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Traffic Jam: Recommendations for Civil Penalties to Curb the Recent Trafficking of Women from Post-Cold War Russia

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TRAFFIC JAM: RECOMMENDATIONS FOR CIVIL
AND CRIMINAL PENALTIES TO CURB THE RECENT
TRAFFICKING OF WOMEN FROM
POST-COLD WAR RUSSIA

*Christopher M. Pilkerton**

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“If those who traffic in drugs should be punished severely and they should—so should those who traffic in human beings.”¹

—Madeline Albright, Secretary of State of the United States

INTRODUCTION

Recent investigations into Russian organized crime syndicates have peeled back their cloak of typical criminal activity, to discover that their illegal enterprises have expanded beyond trafficking in weapons and drugs to trafficking in human lives.² Every year, thousands of women are trafficked from their homes in Russia to work as prostitutes in Europe, Asia, the Middle East, and North America.³ This process is facilitated by the corruption of the Russian government that enables unlawful activity to occur under the guise of legitimate operations.⁴ The Russian mafia is a relatively new player in the global market of criminal opportunity, and has established a profitable business trafficking in human lives.⁵

Numerous treaties have been created to stop this trafficking and to protect these women’s human rights.⁶ These treaties contain specific goals regarding how countries should discourage the trafficking of individuals, work to rehabilitate the victims, and offer general as-

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1. Victoria Pope, *Trafficking in Women*, U.S. NEWS AND WORLD REPORT, April 7, 1997, at 42.
 2. See Louise Shelley, *Post-Soviet Organized Crime and the Rule of Law*, 28 J. MARSHALL L. REV. 827, 827 (1995) (discussing the influence of post-Soviet crime on Russian society).
 3. See generally, GLOBAL SURVIVAL NETWORK, *CRIME & SERVITUDE: AN EXPOSÉ OF THE TRAFFIC IN WOMEN FOR PROSTITUTION FROM THE NEWLY INDEPENDENT STATES*, 1, 5–8 (Fall 1997) [hereinafter GSN].
 4. See Scott P. Boylan, *Organized Crime and Corruption in Russia: Implications for U.S. International Law*, 19 FORDHAM INT’L L.J. 1999, 2000 (1996), where the author refers to the relationship between the Russian government and organized crime as an “illicit partnership.” See also GSN, *supra* note 3, at 41–45.
 5. GSN, *supra* note 3, at 33.
 6. See Susan Jeanne Toepfer & Bryan Stuart Wells, *The Worldwide Market For Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women*, 2 MICH. J. GENDER & L. 83, 83 (1994).

sistance to them.⁷ Enforcement procedures, however, have been inadequate. There has recently been serious discussion about the establishment of an International Criminal Court (ICC) to address these transnational issues. Although it is not clear whether trafficking will be considered a prosecutable offense in the ICC, the theory behind the ICC is that countries would have the opportunity to request that certain criminals be tried before the ICC for crimes committed anywhere in the world. Thus, a country would be allowed to enforce an internationally recognized law upon an individual even if it could not prosecute that individual in its own courts.⁸

This Article will examine the recent criminal trend of trafficking women from post-Cold War Russia into the United States. First, it will examine the Russian mafia and its development. It will also discuss the system of economic corruption that currently exists in Russia, which facilitates government involvement with this criminal activity. It will further investigate the issues surrounding trafficked women and the international anti-trafficking conventions that have been created by the United Nations. Next, it will go into a deeper discussion of the current status of relevant international law and the issues involving the International Criminal Court. Finally, this Article will propose six civil and criminal recommendations that can be utilized through the current application of United States law with an emphasis on the need for international enforcement of the laws that affect this problem. This article is restricted to the trafficking of women from Russia; thus, it discusses one example of a worldwide problem. Many of this article's recommendations, however, may also apply to the trafficking of women from other countries.

I. BACKGROUND

A. *The Mafia*

The idea of the mafia is not a new one. In fact, academics have been debating its existence as a nationwide crime syndicate for over a

7. See Toepfer & Wells, *supra* note 6, at 90.

8. See Phyllis Hwang, *Defining Crimes Against Humanity in the Rome Statute of the International Criminal Court*, 22 *FORDHAM INT'L L.J.* 457, 457 (1998) (citing the International Criminal Court as having "jurisdiction over genocide, war crimes, and crimes against humanity when national courts are unable or unwilling to prosecute such crimes").

half century.⁹ When United States Senator Estes Kefauver's committee opened its hearings on organized crime in 1950, they were surprised to discover that, in traditional Sicilian, the word "mafiosi" did not refer to a person or persons.¹⁰ Rather, it embodied a moral code that stood for integrity and excellence, exemplified in a patron-client relationship that included both the legitimate and criminal segments of Sicilian society.¹¹ In fact, the mafia that is glamorized in the contemporary media rarely demonstrates these values, but rather focuses on the manipulation of economic opportunity through acts of violence.¹² Accordingly, academics argue that the name "mafia" is a misnomer because it does not refer to a secret organization, but to a method that creates personal wealth and reputation by assigning certain functions to a sub-cultural system.¹³

This Sicilian blueprint has been manipulated and transformed into the horrible reality of what, today, may be generically referred to as "organized crime."¹⁴ Organized criminal groups transcend ethnicity and are more than a criminal cartel.¹⁵ They are para-governments within society whose activities include the regulation of prostitution, gambling, and narcotics trafficking.¹⁶ Their lucrative activity preys on a constituency of "urban poor and lower middle classes," and is often facilitated by corrupt alliances with public agencies.¹⁷

As the livelihood of any organized crime syndicate is financial profit, the dawn of the technological age demands activities beyond national borders. Not only does this create opportunities in the marketplace of international business, it also causes various cultures to fall prey to the activities of criminal organizations that have proven successful in other lands. Therefore, the most critical areas to examine are the dramatically changing countries in Eastern Europe, which have

9. See G. Robert Blakey, *Federal Criminal Law: The Need, Not for Revised Constitutional Theory or New Congressional Statutes, But the Exercise of Responsible Prosecutive Discretion*, 46 HASTINGS L.J. 1175, 1193 (1995).

10. See Blakey, *supra* note 9, at 1193 n.43.

11. See Blakey, *supra* note 9, at 1193 n.43.

12. See JOSEPH L. ALBINI, *THE AMERICAN MAFIA: GENESIS OF A LEGEND* 135 (1971); Charles Tilly, *Foreword* to ANTON BLOK, *THE MAFIA OF A SICILIAN VILLAGE, 1860-1960* at xiv (1973).

13. See HENNER HESS, *MAFIA AND MAFIOSI: THE STRUCTURE OF POWER* 127 (Ewald Osers Trans., Lexington Books 1973).

14. HOWARD ABADINSKY, *ORGANIZED CRIME* 8-23 (3d ed. 1990).

15. See Blakey, *supra* note 9, at 1197.

16. See Blakey, *supra* note 9, at 1197.

17. Blakey, *supra* note 9, at 1197, 1198.

recently seen the fall of the Soviet Empire and the creation of the European Economic Community.

B. *The Russian Mafia*

1. The History of Russian Organized Crime

Organized crime has existed in Russia since the days of the Bolshevik Revolution.¹⁸ In fact, what became known as the "secret police" of the Bolshevik movement was initially a concentrated recruitment of career criminals.¹⁹ These criminals became loyal to a government-sponsored movement that stressed allegiance over the rule of law.²⁰ This practice continued throughout the entire Soviet regime as the Communist party suppressed organized crime gangs and regulated the majority of white-collar criminal activity.²¹ Due to its control over the criminal market, the Communist party has been described as "the largest criminal organization in the world."²²

The "iron curtain" has fallen and the Cold War is over; yet, the criminal activity synonymous with the former leadership of the Soviet Union has expanded into transnational activity.²³ The United States is one lucrative location for this activity. The growth of this syndicate has prompted the United States Department of Justice to elevate the

18. See Mike Cormaney, *RICO in Russia: Effective Control of Organized Crime or Another Empty Promise?*, 7 *TRANSNAT'L L. & CONTEMP. PROBS.* 261, 269 (1997).

19. See J. Michael Waller, *Organized Crime and the Russian State*, 2 *DEMOKRATIZATI-AZATSIYA* 364, 371 (1994).

20. See Cormaney, *supra* note 18, at 269 n.38 (citing STEPHEN HANDELMAN, *COMRADE CRIMINAL: RUSSIA'S NEW MAFIYA* 96-100 (1995); see also Vladimir Schlapentokh, *Russia: Privatization and Illegalization of Social and Political Life*, 19 *WASH. Q.* 65 (Winter 1996); see generally JOHN PATTON WILLERTON, JR., *PATRONAGE AND POLITICS IN THE SOVIET UNION* (1985).

21. See Cormaney, *supra* note 18, at 269 n.39 (citing Michael Scammell, *What's Good for the Mafia Is Good For Russia*, *N.Y. TIMES*, Dec. 26, 1993, at 11) ("Dictatorships of both the left and right . . . regard organized crime as their own prerogative and cannot tolerate competition."). For a detailed account of the corruption and criminal activities of the Communist party of the Soviet Union, see generally Arkady Vaksberg, *THE SOVIET MAFIA* (John & Elizabeth Roberts trans., Weidenfeld and Nicolson, pub., 1991).

22. Cormaney, *supra* note 18, at 270.

23. See Boylan, *supra* note 4, at 1999 (demonstrating that not only is corruption rampant throughout Russian government but its connection to Russian gangs in the West equates it with international narcotics smuggling, loan sharking, and other serious crimes).

Russian mafia to its highest investigative priority.²⁴ This places them on a level with La Cosa Nostra (the Italian Mafia), Columbian cartels, and the Chinese triads.²⁵

The 1988 Vienna Conference recognized that "organized crime is characterized by the ability to expand into new activities or geographical areas as soon as the opportunity arises or the necessity demands."²⁶ The Russian mafia seems to have demonstrated this by its activity in the areas of prostitution, drug trafficking, money laundering, and nuclear weapons.²⁷ At least 200 of Russia's criminal groups maintain relationships with United States-based street gangs in seventeen cities and fourteen states nationwide.²⁸ The Russian Mafia has also established ties with other criminal groups, including La Cosa Nostra and Columbian cocaine cartels, making its diverse networks and crimes more difficult for law enforcement officials to detect.²⁹ This problem is complicated by the protective nature of immigrant communities within the United States, which provide an interdependent support staff that contributes to a criminal ring's ability to operate covertly.³⁰

2. Role of the Russian Mafia in Government Corruption

With the advent of perestroika, the line distinguishing the government from the mafia has become difficult to determine; both have prospered through the black market and corruption.³¹ The word "mafiya" was first used to describe corrupt Soviet bureaucrats.³² By the early 1990s, the term "mafiya" was also used to describe the Soviet

24. See Selwyn Raab, *Influx of Russian Gangsters Troubles F.B.I. in Brooklyn*, N.Y. TIMES, Aug. 23, 1994, at A1, B2.

25. See Raab, *supra* note 24, at B2.

26. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, U.N. ESCOR, U.N. Doc. E/Conf. 82/15, *reprinted in* 28 I.L.M. 493 (1989).

27. See Peter J. Vassalo, *The New Ivan the Terrible: Problems in International Criminal Enforcement & the Specter of the Russian Mafia*, 28 CASE W. RES. J. INT'L L. 173, 174 (1996).

28. See D.E. Lungren, *Russian Organized Crime: California's Newest Threat*, California Department of Justice, March 1996, at 9.

29. See Vassalo, *supra* note 27, at 181.

30. See LYDIA S. ROSNER, *THE SOVIET WAY OF CRIME: BEATING THE SYSTEM IN THE SOVIET UNION AND THE U.S.A.* 80 (1986).

31. See Peter Daniel DiPaola, *The Criminal Time Bomb: An Examination of the Effect of the Russian Mafiya on the Newly Independent States of the Former Soviet Union*, 4 IND. J. GLOBAL LEGAL STUD. 145, 148 (1996).

32. See DiPaola, *supra* note 31, at 149.

government officials who continued the tradition of corruption left over from the Communist regime.³³

Corruption has affected local law enforcement as well. By 1991, an annual average of 20,000 police officers were fired for "collusion with the mafia."³⁴ The Global Survival Network (GSN), a nongovernmental organization investigating the trafficking of women from the former Soviet Union, conducted interviews which revealed that some Russian police and officials of the state intelligence agency, the Federal Security Bureau (FSB), are "involved in the sex trade."³⁵ In fact, GSN's undercover research showed that one 21-year-old female pimp paid the police 50,000 to 100,000 rubles, approximately \$50-\$100, per night for each of her girls to avoid arrest or interrogation.³⁶

C. Involvement of the Russian Mafia in Forced Prostitution

One business that is growing particularly fast is forced prostitution. As an industry, prostitution may continue to grow due to an increasing market of international customers desiring sexual services.³⁷ "In addition to the tourist agencies, hotels, and transportation services, the police and the government bureaucracy all benefit directly or indirectly from forced prostitution"³⁸ "In some countries . . . government officials and the local elites have come to accept the institutionalization of violence in the form of forced prostitution because they view the practice as the key to regional development and an important source of foreign currency."³⁹

The concept of forced prostitution derives from an individual's inability to leave a sexually exploitative relationship.⁴⁰ This is chiefly

33. See DiPaola, *supra* note 31, at 149.

34. Claire Sterling, *Redfellas: The Growing Power of Russia's Mob*, NEW REPUBLIC, Apr. 11, 1994, at 19.

35. GSN, *supra* note 3, at 41.

36. See GSN, *supra* note 3, at 41.

37. See Nora V. Demleitner, *Forced Prostitution: Naming an International Offense*, 18 FORDHAM INT'L L.J. 163, 190 (1994).

38. Demleitner, *supra* note 37, at 190.

39. Demleitner, *supra* note 37, at 190.

40. See Jessica N. Drexler, Comment, *Government's Role In Turning Tricks: The World's Oldest Profession in the Netherlands and the United States*, 15 DICK. J. INT'L L. 201, 206-08 (1996); see also Janie Chuang, *Redirecting the Debate Over Trafficking In Women: Definitions, Paradigms and Contexts*, 11 HARV. HUM. RTS. J. 65, 68 (1998) ("Trafficking in women is fueled by poverty, sexism, and racism, all of which combine to create a situation of unequal bargaining power or vulnerability.").

caused by the fact that, in many countries, a woman's only way to support a family may be prostitution.⁴¹ In Russia 98 percent of women are literate and many have a university education.⁴² Yet, in some parts of the Russian Federation, women account for nearly 90% of the unemployed population.⁴³ Thus, women are willing to accept offers of employment abroad as "models," "dancers," and "waitresses." It is only later that they realize that they were offered false employment and have been sold into prostitution by organized criminals.⁴⁴

This agreement is often formalized in a contract⁴⁵ that is unenforceable in a court of law due to its criminal nature. Whether through legitimate paperwork or false identification, traffickers use a variety of means to bring the women into the United States.⁴⁶ The Russian traffickers are able to purchase false or altered passports from authorities in the Ministry of Foreign Affairs, or through companies with connections to Interpol (the international police organization) which change the name, nationality, or age of a person traveling abroad.⁴⁷

Once the women have entered the United States, local mafiosi confiscate their documentation.⁴⁸ These women do not have knowledge of U.S. culture or proper paperwork and, due to the formality of the arrangement and their ignorance as to their legal rights, believe they must work off debts to the mob of thousands of dollars for passports and other documentation obtained in their country of origin.⁴⁹ This phenomenon is referred to as "debt bondage," a practice outlawed by many treaties and conventions, defined as "the status or condition arising from a pledge by a debtor of his personal services or

41. See Demleitner, *supra* note 37, at 187.

42. See GSN, *supra* note 3, at 12.

43. See GSN, *supra* note 3, at 11.

44. See GSN, *supra* note 3, at 1.

45. See GSN, *supra* note 3, at 15, 20–21.

46. See GSN, *supra* note 3, at 15 (demonstrating that traffickers "use tourist, entertainment, fiance, student, and business visas").

47. See GSN, *supra* note 3, at 43.

48. See GSN, *supra* note 3, at 19, 38. By tricking the women into handing over their documentation, traffickers are essentially making them legal non-persons in the U.S. See GSN, *supra* note 3, at 19.

49. See GSN, *supra* note 3, at 19–21. GSN estimates that Eastern European women sent to Japan are indebted by up to \$35,000.

of those of a person under his control as security for a debt, if the value of those services . . . are not respectively limited and defined."⁵⁰

Leaving may not be a desirable option for these women. First, deportation provides no relief since the women must pay the debts allegedly accrued or face personal danger and threats of violence to their families in Russia. This type of intimidation is also used to keep women from going to law enforcement officials.⁵¹ Second, even if officials do respond to prostitution, they reinforce the women's helplessness because current laws punish the prostitutes.⁵² If the state takes action against women, they have no choice other than to rely on their pimps for bail, thereby maintaining the debt bondage scheme.

Forced prostitution has become a highly organized and extremely profitable business for organized crime syndicates, particularly the Russian mafia.⁵³ Those responsible for trafficking are members of highly organized networks that recruit and maintain these prostitution rings.⁵⁴ These networks involve collaboration between intermediaries in Russian villages and regional recruiters, and extend to the international web of organized criminals.⁵⁵ Even when the Russian mafia is not directly responsible for the trafficking of women overseas, its organizations may provide security and protection for such operations.⁵⁶ Therefore, the presence of organized crime becomes vital to the success of the trafficking, whether directly or indirectly.⁵⁷

50. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 266 U.N.T.S. 40, 41.

51. See Lan Cao, Note, *Illegal Traffic in Women: A Civil RICO Proposal*, 96 YALE L.J. 1297, 1303 (1987).

52. See Cao, *supra* note 51, at 1305.

53. See Vassalo, *supra* note 27, at 174 (describing the Russian Mafia as "a union of racketeers without equal," and citing their sphere of criminal activities to include prostitution "on a monumental and increasingly international scale") (quoting Sterling, *supra* note 34, at 20).

54. See Cao, *supra* note 51, at 1299 (To run and furnish the sex slave business, women are recruited by organized rings of procurers, using fraudulent recruiting methods. For example, they are abducted, procured through organized crime, recruited by phony employment agencies, and trafficked into the U.S. via false marriage contracts.").

55. See Cao, *supra* note 51, at 1300-02.

56. See GSN, *supra* note 3, at 33.

57. See GLOBAL SURVIVAL NETWORK, *BOUGHT & SOLD: ORGANIZED CRIME & ILLEGAL TRAFFICKING OF WOMEN OUT OF RUSSIA, PRELIMINARY REPORT 8* (Spring 1997).

II. CURRENT LAW

A. International Responses to Trafficking

Although the practice of forced prostitution is still prevalent in our global society, the status and treatment of women has been the subject of several international legal instruments since the turn of the century. One of the earliest treaties, the Convention for the Suppression of the White Slave Traffic,⁵⁸ was signed in 1910. This treaty:

bound its thirteen signatories to severely punish any person who hired, abducted, or enticed for immoral purposes any women under the age of twenty-one, or used violence, threats, fraud, or any compulsion on a wom(a)n over twenty-one to accomplish the same purpose, even if he or she committed the acts constituting the offense in different countries.⁵⁹

The Convention referred to “anti-trafficking,” as opposed to “anti-forced prostitution,” because forced prostitution was considered a domestic area of concern.⁶⁰ Therefore, the signatories of this Convention created few international directives to deal with the specific problem of trafficking for purposes of prostitution.⁶¹

Shortly after the 1910 Convention, the Covenant of the League of Nations⁶² was developed, which entrusted the League with the “general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs.”⁶³ The International Convention for the Suppression of the Traffic of Women and Children furthered this initiative by encouraging states to take a domestic approach to the trafficking problem by drafting legislation to promote legitimate employment for

58. Convention for the Suppression of the White Slave Traffic, May 4, 1910, 211 Consol. T.S. 45 [hereinafter 1910 Convention]. For a discussion of the term “white slavery,” see Demleitner, *supra* note 37, at 165–67 (“The term ‘white slave’ had originally been used to apply to factory workers in England but fell into disuse after the passage of the ten-hour factory law.”).

59. Demleitner, *supra* note 37, at 168–69.

60. See Demleitner, *supra* note 37, at 168 n.20.

61. See Demleitner, *supra* note 37, at 169.

62. LEAGUE OF NATIONS COVENANT art. I–XXVI.

63. LEAGUE OF NATIONS COVENANT art. XXIII, para. c.

trafficked immigrants and emigrants.⁶⁴ This approach confused international signatories who found it difficult to distinguish between international trafficking and the national aspects of commercialized prostitution.⁶⁵ A special fact-finding Commission demonstrated that the existence of licensed brothels was a key incentive to traffic, both nationally and internationally, and established that "profit . . . is at the root of the whole business [of forced prostitution]."⁶⁶ It concluded that the business of prostitution was much more socially detrimental than prostitution itself because it allowed for third-party [pimp] benefits by merely providing the services of another [prostitutes].⁶⁷ It further noted that prostituted women were certain to become completely demoralized by their significant dependency on their exploiters since they knew little of the language or customs of the receiving country.⁶⁸ With this in mind, the International Convention of 1933 extended the scope of the acts criminalized by declaring that even the prostitute's consent did not exempt those responsible for procurement.⁶⁹

The League of Nations, in 1937, prepared a draft Convention in order to consolidate earlier agreements, provide prosecutorial tools against brothel managers, and strengthen the international commitment to eradicate the trafficking of women.⁷⁰ It was the first international treaty to address international enforcement by declaring that trafficking was at the center of the system of international prostitution.⁷¹ The goal of the 1937 Convention was to provide for the rehabilitation of victims and curb third-party profit.⁷² Unfortunately, the treaty was never signed into law due to the onset of World War II.⁷³

64. See Demleitner, *supra* note 37, at 170 n.32 (citing the International Convention for the Suppression in the Traffic in Women and Children, Sept. 30, 1921, 9 L.N.T.S. 415, amended by the Protocol to Amend the Convention for the Suppression of the Traffic in Women and Children, concluded at Geneva on 30 September 1921, and the Convention for the Suppression of the Traffic in Women of Full Age, concluded at Geneva on 11 October 1933, Nov. 12, 1947, 53 U.N.T.S. 13).

65. See Demleitner, *supra* note 37, at 170.

66. Demleitner, *supra* note 37, at 171.

67. See Demleitner, *supra* note 37, at 171.

68. See Demleitner, *supra* note 37, at 171.

69. See Demleitner, *supra* note 37, at 171.

70. See Demleitner, *supra* note 37, at 171.

71. See Demleitner, *supra* note 37, at 171.

72. See Demleitner, *supra* note 37, at 171.

73. See Demleitner, *supra* note 37, at 172.

In 1946, the United Nations Economic and Social Council created the Commission on the Status of Women.⁷⁴ Through various initiatives including a study to establish legislative possibilities, this Council generated the Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others.⁷⁵ Signatories to this document commit to three obligations: (1) to adhere to the concept of anti-trafficking; (2) to abide by current enforcement measures; and (3) to agree to the use of rehabilitative and educational tools to help victims of prostitution in areas not addressed by criminal laws.⁷⁶ Under the 1949 Convention, prostitutes were viewed as the victims of traffickers.⁷⁷ As this Convention echoed the goals of the 1937 Convention, prostitution was considered legal, and parties to the treaty agreed that prostituted women would “not be punished or subjected to any special supervision or registration.”⁷⁸

So as not to inflict more regulation on the trafficked individual herself, the 1949 Convention prohibited the procurement and consumption of prostitution that led to the human rights violations the Convention was charged to prevent.⁷⁹ In order to accomplish this, certain provisions demanded that foreign convictions of traffickers be recognized and enforced in signatory countries.⁸⁰ This bold move was to be facilitated by joint investigations, leading to an exchange of information and the extradition of those responsible for the trafficking.⁸¹ The 1949 Convention set out to criminally punish any person who “[p]rocures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; [e]xploits the prostitution of another person, even with the consent of that person,” and divided the punishable offenses into two categories, (1) prepara-

74. See Toepfer & Wells, *supra* note 6, at 94.

75. See Toepfer & Wells, *supra* note 6, at 95; see also Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, *opened for signature* Mar. 21, 1950, 96 U.N.T.S. 272 (entered into force July 25, 1951) [hereinafter 1949 Convention].

76. See Chuang, *supra* note 40, at 76. This last point, regarding states' use of welfare tools, will not be discussed in this Article, but experts believe this to be one of the most important techniques to resolve this problem.

77. See Toepfer & Wells, *supra* note 6, at 96.

78. Toepfer & Wells, *supra* note 6, at 96.

79. See Toepfer & Wells, *supra* note 6, at 96–97.

80. See Toepfer & Wells, *supra* note 6, at 97.

81. See Toepfer & Wells, *supra* note 6, at 97.

tory acts and (2) intentional participation.⁸² Although no specific penalties were offered, preventive measures were established⁸³ and the Convention mandated that each signatory establish an authority to centralize information regarding anti-trafficking violations and report directly to the Secretary-General of the United Nations.⁸⁴

The most recent trend of anti-trafficking treaties is seen in the 1979 Convention on the Elimination of All Forms of Discrimination Against Women.⁸⁵ The provision against trafficking in Article Six of CEDAW mandates that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."⁸⁶

Many nations have signed international legal instruments recognizing that trafficking in women is a violation of human rights.⁸⁷ Regional charters and human rights documents which prohibit trafficking also exist.⁸⁸ The International Labour Organization (ILO) has adopted two conventions which may be applicable to trafficking in prostitution: the Forced or Compulsory Labor Convention⁸⁹ and the

82. Toepfer & Wells, *supra* note 6, at 96, 99. Note that Article 1 of the 1949 Convention makes procurement and exploitation of persons for prostitution punishable even if the victim was not transported across international borders and the prosecuting authority does not have to show that procurers gained financially from their activity.

83. See Demleitner, *supra* note 37, at 174. These preventive measures included:

[T]he protection of immigrants and emigrants at points of arrival and departure, publicity to warn of the dangers of trafficking, the supervision of railway stations, airports, and seaports, informing the appropriate authority of the arrival of persons who appear to be either procurers or victims, and the control of employment agencies. In addition, the states who were parties committed to repatriate victims 'who desire to be repatriated or who may be claimed by persons exercising authority over them or whose expulsion is ordered in conformity with law.'

84. See 1949 Convention, *supra* note 75, 96 U.N.T.S. at 280.

85. Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 14, 17 (entered into force Sept. 3, 1981) [hereinafter CEDAW]; see also Toepfer & Wells, *supra* note 6, at 100.

86. Toepfer & Wells, *supra* note 6, at 101 (quoting CEDAW, *supra* note 85, at 17).

87. See Toepfer & Wells, *supra* note 6, at 93 (noting that the status of women has been the subject of over twenty international legal instruments since 1945); see also Slavery Convention, Sept. 25, 1926, 46 Stat. 2183, 60 L.N.T.S. 253; 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *entered into force* Apr. 30, 1957, 266 U.N.T.S. 40.

88. See Toepfer & Wells, *supra* note 6, at 111-27.

89. Convention Concerning Forced or Compulsory Labour, *adopted* June 28, 1930, 39 U.N.T.S. 55.

1957 Abolition of Forced Labour Convention.⁹⁰ Forced labor is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."⁹¹ Many states are parties to at least one of these conventions, including the United States and the Russian Federation.

A 1972 United Nations Subcommission on the Abolition of Slavery authorized a working group on prostitution whose function was to compile information and draft recommendations.⁹² This working group, however, had no enforcement capability. Following the findings of the Subcommission, the United Nations virtually held that trafficking for the purposes of prostitution is a violation of Article One of the Universal Declaration of Human Rights ("All human beings are born free and equal in dignity, and rights"), of Article Four ("No one shall be held in slavery or servitude"), and of Article Five ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment").⁹³ The debt bondage schemes associated with trafficking operations also establish trafficking as a forbidden slavery-like practice under international law.⁹⁴

Some commentators consider the Inter-American system to be the best forum within which to combat the trafficking of women.⁹⁵ Loosely modeled after a somewhat ineffective European Convention, the Inter-American Commission on Human Rights provides more opportunities for a trafficked individual to assert her own rights because it allows her to file a complaint herself rather than merely granting her state standing to bring an action.⁹⁶ Unfortunately, in both the Inter-American system and the European Court, the Com-

90. The 1957 Abolition of Forced Labor Convention, June 25, 1957, 320 U.N.T.S. 291.

91. Convention Concerning Forced or Compulsory Labour, *supra* note 89, at 58.

92. See E.S.C. Res. 1695 (LII), U.N. ESCOR, 52d Sess., Supp. No. 1, at 22, U.N. Doc. E/5183 (1972).

93. See *Working Group on Contemporary Forms of Slavery*, U.N. Commission on Human Rights' Sub-Commission on Prevention of Discrimination and Protection of Minorities, 16th Sess., Agenda Item 4, U.N. Doc. E/CN.4/Sub.2/AC.2/1991/1/Add.1 (1991).

94. See Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *supra* note 87, at 41.

95. See Toepfer & Wells, *supra* note 6, at 126.

96. See Toepfer & Wells, *supra* note 6, at 123-25. Although recent amendments will hopefully make it more effective, the European Convention's language has been interpreted very narrowly and is not currently effective in the prohibition of trafficking. See Toepfer & Wells, *supra* note 6, at 121-23.

mission's right to receive inter-state complaints depends wholly upon the permission of the violating state.⁹⁷ Although the use of the Inter-American Court on Human Rights is procedurally constrained, their decisions are enforceable.⁹⁸ The Commission may make recommendations, and if the situation remains unchanged, the Commission may decide to publish its report.⁹⁹ The hope is that a state may have little choice other than to assert its human rights directives when other states apply negative publicity and moral pressure.¹⁰⁰

While the international debate has attempted to characterize forced prostitution as slavery, the term "slavery" fails to truly describe all of the violations that this practice actually encompasses.¹⁰¹ Were the United Nations and regional organizations to acknowledge and label forced prostitution as an international crime, their member states would in effect be enacting policy initiatives that outlaw and criminalize this practice.¹⁰² While forced prostitution could be prosecuted in most countries under a variety of statutes, the international community has not succeeded in its attempts to decrease the prevalence of the practice, because of poor international enforcement of women's rights.¹⁰³

1. Means of Extradition

Efforts by the United States to prosecute criminals located abroad are repeatedly hindered by "considerations of the sovereignty, laws, and political reactions of foreign states."¹⁰⁴ Absent a system of international criminal law, extradition treaties are the only means by which a state can gain jurisdiction over an individual outside its borders

97. See Toepfer & Wells, *supra* note 6, at 124-25.

98. See Toepfer & Wells, *supra* note 6, at 126.

99. See Toepfer & Wells, *supra* note 6, at 126.

100. See Toepfer & Wells, *supra* note 6, at 126.

101. See Demleitner, *supra* note 37, at 164.

102. Cf. Charles Lewis Nier, III, *Guilty as Charged: Malcolm X and His Vision of Racial Justice For African Americans Through Utilization of the United Nations International Human Rights Provisions and Institutions*, 16 DICK. J. INT'L L. 149, 173 (1997) (demonstrating that while the Universal Declaration of Human Rights did not bind U.N. member countries, it did act as a global paradigm).

103. See Toepfer & Wells, *supra* note 6, at 104-05.

104. Ethan A. Nadellmann, *The Evolution of United States Involvement in the International Rendition of Fugitive Criminals*, 25 N.Y.U. J. INT'L L. & POL. 813, 814 (1993).

whom it seeks to prosecute for an alleged wrongdoing.¹⁰⁵ The Supreme Court stated in *Factor v. Laubenheimer*:

the principles of international law recognize no right to extradition apart from treaty. While a government may . . . surrender a fugitive from justice to the country from which he has fled . . . the legal right to demand his extradition and the correlative duty to surrender him to the demanding country exist only when created by treaty.¹⁰⁶

Extradition provides for the transfer of an accused person from one nation to his own country or the place where the illegal activity occurred so that the person may face criminal charges. Both treaties and principles of comity between nations govern the extradition process.¹⁰⁷ These agreements give nations the opportunity to resolve territorial disputes without resorting to extraterritorial abduction. The agreements often utilize one of two methods to make extradition effective:¹⁰⁸ they must either recognize the concept of dual criminality—that the activity was considered criminal by both the receiving and extraditing countries—or include a list of crimes for which a country will allow extradition.¹⁰⁹ Although these treaties have often proven effective, there is no general duty for non-signatory states to bring fugitives to justice. Unfortunately, strained diplomatic relations be-

105. See generally Marian Nash Leich, *Contemporary Practice of the United States Relating to International Law*, 76 AM. J. INT'L L. 154 (1982) (providing an in-depth discussion of extradition treaties).

106. *Factor*, 290 U.S. 276, 287 (1933).

107. See Sharon A. Williams, *The Double Criminality Rule and Extradition: A Comparative Analysis*, 15 NOVA L. REV. 581, 582–83 (1991).

108. See Geoffrey R. Watson, *The Passive Personality Principle*, 28 TEX. INT'L L.J. 1, 42 (1993) (citing a letter rogatory used in absence of extradition treaty).

109. See Williams, *supra* note 107, at 583. Article 240 of the Russian Criminal Code criminalizes coercing or forcing a person into prostitution by means of force or threat of force, blackmail, destruction of property, or deceit; and imposes a fine of 200 to 500 minimal salaries or loss of freedom for up to four years. Ugolovnyi Kodeks RF Sec. 1 Art. 240. Section two of Article 240 targets organized criminal activity by criminalizing coercion into prostitution by members of an organized group, with a punishment of a fine of 700–1,000 minimal salaries or loss of freedom for three to six years. Ugolovnyi Kodeks RF Sec. 2 Art. 240. Article 241 criminalizes organizing or holding property for the purposes of prostitution, and imposes a fine of 700–1,000 minimal salaries or loss of freedom for up to five years. Ugolovnyi Kodeks RF Art. 241. In fact, a comprehensive law introduced by the Duma in January 1995, uses elements of America's RICO, possibly leading to the expansion of the international criminal net.

tween countries may lead to the denial of extradition and, therefore, the obstruction of global justice.

a. Mutual Legal Assistance

Although it has been argued that many of the treaties cited here lack substantial enforcement capability,¹¹⁰ mutual legal assistance is another way to prevent the current levels of trafficking into the United States. Mutual legal assistance is the means by which a country obtains, for use in its investigational and judicial proceedings, evidence and information that is outside its borders. This can be accomplished by formal requests (a letter rogatory)¹¹¹ or the more recent development of a mutual legal assistance treaty (MLAT).¹¹² One possible theory is that there should be a similar type of regional multilateral agreement between sending, receiving and transit countries to provide assistance to trafficked persons and to prosecute traffickers. This argument is supported by the classification of forced prostitution as a crime under the Geneva Convention and its additional protocols.¹¹³ Conventions that have successfully fought other trafficking problems demonstrate a recent trend of bold enforcement that could be furthered by following the recommendations herein, as these treaties force the signatory parties to surrender certain areas of sovereignty

110. See Stephanie Farior, *The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to Its Potential*, 10 HARV. HUM. RTS. J. 213 (1997).

111. See Robert L. Pisani & Robert Fogelnest, Esq., *The United States Treaties on Mutual Assistance in Criminal Matters*, in INTERNATIONAL CRIMINAL LAW: A GUIDE TO U.S. PRACTICE AND PROCEDURE 233 (Ved P. Nanda & Cherif Bassiouni eds., 1987). A letter rogatory is a centuries-old procedure in which a court in one country requests a court in another country to render assistance based on friendly relations and reciprocity.

112. See Pisani & Fogelnest, *supra* note 111, at 233. A mutual legal assistance treaty is a relatively new phenomenon that was necessitated by the increasing interdependence of countries and the growing international aspects of crime. These treaties typically require criminal duality, i.e., offense must be listed as a crime in both the sending and receiving countries. The contents of the requests are set forth in the treaties, as well as the types of assistance which can be provided. Some advantages of this arrangement include efficiency, mandatory reciprocity, and access to a broad scope of investigative materials. One example is a mutual legal assistance treaty with specific drug trafficking provisions that was signed after the success of the Vienna Convention. See Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *supra* note 26, at 483.

113. See Demleitner, *supra* note 37, at 196.

by allowing foreign intrusion into what are typically domestic concerns.¹¹⁴

Another option under the mutual legal assistance doctrine is to employ a letter rogatory. Under a letter rogatory, the appropriate embassy, ministry of justice, or department of state requests the extradition of an individual or evidence via the diplomatic channels of the foreign consulate. However, MLATs are preferable to letters rogatory because compliance with the latter is usually neither mandatory nor timely.¹¹⁵ The first MLAT involving the United States was a 1973 Treaty on Mutual Assistance in Criminal Matters with Switzerland.¹¹⁶ It was unique in that it created a legal obligation that one state mutually assist the other in investigating transnational crime. The most famous organized crime-focused MLAT is the MLAT on extradition between Italy and the United States.¹¹⁷ It requires all agencies with criminal investigative functions to request assistance through the Attorney General.¹¹⁸ This agreement was crucial in the discovery of an international narcotics conspiracy known as "the Pizza Connection."¹¹⁹ It allowed for the live testimony of two Italian nationals and the ability to facilitate the transfer of witnesses.¹²⁰ Due to its reliable application, the MLAT has become an effective tool for prosecutors across the country.¹²¹

114. See Vassalo, *supra* note 27, at 188.

115. See Pisani & Fogelnest, *supra* note 111, at 233 n.1 and accompanying text.

116. See Treaty on Mutual Assistance in Criminal Matters, May 25, 1973, U.S.-Switz., art. 9, 27 U.S.T. 2019, 2035.

117. See Italian Republic on Mutual Assistance in Criminal Matters, Nov. 9, 1982, U.S.-Italy, S. Treaty Doc. No. 25, 98th Cong. 2d. Sess. (1984) [hereinafter Treaty on Mutual Assistance in Criminal Matters, U.S.-Italy]. A separate extradition treaty was entered into between the United States and Italy in 1983. See Agreement on Extradition, Oct. 13, 1983, U.S.-Italy, T.I.A.S. No. 10,837 (allowing a United States prosecutor to be stationed abroad to bring Italian law in line with U.S. law).

118. See Treaty on Mutual Assistance in Criminal Matters, U.S.-Italy, *supra* note 117.

119. *United States v. Casamento*, 887 F.2d 1141, 1147 (2d Cir. 1989). For more information on "the Pizza Connection," see Richard A. Martin, *Problems in International Law Enforcement*, 14 *FORDEAM INT'L L.J.* 519, 522 (1990-1991).

120. See Martin, *supra* note 119, at 522.

121. See Dianne Marie Amann, *A Whipsaw Cuts Both Ways: The Privilege Against Self-Incrimination in an International Context*, 45 *UCLA L. REV.* 1201, 1265 (1998) ("Requests made pursuant to U.S. treaties more than tripled in the last decade, as prosecutors took advantage of the ability to secure admissible evidence with speed and efficiency.").

b. Prescriptive Jurisdiction Rule

Customary international law holds that a state may not maintain sovereignty over another state.¹²² This bar on the use of one state's domestic law in another state, or prescriptive jurisdiction, effectively limits a state's ability to conduct legal investigations or execute arrest power within its jurisdiction.¹²³ The prescriptive jurisdiction rule does allow for exceptions in cases of a convention or customary international practice, as demonstrated in *United States v. Noriega*.¹²⁴ Noriega was indicted by a federal grand jury for numerous violations of United States drug-trafficking laws.¹²⁵ Although none of these criminal violations occurred within the territory of the United States, the court justified the prescription of United States law because Noriega's offense was considered by customary international law to be a "universally condemned" offense.¹²⁶ Since Noriega's conduct fell under the exception for "universally condemned" offenses, the court was able to claim jurisdiction.¹²⁷ Consequently, the successful use of the rule is limited by its application to recognized areas of criminal activity;¹²⁸ which include slave tradings, hijackings, piracy, war crimes, and genocide.¹²⁹ These offenses are defined as "offenses recognized by the community of nations as of universal concern."¹³⁰

In *United States v. Alvarez-Machain*, the Supreme Court analyzed the extent to which the prescriptive jurisdiction limitation could be applied in considering the abduction and removal of a Mexican national to the U.S. for kidnapping and murder charges.¹³¹ Although the criminal act of abduction does not fall under this prescriptive juris-

122. See Vassalo, *supra* note 27, at 182 (citing S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 9, at (Sept. 7)).

123. See Vassalo, *supra* note 27, at 186-87.

124. 746 F. Supp. 1506 (S.D. Fla. 1990).

125. See *Noriega*, 746 F. Supp. at 1510.

126. See *Noriega*, 746 F. Supp. at 1514. Noriega was actually prosecuted under RICO, 18 U.S.C. § 1962, for promoting, establishing or carrying on an unlawful activity in interstate or foreign commerce. 746 F. Supp. at 1510.

127. See *Noriega*, 746 F. Supp. at 1514.

128. See *United States v. Yunis*, 924 F.2d 1086, 1091 (D.C. Cir. 1991).

129. See *Yunis*, 924 F.2d at 1091.

130. *Yunis*, 924 F.2d at 1091 (citing RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 404, 423 (1987)).

131. 504 U.S. 655 (1992).

dition exception, jurisdiction is permitted if it is done with the consent of the local authorities.¹³²

Extraterritorial prescription is allowed according to some international law doctrines.¹³³ The most notable is the "effects principle", a doctrine which looks to the international effects of a particular crime to establish if a particular country can have jurisdiction over an individual. Guided by a standard of reasonableness,¹³⁴ the effects principle is yet another means by which the United States may apply its law internationally.

2. The International Criminal Court

Due to an inability to enforce international criminal standards, our society is arguably unequipped to deal with crime at the international level. One possible remedy to this situation is the International Criminal Court. Discussion of an ICC began during World War II in response to atrocities committed by the Nazis in Europe.¹³⁵ Inquiries into the establishment of the ICC were partially answered on August 8, 1945, when the Allies agreed to the creation of an international military tribunal in Nuremberg for the prosecution of Axis war criminals.¹³⁶ For political and structural reasons, this tribunal has not evolved into an ICC.¹³⁷

In 1949, the General Assembly of the United Nations invited an International Law Commission (ILC) to study the possibility of establishing a permanent international judicial body that would exercise jurisdiction over authority granted by international conventions.¹³⁸ The ILC determined that the goal was desirable, but abandoned it due to Cold War politics.¹³⁹ The United States has been supportive of this

132. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 432(2) (1986).

133. See The Research In International Law of the Harvard Law School, *Jurisdiction With Respect to Crime*, 29 AM. J. INT'L L. 435, 445 (Supp. I 1935).

134. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 402 cmt. d (1986).

135. See Joel Cavicchia, *The Prospects For An International Criminal Court in the 1990's*, 10 DICK. J. INT'L L. 223, 225 (1992).

136. See Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, Aug. 8, 1945, 59 Stat. 1544, E.A.S. No. 472, 82 U.N.T.S. 279.

137. See generally Cavicchia, *supra* note 135.

138. See Cavicchia, *supra* note 135, at 227 n.30 and accompanying text (citing G.A. Res. 260(B)(III) at 177, U.N. Doc. A/810 (1948)).

139. See Cavicchia, *supra* note 135, at 234.

idea for over a decade.¹⁴⁰ In 1986, the Omnibus Security and Terrorism Act decreed that the President of the United States should consider "the possibility of eventually establishing an international tribunal for prosecuting terrorists."¹⁴¹ As recently as November 5, 1990, President Bush signed a law containing an amendment calling for the President to report to Congress the results of his efforts regarding the establishment of an ICC to deal with criminal acts defined in international conventions.¹⁴²

Support for this idea can be found in other areas of the world as well. In 1987, the former General Secretary of the Communist Party of the Soviet Union, Mikhail Gorbachev, distributed a communication to the United Nations that proposed the establishment of an ICC.¹⁴³ President Caesar Gaviria Trujillo of Columbia further supported this effort in 1990 when he indicated an interest to "explore the possibility of creating an international or regional criminal jurisdiction to fight narcotrafficking and other related crimes that surpass international borders."¹⁴⁴ In response to this public outcry, the World Ministerial Conference on Organized Transnational Crime was established on November 21, 1994, and 140 nations met and pledged to unite in a sophisticated and coordinated force to examine the possibility of international law enforcement.¹⁴⁵ Finally, that same year, the ILC presented a final draft statutory code to the United Nations General Assembly.¹⁴⁶ Until recently, the United States had expressed its support for the ICC, but the process has been slowed by concerns of the U.S. delegation.¹⁴⁷ Nonetheless, a variety of issues remain to be resolved, particularly with respect to the scope of the ICC's jurisdic-

140. Those in support of the idea include former Secretaries of State from George Schulz to James Baker. See Cavicchia, *supra* note 135, at 261 nn.63-64 and accompanying text.

141. Omnibus Security and Terrorism Act of 1986, Pub. L. No. 99-399, § 1201(d), 1986 U.S.C.A.N. (100 Stat.) 853, 896.

142. H.R. 5114, 101st Cong., 2d Sess. 136 Cong. Rec. S16,216-17 (1990); the Foreign Operations Appropriations for Fiscal Year 1991.

143. See John Quigley, *Perestroika and International Law*, 82 AM. J. INT'L L. 788, 794 (1988).

144. Cavicchia, *supra* note 135, at 23 (citing the inaugural address by President Caesar Gaviria Trujillo of Columbia on Aug. 7, 1990).

145. See Joel S. Solomon, *Forming A More Secure Union: The Growing Problem of Organized Crime in Europe As A Challenge to National Sovereignty*, 13 DICK. J. INT'L L. 623, 643-44 (1995).

146. See Solomon, *supra* note 145.

147. Thomas W. Lippman, *America Avoids the Stand: Why the U.S. Objects to a World Criminal Court*, WASH. POST, July 26, 1998, at C1.

tion. In all likelihood, the ICC's structure would to some degree resemble the United Nations war crimes tribunals, and its jurisdiction may include genocide, war crimes, crimes against humanity, trafficking and, potentially, crimes of aggression.¹⁴⁸

As the world community develops a definitive interest in transnational crime, the establishment of an International Criminal Court may prove to be another linchpin that connects countries' political and economic interests. For the ICC to become a reality, a multilateral convention would be necessary to establish the extent of its jurisdiction, as well as to determine other important issues.¹⁴⁹ If this convention were to progress, the court would exist as a war crimes tribunal, and as its role develops, might eventually maintain jurisdiction over cross-border crimes and human rights abuses.¹⁵⁰ By providing a forum for the prosecution of transnational crime, law enforcement will be making a major step toward the eradication of what is quickly becoming the most expeditious and lucrative venue for criminal activity.

3. International Justice Commission

Opponents of the ICC identify five obstacles: (1) lack of a standardized international criminal code; (2) dependence on voluntary participation; (3) authoritative power which may confuse the benefits of a comparable extradition treaty causing diversion of resources from more practical and readily achievable means; (4) the glamorization of

148. See generally Sandra L. Jamison, *A Permanent International Criminal Court: A Proposal that Overcomes Past Objections*, 23 DENV. J. INT'L L. & POL'Y 419 (1994).

149. These issues include the court's structure, procedural guarantees, jurisdiction, enforcement, and penalties. See Jamison, *supra* note 148, at 445-51.

150. See generally Jamison, *supra* note 148, at 433-35 (citing M. CHERIF BASSIOUNI, INTERNATIONAL CRIMINAL LAW VOL. I: CRIMES 135 (1986)). Proposed coverage includes:

- 1) Aggression, 2) War Crimes, 3) Unlawful Use of Weapons, 4) Crimes Against Humanity, 5) Genocide, 6) Racial Discrimination and Apartheid, 7) Slavery, 8) Torture, 9) Unlawful Human Experimentation, 10) Piracy, 11) Aircraft Hijacking, 12) Threat and Use of Force Against Internationally Protected Persons, 13) Taking of Civilian Hostages, 14) Drug Offenses, 15) International Traffic in Obscene Publications, 16) Destruction and/or Theft of National Treasures, 17) Environmental Protection, 18) Theft of Nuclear Materials, 19) Unlawful Use of Mails, 20) Interference with Submarine Cables, 21) Falsification and Counterfeiting, and 22) Bribery of Foreign Public Officials.

crime by the international press; and (5) a politicized court that would remove leaders for corrupt reasons.¹⁵¹ These criticisms are genuine, but without some type of body to facilitate the extradition process, the same type of criminal havoc that has been let loose on contemporary society will undoubtedly continue.¹⁵²

Recently, an international justice commission has been proposed that would consist of equal representation from participating states and would be responsible for all extraditions.¹⁵³ If members attempted to block extradition from their countries they would be subject to economic sanctions.¹⁵⁴ The commission would ensure compliance with what would essentially be a universally accepted extradition treaty, yet would have no adjudicative function.¹⁵⁵ This in turn would protect against political corruption because there would be no function for national favoritism.¹⁵⁶ Many countries, however, fear a joint criminal justice union because they may lose sovereignty. Another legitimate concern is that by relinquishing sensitive data, they will also be jeopardizing national safety and security, as well as individual privacy.¹⁵⁷ Although these reservations bear credence, by ultimately accepting this suggestion, countries would not lose sovereignty; they would merely establish a more efficient means of enforcing agreements already in place. Based on the current global enthusiasm for the international criminal court, the introduction of an international justice commission may be a good model by which to determine the effectiveness of the ICC. The establishment of an international code of laws would not only demonstrate international solidarity against transnational criminal activity, but would also allow for the adoption of proven domestic law into the international arena.

151. See Farah Hussain, Note, *A Functional Response to International Crime: An International Justice Commission*, 70 ST. JOHN'S L. REV. 755, 769-74 (1996).

152. See generally Abraham Abramovsky, *Prosecuting the "Russian Mafia": Recent Russian Legislation and Increased Bilateral Cooperation May Provide the Means*, 37 VA. J. INT'L L. 191, 194-98 (1996).

153. See Hussain, *supra* note 151, at 775.

154. See Hussain, *supra* note 151, at 776.

155. See Hussain, *supra* note 151, at 776-77.

156. See Hussain, *supra* note 151, at 777.

157. See Hussain, *supra* note 151, at 771-72.

B. Inadequacy of Current Enforcement

The natural tendency in law enforcement is to punish those involved in the crime. In prostitution, however, participating women are the victims not the perpetrators. The substantive terms of the current international gender-based treaties are, by themselves, inadequate for effective enforcement against the trafficking of women.¹⁵⁸ Although the treaties discussed above demonstrate that trafficking violates international law, they do not provide trafficked women with the right to bring a claim against their procurers, nor do they require a party nation to file a legal claim on the women's behalf.¹⁵⁹ Consequently, the inability to realistically enforce the treaties undercuts their substantive prohibitions.¹⁶⁰

This inadequacy is exemplified in the most significant of the above mentioned treaties, CEDAW. Although the CEDAW provisions establish committees to enforce the agreement, they provide no tools for effective compliance.¹⁶¹ The committees make recommendations based on reports from signature countries, but it is unclear to whom these recommendations are made and who will enforce them.¹⁶² The committees can influence the global community by making a request to the Secretary-General of the United Nations for more information from a state party.¹⁶³ Thus, the committees have no power to deal directly with state parties. In fact, many commentators believe that CEDAW's most significant power is that which allows the committee to publicly review each member state's reports.¹⁶⁴ These reports allow for public documentation of a state's success or failure in the implementation of treaty regulations.¹⁶⁵ Fear of unfavorable international reaction may encourage some nations to enforce the text of the treaty, but without a timetable for action, CEDAW's enforcement

158. See Fariior, *supra* note 110, at 213-14.

159. See Toepfer & Wells, *supra* note 6, at 84.

160. See Toepfer & Wells, *supra* note 6, at 84.

161. See Toepfer & Wells, *supra* note 6, at 106-11.

162. See Toepfer & Wells, *supra* note 6, at 108.

163. However, state parties have often failed to respond. "In 1984 and 1985, four out of nine western nations that had ratified the Convention did not submit reports when they were due." Toepfer & Wells, *supra* note 6, at 109 n.158.

164. See, e.g., Andrew C. Byrnes, *The "Other" Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women*, 14 YALE J. INT'L L. 1, 6 (1989).

165. See Margaret E. Galey, *International Enforcement of Women's Rights*, 6 HUM. RTS. Q. 463, 482-88 (1984).

capabilities do not meet its directives.¹⁶⁶ Thus, the goals of the treaties will be difficult to achieve as long as treaty structures remain vague and the reservations of signatory nations continue to exist.¹⁶⁷

Although the treaties have established significant rules with which to combat trafficking, the reality is that women are still being manipulated. Current studies demonstrate that some trafficked women are sold and resold in every part of the world, and that "[t]hose who rebel against their exploiters are starved, whipped, burnt with cigarette[s, and] forced to drink intoxicating drinks, drugs or herbal concoctions, cut on the face, branded or locked up."¹⁶⁸ Even if these women are fortunate enough not to live under such circumstances, their legal avenues are blocked by the fact that most states criminalize both prostitution and solicitation.¹⁶⁹ One argument as to why these treaties are not effectively enforced is that the agents of enforcement, national governments, consistently lack the resources or political motivation to promote compliance with the treaties and agreements by which they are bound.¹⁷⁰ The countries that do possess the necessary political will and resources may direct their efforts at target minority groups and "[b]ecause women have not been viewed as a discrete and insular 'minority' in most societies, they normally have not come within the targeted groups requiring special governmental assistance to promote their rights."¹⁷¹ Fortunately, the United States has recognized this problem, as demonstrated by its development of criminal legislation.¹⁷² Although significant steps have been made to help stop future trafficking, more available tools must be recognized to supplement that push and to help those already victimized.¹⁷³

III. LEGAL RECOMMENDATIONS UNDER EXISTING U.S. LAW

Currently, most of the receiving countries, even if they are party to the penal codes of CEDAW, use their immigration laws to punish and deport women rather than considering them victims of human

166. See Galey, *supra* note 165, at 464-66.

167. See Toepfer & Wells, *supra* note 6, at 106-07.

168. M. RITA ROZARIO, *TRAFFICKING IN WOMEN AND CHILDREN IN INDIA* 78 (1988).

169. See generally Raymond I. Parnas, *Legislative Reform of Prostitution Laws: Keeping Commercial Sex Out of Sight and Out of Mind*, 21 SANTA CLARA L. REV. 669 (1981).

170. See Galey, *supra* note 165, at 463.

171. Galey, *supra* note 165, at 464.

172. For a discussion of the Mann Act, see *infra* note 216 and accompanying text.

173. See GSN, *supra* note 3, at 48.

rights abuses.¹⁷⁴ This general practice makes it impossible for women to seek protection and pursue any legal battle against traffickers and accomplices.¹⁷⁵ The following recommendations for legal action, some of which may be brought by third-party representatives, may in fact provide trafficked women this opportunity under current United States law.

A. Recommendations #1 and #2: Criminal & Civil RICO Application

In 1970, Congress enacted the Organized Crime Control Act, which included the Racketeer Influenced and Corrupt Organizations law (RICO).¹⁷⁶ RICO was formed to address criminal enterprise.¹⁷⁷ Its substantive provisions focus on “‘patterns’ of violence, the provision of illegal goods and services, corruption in the labor or management relations, corruption in government, and criminal fraud by, through, or against various types of licit or illicit ‘enterprises.’”¹⁷⁸ Although existing federal and state laws already prohibited these activities, Congress enacted RICO to provide enhanced criminal and civil punishments.¹⁷⁹ Thus, the underlying purpose of RICO is to eliminate organized crime “by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.”¹⁸⁰

The substantive elements of RICO that the government or a person with standing¹⁸¹ must prove are: “(1) that the

174. See GSN, *supra* note 3, at 49.

175. See GSN, *supra* note 3, at 47.

176. 18 U.S.C. §§ 1961–1968 (1994).

177. See G. Robert Blakey & John Robert Blakey, *Civil and Criminal RICO: An Overview of the Statute and Its Operation*, 64 DEF. COUNS. J. 36, 36 (1997).

178. Blakey & Blakey, *supra* note 177, at 36.

179. See Blakey & Blakey, *supra* note 177, at 36–37.

180. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (1970).

181. The First, Second, Eighth, and Ninth Circuits provide for a very narrow requirement for standing under RICO. See Dana Wolff, *The Frontier of RICO Standing: Interpreting RICO's Conspiracy Provision To Realize Congress' Goal of Creating a Powerful Crime-Fighting Weapon*, 21 J. LEGIS. 147, 148 (1995). These courts have decided that to have standing to bring a civil RICO conspiracy claim, the plaintiff must allege injury directly caused by a predicate act of racketeering. See Wolff, *supra*. The Third and Seventh Circuits interpret RICO's standing requirements more broadly, holding that alleging injury from an overt act that furthers a RICO conspiracy is sufficient to confer standing, even if the overt act is not a predicate act of racketeering. See Wolff, *supra*.

defendant¹⁸² (2) through the commission of two or more acts (3) constituting a 'pattern' (4) of 'racketeering activity' (5) directly or indirectly invests in, or maintains an interest in, or participates in (6) an 'enterprise,' (7) the activities of which affect interstate or foreign commerce."¹⁸³ Absent exceptions for a victimized member of a conspiracy,¹⁸⁴ penalties under RICO include prison sentences of up to 20 years and a fine of up to twice the gross profits of the offense.¹⁸⁵ Other penalties include criminal forfeiture of properties gained from illegal activity.¹⁸⁶ The civil penalties under RICO allow for any person who has been injured in his business or property by a RICO violation to recover treble damages, plus costs for the suit including reasonable attorney's fees.¹⁸⁷ These penalties erode organized crime's financial base while simultaneously providing economic incentives for private plaintiffs.¹⁸⁸

"In most nations, including Russia, the core activity of organized crime is 'racketeering,' or the provision of illegal goods and services."¹⁸⁹ The nature and organization of an organized prostitution ring, particularly one that includes trafficked women, fits the statutory

182. The issue of who can be sued or prosecuted has received considerable attention. See *Reves v. Ernst & Young*, 507 U.S. 170, 185 (1992) (holding that one must participate in the operation or management of the enterprise itself).

183. *Moss v. Morgan Stanley Inc.*, 719 F.2d 5, 17 (2d Cir. 1983) (citing 18 U.S.C. § 1962(a)-(c) (1994)).

184. One particular criminal RICO exception is given to certain groups of persons thought to be in need of special protection. Accomplice liability will not be imposed upon such individuals absent a specific legislative policy to treat them as aiding and abetting the original crime. *Gebardi v. United States*, 287 U.S. 112, 123 (1932). The Supreme Court followed this approach in *Gebardi* where although a woman consented to her transport across state lines for the purposes of prostitution, the Court did not find her activity as giving rise to accomplice liability. See 287 U.S. at 123. Although many international legal instruments recognize the human rights abuses that go along with forced prostitution, see *Toepfer & Wells, supra* note 6, at 93, this precedent demonstrates the U.S. Supreme Court's willingness to see the woman as a victim.

185. See 18 U.S.C. § 1963(a) (1994).

186. See 18 U.S.C. § 1963(a)-(b) (1994); see also *United States v. Grande*, 620 F.2d 1026, 1039 (4th Cir. 1980), *cert. denied sub nom. Castagna v. United States*, 449 U.S. 830 (1980) (finding forfeiture provisions constitutional).

187. See 18 U.S.C. § 1964(c) (1994).

188. See *Cao, supra* note 51, at 1308.

189. *Cormanthey, supra* note 18, at 272 (citing ROBERT P. RHODES, ORGANIZED CRIME: CRIME CONTROL VS. CIVIL LIBERTIES 16 (1984)); see also Ella Cherepakhova, *Liliya Babayeva: Racketeering- "Soft," "Hard," "Omnipresent," Delovoy Mir*, reprinted in F.B.I.S., SOV 95-118, at 31 (June 20, 1995) (interview with Russian sociologist Liliya Babayeva).

requirements needed to invoke criminal or civil RICO.¹⁹⁰ Since injury to business or property should encompass the sort of injury incurred by prostitutes,¹⁹¹ the injury requirement needed for civil RICO standing should be satisfied, thereby giving prostitutes a private right of action against the prostitution enterprise.¹⁹²

To have a cause of action under RICO, a prosecutor/plaintiff must prove injury from the operation of an enterprise affecting interstate or foreign commerce which was conducted through acts constituting a "pattern of racketeering."¹⁹³ A pattern of racketeering is present when a defendant has committed two violations of any of the numerous acts listed in the RICO statute within the last decade.¹⁹⁴ These acts are referred to as "predicate acts," and include both state and federal offenses.¹⁹⁵ Relevant predicate acts include: (1) abduction;¹⁹⁶ (2) acts of mail or wire fraud;¹⁹⁷ (3) the violation that occurs, under the Mann Act, when a person "transports in interstate or foreign commerce . . . any woman or girl for the purpose of prostitution;"¹⁹⁸ (4) extortion,¹⁹⁹ as these women, at some point, are forced into this activity under threat of violence to themselves or their family; and (5) usury laws or unlawful debt.²⁰⁰ Citing any two of these would most likely satisfy the two predicate acts necessary to invoke RICO.

The prosecutor/plaintiff must also demonstrate that an enterprise existed:

[E]nterprise can be an 'individual', 'a legal entity,' or a 'group of individuals associated in fact.' This definition is

190. Although Cao's article, *supra* note 51, addresses only civil RICO, her argument can be extended to criminal RICO as well.

191. See *infra* note 203 and accompanying text for a description of potential injuries.

192. See Cao, *supra* note 51, at 1313-16.

193. Cao, *supra* note 51, at 1308 (citing 18 U.S.C. § 1962 (1982)).

194. See Cao, *supra* note 51, at 1309 (citing 18 U.S.C. § 1962 (1), (5) (1982)).

195. See U.S. DEP'T OF JUSTICE, RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (RICO): A MANUAL FOR FEDERAL PROSECUTORS 5-23 (1988) [hereinafter RICO MANUAL] (listing examples of predicate acts).

196. See RICO MANUAL, *supra* note 195, at 7.

197. See RICO MANUAL, *supra* note 195, at 54-55 n.105.

198. Cao, *supra* note 51, at 1312 n.68 (quoting 18 U.S.C. § 2421 (1982)) (noting that "a civil RICO plaintiff has an enormous advantage over public prosecutors" as she only needs to "prove those acts . . . by a preponderance of evidence.").

199. See *United States v. Delker*, 757 F.2d 1390, 1391-92 (3d Cir. 1985); *United States v. Brooklier*, 685 F.2d 1208, 1213 (9th Cir. 1982).

200. See *United States v. Biasucci*, 786 F.2d 504, 506-07 (2d Cir. 1986).

interpreted to mean an 'ongoing' and 'continuing unit' of 'persons associated together for a common purpose of engaging in a course of conduct.' It must have a 'financial purpose' and must be more than a loose group created only to commit the racketeering activity. In other words, the enterprise must be 'a separate and discrete element of a RICO violation.'²⁰¹

For purposes of the trafficking of Russian women to the United States, there is a large net that could be cast over the characters involved. The individuals involved in this enterprise include, but are not limited to, the recruiters, the individuals providing the falsified documents, the kingpins providing the security and protection, the brothel owners in Russia and the United States, and the ringleaders in the United States.²⁰²

Finally, the prosecutor/plaintiff will need to demonstrate an injury. As cited by the Global Survival Network's preliminary report, there are countless injuries that occur during the course of these debt bondage schemes, including: (1) women paying traffickers exorbitant fees to "facilitate" their journey; (2) forced work as prostitutes, usually without remuneration; (3) illegal confinement; (4) physical and psychological violence, including rape; (5) threats of reprisals against family members or relatives; (6) inability to choose clients, or to use safe-sex methods to prevent the spread of sexually transmitted diseases; (7) lack of access to medical treatment and social assistance; (8) forced illegal migration, often through the use of false documents; (9) confiscation of passports by pimps; and (10) discrimination, prosecution, illegal detention, and deportation.²⁰³ By documenting any of these harms in conjunction with the elements already established, the prosecutor/plaintiff could build a case to bring to court.

201. Cao, *supra* note 51, at 1309 (citations omitted).

202. In a parallel example, Elizabeth Glazer, an assistant U.S. attorney in Manhattan, has worked with local police to prosecute gang members under RICO. See Francis A. McMorris, *U.S. Prosecutor is using RICO on Gangs*, WALL ST. J., March 28, 1997, at B11. This unique application of the law demonstrates its ability to group together a greater number of criminals. Glazer explains, "juries no longer have tunnel vision. They have a panoramic view of gang members' roles in crimes ranging from murder to smuggling illegal aliens." McMorris, *supra* at B11. Although some mafia organizations, namely the Russians', may not be familial as is the typical organized crime syndicate, prosecutors may very well be able to reach them as gang members, thereby reaching their supervisors.

203. See generally GSN, *supra* note 3.

As indicated, the United Nations has not codified the international laws of an ICC, but if and when they do, the incorporation of RICO into this body of law would be a very effective prosecutorial tool in the fight against trafficking. Currently, however, RICO is only a law in the United States, so it could only be applied if the United States could gain jurisdiction over these traffickers. In order to achieve this, the suspected individuals must be placed into custody, which would mean that the offense committed by the individual must be extraditable. Unfortunately, the United States and Russia do not currently have an extradition treaty.²⁰⁴

However, one means by which custody of a defendant may be obtained outright is by prescriptive jurisdiction. International law typically allows prescriptive jurisdiction only when it is derived from international custom or convention,²⁰⁵ but certain exceptions to this rule do exist.²⁰⁶ The customary international practice exception was invoked in *Noriega* when a federal grand jury indicted Noriega for

204. However, recommendation ten of the G7-P8-Senior Experts Group on Transnational Organized Crime, of which Russia is a part, states:

If extradition of nationals is not permitted by the Requested State, and the extradition of one of its nationals is requested, the Requested State should:

- (1) allow for conditional extradition on the condition that it is only for trial and that its national be promptly returned after trial to its territory for service of any sentence within the limits of the law of the Requested State, or
- (2) allow for the transfer/surrender, when it is permitted by domestic law, only for trial and on the condition that its national be promptly returned after trial to its territory for service of any sentence within the limits of the law of the Requested State, . . .

G7-P8—Senior Experts Group on Transnational Organized Crime, G7-P8—Senior Experts Group Recommendations, Annex 4, Paris, April 12, 1996 *reprinted in Excerpts*, TRENDS IN ORGANIZED CRIME, Summer 1997, at 72, 73.

Moreover, the United States and the Russian Federation have a mutual legal agreement (MLAA). Although the current MLAA does not allow for the extradition of foreign nationals, it does permit (1) obtaining testimony, statements, and materials; (2) providing documents, records, and other items; (3) serving documents; (4) locating and identifying documents; (5) executing searches and seizures; (6) taking actions related to immobilization and forfeiture of assets, restitution, collection of fines; and (7) any other assistance not prohibited by the laws of the requested party. This agreement provides effective assistance in obtaining materials in prosecutions of individuals that the United States does have standing to perform. *See Agreement Between the Government of the United States of America and the Government of Russian Federation on Cooperation in Criminal Law Matters*, art. 2 § 2 (1997), *cited in Abramovsky*, *supra* note 152, at 206–11.

205. *See Vassalo*, *supra* note 29, at 181–82.

206. *See Vassalo*, *supra* note 29, at 182.

numerous violations of United States drug trafficking laws.²⁰⁷ Although none of these criminal violations occurred within the actual territory of the United States, the Court justified the prescription of U.S. law because Noriega's offense, drug trafficking, violated customary international law.²⁰⁸ Based on the numerous treaties cited previously regarding the criminality of trafficking women,²⁰⁹ the tangential crime and violence associated with trafficking, and the human rights law rejecting slavery, which occurs every day for a trafficked woman, it is reasonable to believe that this practice would also fall under a "universally condemned offense."²¹⁰ If in fact it does, then RICO charges, as well as all other legal action, could be brought under the *Noriega* precedent.

*B. Recommendation #3: Criminal Activity
Through Interstate Commerce*

Another body of criminal law that United States officials can utilize in this fight against the trafficking of women is the Mann Act. By coordinating joint efforts between the Department of Justice (DOJ), the Immigration and Naturalization Service (INS), and the Department of State (DOS), the federal government can more effectively prosecute and/or deport those responsible for trafficking.²¹¹

207. See *Noriega*, 746 F. Supp. at 1510.

208. See *Noriega*, 746 F. Supp. at 1512-16.

209. See *supra* notes 6, 64, 85.

210. Rachel Bart, *Using the American Courts to Prosecute International Crimes Against Women: Jane Doe v. Radovan Karadzic and S. Kadic v. Radovan Karadzic*, 3 CARDOZO WOMEN'S L. J. 467, 473-76 (1996) (discussing *Filartiga v. Penna-Irala*, 630 F.2d 876 (2d Cir. 1980) and *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984)). The Second Circuit in *Filartiga* interpreted the Alien Tort Claims Act (ATCA) broadly, holding that kidnapping, torture, and murder violated the law of nations. See Bart, *supra*. Further decisions allowed ATCA suits for other forms of cruel, inhuman, or degrading treatment. See Bart, *supra*. Under these cases, forced prostitution would likely be classified as a violation of the law of nations. In *Tel-Oren*, however, the court narrowed the ATCA, limiting its application to state actors and to crimes existing when the Judiciary Act was passed in 1789. See Bart, *supra*. Congress responded by passing the Torture Victim Protection Act, expanding the scope of the ATCA to allow liability against non-state actors, but not suits involving purely private groups. See Bart, *supra*.

211. See Jonathan M. Winer, *Alien Smuggling: Elements of the Problem and the U.S. Response*, U.S. Working Group on Organized Crime, National Strategy Information Center, at 12 (1997). In 1993, President Clinton issued a directive to combat alien

Congress has the power “[t]o regulate Commerce with foreign Nations, and among the several States,”²¹² a concept that includes the intercourse and traffic between United States citizens.²¹³ Congress first addressed the problem of trafficking by criminalizing the transportation of humans in the Mann Act.²¹⁴ The Mann Act forbids transporting a person across state lines or international boundaries and imposes fines and/or imprisonment of up to ten years for “[c]oercion and enticement.”²¹⁵ This concept has been further codified in the U.S. Code, which provides for further penalties of imprisonment and fines.²¹⁶ The application of the Mann Act and subsequent legislation to the intended consequences of trafficking, namely prostitution, not only makes the activity illegal, but could establish significant penalties for those responsible. This would undercut their profit, and therefore discourage future trafficking to this country.

*C. Recommendation #4: Criminal Activity
Through Immigration Law*

As trafficked women are the victims of traffickers, it is important for United States officials not only to prosecute those United States citizens who run these organizations, but also to utilize the existing body of immigration law to separate those who procure from those who are forced into prostitution. In 1996, Congress passed the Illegal

smuggling through law enforcement, the interdiction of vessels, and new procedures for processing asylum claims and returning migrants.

The directive brought together the Department of Justice, the Immigration and Naturalization Service, and the Department of State to study this problem. The group recommended the following actions: development of programs to increase the awareness of trafficking among foreign governments, adoption of new laws, prosecution of officials implicated in trafficking, expansion of U.S. enforcement mechanisms overseas, and increased training and information distribution among border guards, inspection officers, and law enforcement officials.

212. U.S. CONST. art. I, § 8, cl. 3.

213. See generally *United States v. Lopez*, 514 U.S. 549, 558–59 (1995) (summarizing categories of activity regulable by Congress under its commerce powers).

214. See *White-Slave Traffic (Mann) Act*, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C.A. §§ 2421–2424 (West Supp. 1998)).

215. 18 U.S.C.A. § 2422 (West Supp. 1998). “Coercion and enticement” has proven to cover actions including kidnapping, physical and mental force, threat, torture, blackmail, extortion, promise of financial rewards or marriage, and isolation from others. See Wijers and Chew, *supra* note 50, at 11 n.39.

216. See 8 U.S.C. sec. 1328 (1990).

Immigration Reform and Immigrant Responsibility Act.²¹⁷ This body of law contains extensive language applicable to the problem of trafficking, and offers deportation and bars on readmission as viable penalties. The Act's guidelines state that those aliens who have engaged in or procured persons for the purpose of prostitution prior to coming to the United States shall be excluded from admission.²¹⁸ Although this law refers to both the traffickers and the prostitutes, the fight against trafficking may be better served if only the traffickers became the focus of these government actions.

There are two other portions of the 1996 Act that may be effectively utilized to penalize traffickers. One of the most useful and creative legislative tools in deporting targeted individuals is the visa overstay, which accounts for over half of illegal immigration in the United States.²¹⁹ The penalties for visa overstays have been increased so that an overstay of six months to a year will bar readmission for three years; and any stay over one year will bar readmission for ten years.²²⁰ Most recently, in the 1996 Act, individuals convicted of document fraud or mutilating passports can receive strict sentences, including deportation and prison time.²²¹ These are both highly effective means of preventing trafficking because the processing of immigration paperwork is the easiest way for law enforcement officials to cite cause for deportation in the event of a visa overstay, and it is a means by which to deny entry if credentials are not in fact legitimate.

By using immigration laws to identify domestic activity, United States officials may be better able not only to prosecute individuals for the crime of trafficking, but also to deport them. Although this multi-tiered approach of existing law and new legislation will provide a

217. Pub. L. No. 104-208, 110 Stat. 3009-546 (codified as amended 8 U.S.C. §§ 1544-1546 (1996)).

218. See 8 U.S.C.A. § 1182(a)(2)(D) (West Supp. 1998); *but see* 8 U.S.C.A. § 1182(h) (West Supp. 1998) (regarding exceptions from exclusion under previous provision).

219. See MICHAEL FIX ET AL., IMMIGRATION AND IMMIGRANTS: SETTING THE RECORD STRAIGHT 25 (1994); *see also* Maria Isabel Medina, *The Criminalization of Immigration Law: Employer Sanctions and Marriage Fraud*, 5 GEO. MASON L. REV. 669, 688-89, n.89 (1997). A visa overstay refers to those nonimmigrants who remain past the authorized period of their visa.

220. See 8 U.S.C. §§ 1544-1546 (1996).

221. See 8 U.S.C. §§ 1544, 1546(a) (1996). Under current law, alien smuggling can result in ten years to life imprisonment; abetting trafficking operations is punishable by five years imprisonment; illegal entry (with repeated offenses) can bring four to twenty years of imprisonment; the use of fraudulent documents carries a penalty of ten to fifteen years imprisonment; and employers and carriers may be punished by brief imprisonment or fines. 8 U.S.C. §§ 1544, 1546(a).

means to deport or imprison convicted traffickers on United States soil, the larger problem of human rights abuses abroad may call for a more diverse approach.

D. Recommendation #5: Organized Crime Activity As A Violation of the Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act (FCPA) is a criminal statute that prohibits American citizens from bribing foreign officials to assist them in obtaining business, and that provides fines of up to \$100,000 for an individual and \$2,000,000 for a corporation.²²² The types of payments that this statute attempts to quell occur all too frequently in Russia, where corruption is rampant due to the influence of organized crime.²²³

Although the FCPA is unique to the United States and the conduct it prohibits would probably not be “universally condemned” under *Noriega*, we must examine how its application in the U.S. may affect these business practices abroad. As has been discussed, debt bondage is part of a larger scheme of organized criminal activity. It begins in Russia and eventually becomes profitable in other countries, including the United States. Trafficked women are often brought to the United States on false documents obtained from corrupt government officials.²²⁴ Some traffickers are members of the mafia, while some are just individuals bribed by this international mafia organization—a strong contingent of which is located in the U.S.²²⁵

The fact that traffickers are able to produce these documents arguably corrupts the United States economy because this particular activity, as alluded to in *Perez v. United States*,²²⁶ affects a larger pool of funds established by both legitimate and illegitimate business of this criminal syndicate. The FCPA applies only to U.S. businessmen, but if the traffickers are visa or green card-carrying immigrants/businessmen, it must also apply to them. Even if they are not

222. See 15 U.S.C. § 78dd (1994); H.R. Rep. No. 576, 100th Cong., 2d Sess. 920 (1988).

223. See *supra* notes 32–39 and accompanying text.

224. See generally GSN, *supra* note 3; see also DiPaola, *supra* note 31, at 178. DiPaola states that these criminals maintain the ties with government through lobbying, running for office themselves, controlling the press, and through violent action. See DiPaola, *supra* note 31, at 178.

225. See GSN, *supra* note 3, at 37–39.

226. 402 U.S. 146, 156 (1971).

directly controlling the bribes, their agents overseas are establishing a corrupt fund that feeds monies into a larger pool of assets, a percentage of which is used for global bribery.²²⁷ Additionally, and because a 1988 Amendment to the FCPA holds U.S. businesses liable for the payments either made or likely to be made by third persons,²²⁸ these Russian emigres may be held responsible for the actions of the criminals still in Russia. Therefore, the FCPA may allow for yet another prosecutorial tool to be used in the fight against trafficking.

Although there is no explicit language identifying a private remedy under the FCPA, such a remedy may nonetheless be available. In *Cort v. Ash*, the Supreme Court discussed the factors relevant to determining whether a statute includes a private remedy:

First, is the plaintiff one of the class for whose *especial* benefit the statute was enacted . . .? Second, is there any indication of legislative intent explicit or implicit, either to create such a remedy or to deny one? . . . Third, is it consistent with the underlying purpose of the legislative scheme to imply such a remedy for the plaintiff? . . . And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?²²⁹

These four factors might suggest that the FCPA provides a private cause of action for trafficked women.²³⁰ As to the first point, these

227. See Ninel F. Kuznetsova, *Crime in Russia: Causes and Prevention*, 2 DEMOKRATISATSIYA 442, 444–45 (1994); see also Izvestia's Analytic Center, *The Unknown War Against Corruption*, reprinted in CURRENT DIG. OF THE POST-SOVIET PRESS, Vol. XLVI, No. 46 at 15 (1994).

228. See FCPA § 78dd, *supra* note 222.

229. *Cort*, 422 U.S. 66, 78 (1975) (citations omitted) (emphasis in original).

230. *But see* McLean v. International Harvester Co., 817 F.2d 1214, 1219 (5th Cir. 1987) (same holding); Lamb v. Phillip Morris, Inc., 915 F.2d 1024, 1027–30 (6th Cir. 1990) (same holding), *cert. denied*, 498 U.S. 1086 (1991); Citicorp Int'l Trading Co. v. Western Oil & Refining Co., 771 F. Supp. 600, 606–07 (S.D.N.Y. 1991) (holding that the FCPA does not provide a private right of action under *Cort's* four-factor analysis). Cf. Scott P. Boylan, *Organized Crime and Corruption in Russia: Implications For U.S. and International Law*, 19 FORDHAM INT'L L.J. 1999, 2026 n.162 (1996) (arguing that the FCPA should apply to foreigners and extraterritorially under *Dooley v. United Technologies Corp.*, 803 F. Supp. 428 (D.D.C. 1992)); Daniel Pines, *Amending the Foreign Corrupt Practices Act to Include a Private Right of Action*, 82

women can claim that the FCPA was established to protect United States interests abroad, and by allowing the mafia to use its profits from illegitimate business to control their travel to this country, these women in effect have standing as an injured party. It is clear that the business of trafficking is considered criminal, but nonetheless, the government bribes are in effect facilitating the women's transport; and although no specific competing business is being injured, the financial gains that the mafia make on this activity may very well be affecting any legitimate competition that the mafia may be involved in. Unfortunately, we can not be sure of what those businesses are; therefore, it may be sound public policy to allow these women to obtain standing as the injured party.

As to the second point, although there does not seem to be any specific legislative intent, an examination of the genesis of the RICO laws establishes that organized criminal activity affects businesses and contracting abroad, and it is therefore the duty of the government to apply any and all means available to eradicate that corrupt activity. If there is in fact no legislative history, then we must examine the many treaties of the United Nations, such as CEDAW, that require state parties to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."²³¹

As for the third point, the purpose of the FCPA is "to prevent bribery of foreign officials and to protect businesses from having competitors gain an advantage by offering such bribes."²³² Other businesses will suffer economic hardship from the existence of this type of business. Organized crime is implicated in this theory because, as demonstrated by case law, any income derived from the legitimate business of organized crime goes into a larger pool of illegitimate activity, which undercuts private businesses everywhere.²³³ Therefore, this remedy will be an attempt to even the playing field.

The fourth requirement is fulfilled because the courts have established that the regulation of bribery directed at foreign officials cannot be characterized as a matter traditionally relegated to state control and

CAL. L. REV. 185, 216 (1994) (arguing that the FCPA should be amended to allow a private right of action among competing U.S. businesses).

231. CEDAW, *supra* note 85, at 17. CEDAW has been ratified by numerous countries, including Germany and the Russian Federation. CEDAW, *supra* note 85, at 14. The United States has signed but has not ratified CEDAW.

232. FCPA, *supra* note 222.

233. *See Perez*, 402 U.S. at 156.

must be established as a federal offense.²³⁴ Although it is questionable whether the courts will allow the FCPA to extend to a private right of action, if it were successfully used for these trafficked women, it would provide further deterrence to organized crime.

E. Recommendation #6: Possible Tort Claims of Trafficked Individuals

1. Claims Under the Alien Tort Claims Act

Since 1789, the Alien Tort Claims Act (ATCA) has granted the United States federal courts jurisdiction over "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."²³⁵ In *Kadic v. Karadzic*, plaintiffs successfully brought suit under the ATCA for compensatory and punitive damages, as well as for injunctive relief.²³⁶ Although that case addressed victims' rights under multiple genocidal torts perpetrated against women, the complaint included forced prostitution.²³⁷

As has been discussed, trafficked women are often victims of forced prostitution. Accordingly, because this practice has been outlawed by several international treaties, these women may be able to utilize the United States' court system to claim injury under the ATCA and receive financial damages. In fact, a recent application of this statute under claims of mass torture and murder brought five plaintiffs a total of more than \$100,000,000 in punitive and compensatory damages.²³⁸ Although some may question a trafficked woman's ability to physically endure this type of litigation, courts have allowed third parties to bring class actions on behalf of victims.²³⁹ The success of this type of suit would not only help fund educational and medical assistance to victims, but would be devastating to the criminal empire of the Russian mafia.

234. See *Lamb*, 915 F.2d at 1030.

235. 28 U.S.C. § 1350 (1994).

236. See *Kadic*, 70 F.3d 232 (2d Cir. 1995), cert. denied, 518 U.S. 1005 (1996).

237. See *Kadic v. Karadzic*, 70 F.3d at 236-37.

238. See *Mushikiwabo v. Barayagwiza*, No. 94 Civ. 3627, 1996 WL 164496, at *3 (S.D.N.Y. Apr. 9, 1996).

239. See Yolanda S. Wu, Recent Developments, *Genocidal Rape in Bosnia: Redress in United States Courts Under the Alien Torts Claims Act*, 4 UCLA WOMEN'S L.J. 101, 106-07 (1993).

2. Intentional Tort Claims Under U.S. Law

It is feasible that trafficked women could sue their pimps and recruiters as tortfeasors under a claim of intentional tort. The scienter requirement for international torts does not include a desire to harm the victim. The intentional torts include: battery, assault, false imprisonment, and intentional infliction of mental distress.²⁴⁰ Battery is the intentional infliction of a harmful or offensive bodily contact.²⁴¹ Assault is the intentional causing of an apprehension of harmful or offensive contact.²⁴² False imprisonment is the intentional infliction of confinement.²⁴³ Lastly, intentional infliction of emotional distress is defined as the intentional or reckless infliction of emotional distress by extreme and outrageous conduct.²⁴⁴ This comment has demonstrated the numerous types of harm that the pimps and traffickers have intentionally inflicted upon trafficked women so that they remain subservient. These activities include beatings, confinement to quarters, and threats to their own physical well-being and that of their families. Because there are several nuances to these torts, and their application is very case-specific, this discussion will not address them individually. Rather, its point is to establish that under these various constructions of tort law, trafficked women have standing to sue under tort principles in a United States court.

CONCLUSION

The current situation for trafficked women is unacceptable. Russian mafia, often through police or government officials, have convinced these women to leave Russia for opportunities that do not exist. Subsequently, women are forced to prostitute themselves in a foreign land where their security rests with the same organization that threatened them to begin with. This organization—the Russian mafia—is a strong, organized criminal syndicate that is only now taking advantage of its transnational opportunities. Although the Russian mafia may be a relatively new face on the criminal scene, the problem of trafficking is anything but.

240. These torts may be considered under a criminal cause of action as well.

241. See RESTATEMENT (SECOND) OF TORTS §§ 13, 18 (1965).

242. See RESTATEMENT (SECOND) OF TORTS § 21 (1965).

243. See RESTATEMENT (SECOND) OF TORTS § 36(3) (1965).

244. See RESTATEMENT (SECOND) OF TORTS § 46(1) (1965).

Regulatory and international criminal prohibition of trafficking of women has occurred over the better part of this century. Ultimately, all of the legislation in the world cannot be effective if there is no enforcement. Although the United Nations has attempted to regulate nations' enforcement habits, it has met with little success. Most recently, there has been discussion of the creation of an international criminal court to prosecute the individuals involved in this behavior. The court may in fact become a reality, but the many issues that are involved will no doubt delay its enactment. In that case, it is the responsibility of practitioners and academics alike to hypothesize ways through which to curb this problem. Although the trafficking of women transcends commerce and business and is ultimately an issue of human rights, the suggested application of U.S. law outlined in this article may force some crime syndicates to weigh the cost of the risk against the ruble. ❧

