 Watch List for the next year will instead be ranked Tier 3 in that third year.

[6] Remarkably, this is true *even after* the addition in 2008 of a requirement obligating governments to take steps to reduce the demand for commercial sex acts.