

9-1-2011

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Recommended Citation

Iveta Cherneva, *Human Trafficking for Begging*, 17 Buff. Hum. Rts. L. Rev. 25 (2011).
Available at: <https://digitalcommons.law.buffalo.edu/bhrlr/vol17/iss1/2>

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HUMAN TRAFFICKING FOR BEGGING

*Iveta Cherneva**

Beggars are a part of the street landscape of any major city. However, many of the children and elderly women begging on the streets are forced beggars: victims of trafficking in persons who are part of a beggars ring with an organizational complexity comparable to that of a medium-size business enterprise. The present work focuses on the phenomenon of trafficking in persons for the purpose of begging, arguing for its legal conceptualization under international law. Although it is occasionally mentioned in a limited number of international reports and legal documents as a form of trafficking-related exploitation, forced begging is a largely understudied topic and its conceptualization as trafficking in persons has thus far been unsystematic. The present research aims to address the gap in the literature on trafficking in persons and argue for the legal conceptualization of begging as trafficking. Furthermore, it examines the psychologically driven customer demand that fuels the illicit activity, and suggests new ways for crafting public messages in order to improve response strategies and outcomes.

I. CONCEIVING BEGGING AS TRAFFICKING: INTRODUCTION

This work focuses on the phenomenon of trafficking in persons for the purpose of begging and argues for its legal conceptualization under international law. Although it is occasionally mentioned in a limited number of international reports and legal documents as a form of trafficking-related exploitation, forced begging is a largely understudied topic and its conceptualization as trafficking in persons has thus far been rather unsystematic.

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This research aims to address the gap in the literature on trafficking in persons, argue for the legal conceptualization of begging as trafficking, and suggest new ways for crafting public messages in order to improve response strategies and outcomes. In order to prove that organized begging is indeed trafficking in persons, a few questions first need to be asked and answered, and a few legal parameters must be examined. On the “consumer side,” there is an essentially different and unexamined type of psychologically driven customer demand that fuels the illicit activity.

This article puts forward a number of assertions. Organized begging is a form of trafficking in persons, although *not all* organized begging necessarily falls within the international definition of trafficking. Forced begging should be viewed as a separate category of trafficking in persons, independent of labor trafficking. Additionally, a shift towards a victims-centered approach should be adopted. The begging child is our foremost concern. The fact that the child disrupts public order should not be our main concern. The emerging victims-centered paradigm shift, with regard to the treatment of trafficking victims in general, should be applied to the treatment of begging victims as well. This study articulates three main principles of the victims-centered approach, and deciphers what they mean for begging victims.

This article also assesses whether begging in itself is a crime. From that discussion stems various responses as to how to address the problem. By focusing on the “consumer” demand for this specific and peculiar exploitation, it is suggested that the demand for begging could be addressed in a two-fold way: by employing psychological theories to understand and eliminate customer-driven demand through exposing, and secondly, by analyzing the applicability of the “Swedish model” with regard to prostitution as a model for addressing the demand for begging.

The central social, legal, and moral inquiries pose the questions of whether begging should be criminalized, whether one should give them money, and whether such contributions to the illicit activity are worth fueling the vicious cycle. The article concludes with recommendations for combating this human rights problem. Potential directions for future research on the topic are also suggested and encouraged.

A. *Scope of Research*

Forced begging and the international responses to this form of trafficking in persons is a largely understudied area. The present work focuses primarily on trafficking in persons for the purpose of begging. When useful and necessary, the analysis draws parallels to trafficking in persons for the purpose of prostitution, forced labor, and domestic servitude.

Excluded from the scope of this article are other street-related illicit activities, which also occur in the context of organized street crime, such as petty theft, illicit drug transfer, and smuggling, and which could be considered “trafficking” under some circumstances. The stories of these children and young adults are worthy of a book of their own.

Selling flowers or small items such as handkerchiefs sometimes occurs as an additional activity alongside street begging¹ and here, it is considered accordingly.

Although it is mainly children who fall prey to begging pimps, this study intends to address both children and adults as victims. With regard to regional scope, it mainly draws on reported evidence from the regions of Southeast Asia and South Eastern Europe, as well as the author’s impressions and observations of major European cities such as Geneva, Switzerland.

B. Methodology and Disciplines

The present work is a legal, social, and psychological research. It situates the issue of trafficking in persons for the purpose of begging within the field of international law, including the relevant international conventions, custom, jurisprudence, soft law instruments, and legal writing on the subject, with an emphasis on human rights law. Where international law on the subject has not developed sufficiently or is virtually non-existent, examples are brought in from national legislation and jurisprudence. Limited reference is also made to international criminal law.

In terms of public policy analysis, this work examines guidelines, comments, and recommendations of international organizations, national and regional public policy initiatives, frameworks and action plans, non-profit organizations, and national campaigns. In addition, the research draws on psychological and economics theories when addressing the question of “demand” for begging, and philosophical theories when assessing the debate over whether begging is a crime or not.

Perhaps most importantly, this article reflects the stories and voices of begging victims.

¹ See ASIA REG’L COOPERATION TO PREVENT PEOPLE TRAFFICKING, GENDER, HUMAN TRAFFICKING AND THE CRIMINAL JUSTICE SYSTEM IN CAMBODIA 12 (2003) [hereinafter ARCPPT].

C. *Terms and Definitions*

The international definition of “trafficking in persons” is adopted from Article 3 of the United Nations (U.N.) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children:

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

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.²

It should be noted that for crimes of trafficking consent is irrelevant. According to the U.N. Protocol Legislative Guide, “[o]nce it is established that deception, coercion, force or other prohibited means were used, consent is irrelevant and cannot be used as a defence.”³

² U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the U.N. Convention Against Transnational Org. Crime, art. 3, G.A. Res. 55/25, U.N. Doc. A/RES/55/25/Annex II, Nov. 15, 2000 (entered into force Sept. 29, 2003) [hereinafter U.N. Protocol].

³ U.N. Office of Drugs & Crime, Div. of Treaty Affairs, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, 270 ¶ 37 (2004) [hereinafter Legislative Guide].

The legal term of reference adopted here is “trafficking in persons for the purpose of begging,” or its short-form, “trafficking for begging.” Other terms referring to trafficking in persons include “human trafficking” and “trafficking in human beings” (and more rarely—“people trafficking,”⁴ “white slave trafficking,”⁵ “trafficking in humans,”⁶ “trafficking of people,”⁷ etc.). It could be argued that by underscoring the “human” element, the term “human trafficking” is more adequate, as what the law considers a “person” could vary across national jurisdictions, thus proving to be an obstacle to granting effective protection to all victims. Nevertheless, the choice here is made for the term “trafficking in persons,” which is in conformity with the international standards, as contained in the U.N. Protocol.

With regard to victims of trafficking, the U.N. Protocol does not offer a definition of a victim. Nevertheless, on a regional level, the Council of Europe Convention on Action against Trafficking in Human Beings defines “victim” in Article 4(e) as “any natural person who is subject to trafficking in human beings as defined in this article.”⁸ Victims of trafficking in persons for the purpose of begging shall be shortly referred to as begging victims.

Unfortunately, “trafficker” is also not defined by the U.N. Protocol. As demonstrated by the study, “trafficker” in the context of begging proves challenging to define. At a minimum, a “trafficker” is considered to be an individual who commits the crime of trafficking in persons for the purpose of begging. In this study, synonyms for “trafficker” are “trafficking pimp,” “begging ring handler,” or “organizer.” The terms are used interchangeably.

Begging in this study is defined as the activity of asking for money as charity on the street. It should be noted that there is no international legal definition of begging, nor of trafficking in persons for the purpose of begging. The problem is mainly treated in national legislation as a problem of

⁴ See, e.g., Mark Barela, Note, U.S. v. Cabrera: *People Trafficking – Using Children to Cross Our Borders*, 5 J.L. & FAM, STUD. 131 (2003).

⁵ See White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 USC §§ 2421-2424 (2006)).

⁶ See, e.g., Jennifer Enck, Note, *The United Nations Convention against Transnational Organized Crime: Is It All That It Is Cracked Up to Be? Problems Posed by the Russian Mafia in the Trafficking of Humans*, 30 SYRACUSE J. INT’L L. & COM. 369 (2003).

⁷ See, e.g., Sabrina Fève & Christina Finzel, *Trafficking of People*, 38 HARV. J. ON LEGIS. 279 (2001).

⁸ Council of Europe Convention on Action against Trafficking in Human Beings, art. 4(e), May 16, 2005, C.E.T.S. No. 197 [hereinafter Council of Europe Convention].

public order and petty crime. This treatment further illustrates the importance of exposing and studying the human rights implications of begging.

D. Approach

Trafficking in persons can be problematized in different ways depending on the scientific discipline, among other things. The phenomenon can be seen through a number of lenses, including those concerning human rights, organized crime, criminal law enforcement, prostitution, migration, national security, and health. When accessing the global revenues generated from this extremely profitable illicit activity and its impact on local tourism and economy,⁹ economic and business perspectives are often applied. The treatment of trafficking victims is also studied from medical, psychological, and psychiatric perspectives.

Trafficking in persons offers the illustrative example that the framing of the problem pre-defines the responses and policies to address it.¹⁰ Recognizing the variety of possible lenses, this research opts for the human rights victims-centered approach to trafficking in persons, which shall lead the reader away from the classical law enforcement approach prevalent until recently. Departing from the legal framework of this research (the U.N. Protocol), the Council of Europe Convention is cited in Part V because the Protocol lacks strong victim protection provisions. One of the main aims of this article is to suggest an emerging paradigm shift on the international, regional, and national levels indicating a move away from a purely law enforcement approach to a human rights victims-centered approach. This shift would hopefully result into a change of mindset in policymaking and full-fledged protection and assistance to trafficking victims.

It should be noted that as the discussion on trafficking in persons takes place within the context of the U.N. Protocol and the U.N. Convention against Transnational Organized Crime, there is an inherent tension underlying the research, which cannot be resolved. Instead of choosing between the law enforcement approach and the human rights victims-centered approach, it is argued that the human rights approach should be mainstreamed.

⁹ See, e.g., Donna M. Hughes & Tatyana A. Denisova, *The Transnational Political Criminal Nexus of Trafficking in Women from Ukraine*, 6 TRENDS IN ORG. CRIME 1, 3-4 (2001); Louise Shelly, *Trafficking in Women: The Business Model Approach*, 10 BROWN J. WORLD AFF. 119 (2003).

¹⁰ For a discussion on the importance of choice of words in problematizing trafficking in persons, see CLAUDIA ARADAU, *RETHINKING TRAFFICKING IN WOMEN: POLITICS OUT OF SECURITY* 13-46 (2008).

II. TRAFFICKING FOR BEGGING: THE PROBLEM

Meet Ali:

At the age of ten, Ali needed work to support his parents and three sisters. He jumped at the chance to travel to a wealthy neighboring country for work when his uncle offered to take him. Once there, however, his uncle made him sit on the street for 16 hours a day in scorching heat without shoes or proper clothing. His job was to beg for money, and if he did not make enough, his uncle beat him and threatened to hurt his sisters back home. When his uncle left the country, he sold Ali to a friend – for a discount since Ali was getting too old to beg properly. The friend treated Ali even worse than Ali’s uncle; he would beat and starve Ali and the other children. When Ali tried to run away, his owner cut off his fingers as punishment. At age 13, police arrested Ali for overstaying his visa in that country and put him in jail.¹¹

Meet Proch:

Proch is a street child who lives by begging in the Poipet area in Cambodia, on the border with Thailand. When he was 8, he left his hometown with his mother to beg in Thailand. After his mother died from taking drugs given to her from the criminal organization in Thailand, he continued to live and beg in Thailand. He told us . . . that:

“They beat me a lot because I’m not a good beggar. They injected me with some kind of medicine. After I received the injection, I could beg a whole day and night, with no appetite or sleep. Most of my friends received the injection too. My friend and I tried to escape many times, but it didn’t work. One day I was caught by the Thai police, who put us in detention and deported us to Cambodia. I don’t want return to Thailand, I can beg in Poipet. I am afraid that they will beat me if I can’t achieve the requirements.”¹²

¹¹ U.S. STATE DEP’T, TRAFFICKING IN PERSONS REPORT 33 (2008) [hereinafter U.S. TIP REPORT].

¹² ARCPPT, *supra* note 1, at 14.

Forced begging is vividly illustrated by the movie *Slumdog Millionaire*.¹³ An old phenomenon in itself, forced begging has only recently begun to be considered and discussed as a form of trafficking in persons. Begging victims vary according to sex, age, and geographic region, but trafficking of children is on the rise, with more and more trafficked children being used for begging throughout the Mekong region. It is estimated that between 1997 and 1998, the number of children caught begging in Bangkok, Thailand (ninety-five percent of them Cambodian) more than doubled to 1,060.¹⁴ One of the youngest interviewed victims, four-year-old Bon, had twisted legs and a club foot when he was found.¹⁵

The activity is currently a business, and a less risky one since law enforcement officials do not pay attention. Child begging has been on the rise as “wealthy tourists plus needy child[ren] equals money,”¹⁶ and a handicapped child brings more money. It was discovered that disabled children are more favored by traffickers as they earn as much as 1000 baht a day, as opposed to healthy children who earn about 300 baht a day.¹⁷ For this reason, sometimes children are even intentionally mutilated:

In Shenzhen, China, adults force street children to beg, sometimes breaking their arms or legs so that passers-by will take pity on the maimed children and pay more money. An undercover reporter learned in 2005 that a man in Shenzhen could earn between \$30,000-\$40,000 per year by forcing children to beg.¹⁸

Reports also point to the prevalence of this problem in India.¹⁹ According to the 2008 U.S. Trafficking in Persons Report,

[I]ndividuals exploit cultural and religious practices to facilitate forced begging. In a number of predominantly Muslim West African countries, for example, traffickers posing

¹³ *Slumdog Millionaire* (2008), Fox Searchlight; see <http://www.imdb.com/title/tt1010048/>.

¹⁴ Int'l Labour Office, *Scared, Hungry, Enslaved: A New Kind of Trafficking, Child Beggars in Asia*, 26 *WORLD WORK* 17, 17 (1998).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Acad. for Educ. Dev., *New Attitude Encouraged Towards Child Beggars in Thailand*, HumanTrafficking.org (Aug. 2, 2006), <http://www.humantrafficking.org/updates/398> (last visited Aug. 23, 2011).

¹⁸ U.S. TIP REPORT, *supra* note 11, at 18.

¹⁹ *Id.*

as Koranic teachers, known as *marabout*[,] recruit boys. Parents willingly send their children to these men due to the long-standing cultural tradition of giving children to religious instructors who will teach them fundamental Muslim values. The false marabout take children from their villages to big cities, where they force them to walk along busy highways, without shoes on hot tarmac or dirty streets, and weave between cars asking for money. The “teachers” force the children, some as young as four years old, to do this for up to 12 hours per day.²⁰

Both boys and girls between ages eight and thirteen are being trafficked for begging.²¹ In Cambodia, “women and children are typically recruited as beggars to fill the following profiles: mothers with babies, young girls carrying flowers, children, and elderly women.”²² The recruitment has become an activity that includes the involvement of several layers of people: “a recruiter who wants those profiles of beggars approaches an informant who works as [a] moto-taxi.”²³ The trafficking pimp retains almost all of the beggar earnings. Threats that beggars would be reported to the police if they try to escape are common.²⁴

When children do not return with a minimum amount of money, they are severely beaten to the point of having permanent scars.

[I]n China and parts of South Asia, some children have been kidnapped from their homes and forced into life as beggars on the street. Gang members who kidnap these children set daily targets for the children to steal or beg. The gangs also get children addicted to drugs and sexually harass the girls to extend their control. One child victim noted: “They force us to pick up coins from boiling water as part of our training to snatch things quickly. If we miss the coin, they beat us with a belt. One 11-year-old boy tried

²⁰ *Id.* at 33.

²¹ UNICEF & TERRE DES HOMMES, ACTION TO PREVENT CHILD TRAFFICKING IN SOUTH EASTERN EUROPE: A PRELIMINARY ASSESSMENT 15 (2006), available at http://www.unicef.at/fileadmin/medien/pdf/ChildTrafficking_SOEuropa.pdf.

²² ARCPPT, *supra* note 1, at 13.

²³ *Id.* at 26.

²⁴ *Id.* at 29.

to run away, but he was caught and almost beaten to death.”²⁵

In Europe, it is often Albanians, Bulgarians, Romanians, and Ukrainians²⁶ who are trafficked into begging, confirmed by a UNICEF and Terre des Hommes Report on child trafficking in South Eastern Europe.²⁷ The report indicates that victims in South Eastern Europe are trafficked not only for sexual exploitation, but for begging as well, and that about seventy percent of the victims trafficked for labor, begging, and delinquency in Albania are male.²⁸ The two distinct groups targeted by traffickers of children in South Eastern Europe are older adolescent girls for sexual exploitation and younger girls and boys considered suitable for begging.²⁹ In a UNICEF study, which interviewed thirty-one child victims of trafficking in South Eastern Europe, four out of thirty-one victims were trafficked for the purpose of begging (thirteen percent of all victims).³⁰ Exploitation for begging could also be related to sexual exploitation, as in the cases of nearly all the children in the study, who were exploited in both ways by their traffickers.³¹

“A family can earn ten to 15 euros per day per child in Albania, which is more than a teacher’s salary. With an average of three to four kids begging, it makes the business very profitable,” said Thierry Agagliate, delegate of the Albania-Kosovo branch of Terre des Hommes in an interview with the Organization for Security and Cooperation in Europe, adding further that in Tirana, Albania, there are around 150 exploited kids on the streets and that the numbers grow during the tourist season.³² Estimates indicate that there are around 6,000 children exploited in both Albania and

²⁵ U.S. TIP Report, *supra* note 11, at 33.

²⁶ JUNE KANE, INT’L LABOUR OFFICE, CHILD TRAFFICKING: THE PEOPLE INVOLVED. A SYNTHESIS OF FINDINGS FROM ALBANIA, MOLDOVA, ROMANIA AND UKRAINE (2005).

²⁷ UNICEF & TERRE DES HOMMES, *supra* note 21, at 13.

²⁸ REBECCA SURTEES, INT’L ORG. FOR MIGRATION & REG’L CLEARING POINT, SECOND ANNUAL REPORT OF VICTIMS OF TRAFFICKING IN SOUTHEASTERN EUROPE (2005).

²⁹ UNICEF & TERRE DES HOMMES, *supra* note 21, at 34.

³⁰ Mike Dottridge, *Young People’s Voices on Child Trafficking: Experiences from South Eastern Europe 22* (UNICEF, Innocenti Research Centre, Working Paper No. IWP-2008-05, 2008).

³¹ *Id.* at 22.

³² Blanca Tapia, *OSCE Supports Albanian Campaign Against Child Begging*, ORG. FOR SEC. AND CO-OPERATION IN EUR., (June 25, 2007), http://www.osce.org/albania/item_2_25295.html.

Greece.³³ Because incomes from child begging are relatively high, parents find it more profitable than working.

Children are disproportionately affected because a significant portion of all begging victims are children. Unfortunately, there are no reliable statistics on the exact percentage, and only anecdotal knowledge is available. What is known is that trafficking for the purpose of begging affects younger children,³⁴ and that makes it even harder for those victims to have their voices heard. Adults may also become victims, especially handicapped ones.³⁵

Beggars are trafficked both by strangers who kidnap them, and by people they know – a friend, a neighbor, or a relative (very often their cousin), and even by their parents.³⁶ Children are trafficked by adult men and women, but in some cases their traffickers could be under eighteen years old or much younger, as in the case of a ten-year old child trafficked by a thirteen or fourteen-year-old child for the purpose of begging.³⁷

The following section indicates how this complex and multi-faceted phenomenon could be conceptualized as trafficking in persons under international law.

III. ORGANIZED BEGGING AS A FORM OF TRAFFICKING IN PERSONS: THE LEGAL APPROACH

In order to conceptualize begging as trafficking in persons, the five elements of trafficking in persons must be met. Trafficking in persons consists of three primary elements – action, means, purpose of exploitation – and two additional elements – transnational nature and organized criminal group.³⁸ While presenting these five elements, in order to test the definition

³³ *Id.*

³⁴ See Dottridge, *supra* note 30, at 7.

³⁵ See Qadeer Tanoli, *Mafia Smuggling People into Iran for Begging*, THE NEWS (Jan. 18, 2011), available at <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=26202&Cat=4&dt=1/18/2011>.

³⁶ See, e.g., Robert Booth, *Romanians Jailed for Making their Children Beg and Steal*, THE GUARDIAN (Jul. 30, 2010), <http://www.guardian.co.uk/uk/2010/jul/30/romanians-jailed-children-beg-steal> (discussing a Romanian couple jailed for exploiting their own children for begging in London); Iveta Cherneva, *Jet Li Supports Anti-trafficking Social Media Campaign in China*, LAW, CRIME, & JUSTICE (Mar 2, 2011), <http://www.suite101.com/content/jet-li-supports-anti-trafficking-social-media-campaign-in-china-a354999> (describing the ways children are trafficked in China).

³⁷ See Dottridge, *supra* note 30, at 26.

³⁸ U.N. Protocol, *supra* note 2, at arts. 3, 4.

of trafficking in persons with regard to organized begging and identify the boundaries, a few factual scenarios challenging that interpretation are examined. *Not all* begging is trafficking in persons as defined by the international standard, but many cases certainly are.

A. *The Action*

The element of action includes “recruitment, transportation, transfer, harbouring *or* receipt of persons.”³⁹ Prominent in literature and policymaking is the debate over the difference between trafficking and smuggling. Smuggling is a crime against the state, while trafficking is a crime against the individual.⁴⁰ Smuggling is transportation-based; trafficking is exploitation-based. Trafficking in persons is arguably the more complex phenomenon. It would be difficult to distinguish the two in the context of begging, as smuggling in some cases is one of the constitutive elements of trafficking. Trafficking for the purpose of begging could be analyzed in juxtaposition to human smuggling, or viewed as including the action of human smuggling as a constitutive element in the transportation phase.

It should also be noted that trafficking does not necessarily involve the act of transportation. Simply recruiting children to beg can fulfil the action element.⁴¹

B. *Coercive/Fraudulent Means*

The means element of trafficking includes the “threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.”⁴² As the previous section indicates, threat or use of force occurs often in the context of organized begging, as does abduction, which is a form of coercion.

More subtle means are employed when a relative induces a member of their family to beg through the use of their leverage and power position in the family. Whether this leveraging ability that arises from a parent’s psychological/emotional/familial duty is considered to be psychological coercion or the abuse of position of vulnerability is debatable. Abuse of posi-

³⁹ *Id.* at art. 3(a).

⁴⁰ See *Commission Proposal for a Council Framework Decision on Combating Trafficking in Human Beings and Combating the Sexual Exploitation of Children and Child Pornography*, COM (2000) 854 final (Jan. 22, 2001).

⁴¹ U.N. Protocol, *supra* note 2, at Art. 3 (a).

⁴² *Id.*

tion of vulnerability is especially relevant when disabled adult victims are concerned. The *travaux préparatoires* of the U.N. Protocol clarifies the term in the following way: “The reference to the words ‘abuse of a position of vulnerability’ is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.”⁴³

National legislation has taken different approaches to the term. The migration law of Belgium defines position of vulnerability to include illegal or uncertain immigration or residency status, minority status, or conditions such as illness, pregnancy, or *physical or mental disability*.⁴⁴ In other countries, such as Bulgaria, the law takes a more general approach, referring to abuse of authority and allowing the courts to define and apply the term to the specific facts of the case.⁴⁵ Without an indication in the *travaux préparatoires* of what is meant by “no real and acceptable alternative,” the term abuse of position of vulnerability is still widely open to interpretation.

However, with regard to means, it should be noted that Article 3(c) of the U.N. Protocol states that “[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article.”⁴⁶ Therefore, in order to prove trafficking in persons, the element of means is not necessary when the victim is below eighteen years of age. Because children represent a significant portion of begging victims, Article 3(c) is notable. In this sense, the interpretational uncertainty with regard to the meaning of “abuse of position of vulnerability,” becomes less important and less obstructive, as far as children begging victims are concerned.

C. Purpose of Exploitation

In the U.N. Protocol, different forms of exploitation include the exploitation of the prostitution of others or other forms of sexual exploitation,

⁴³ See generally Rep. of the Ad Hoc Comm. on the Elaboration of a Convention against Transnational Organized Crime on its first to 11th Session, *Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, 55th Sess., U.N. Doc. A/55/383/Add.1, ¶ 63 (Nov. 3, 2000) [hereinafter *travaux préparatoires*].

⁴⁴ *Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* [Law of 15 December 1980 on entry, stay, status and removal of aliens] Art. 77 bis, ¶ 1.

⁴⁵ U.N. Legislative Guide, *supra* note 3, at 268 n.13.

⁴⁶ U.N. Protocol, *supra* note 2, art. 3(c).

forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs. Other forms of exploitation not specifically mentioned in the Protocol, but nevertheless already classified as a form of trafficking-related exploitation, might also include: mail order brides,⁴⁷ domestic servitude⁴⁸ and nannies,⁴⁹ recruitment of child soldiers,⁵⁰ illegal adoptions,⁵¹ trafficking for ritual purposes and trafficking of prisoners,⁵² camel jockeys, drug smuggling, petty theft, construction, and agricultural

⁴⁷ See, e.g., Susan Jackson, *To Honor and Obey: Trafficking in Mail-Order Brides*, 70 GEO. WASH. L. REV. 475, 475-569 (2002); Donna Lee, *Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions*, 5 ASIAN L.J. 139, 139-79 (1998); Christine Chun, Comment, *The Mail Order Bride Industry: The Perpetuation of Transnational Economic Inequalities and Stereotypes*, 17 U. PA. J. INT'L ECON. L. 1155, 1155-208 (1996); Ryiah Lilith, Comment, *Buying a Wife but Saving a Child: A Deconstruction of Popular Rhetoric and Legal Analysis of Mail-Order Brides and Intercountry Adoptions*, 9 BUFF. WOMEN'S L.J. 225, 225-62 (2001).

⁴⁸ See Joan Fitzpatrick & Katrina Kelly, *Gendered Aspects of Migration: Law and the Female Migrant*, 22 HASTINGS INT'L & COMP. L. REV. 47, 47-112 (1998); Dan Gatmaytan, *Death and the Maid: Work, Violence and the Filipina in the International Labor Market*, 20 HARV. WOMEN'S L.J. 229, 229-61 (1997).

⁴⁹ See generally Mary Romero, *Nanny Disputes and Other Stories: Imagining Women's Labor in the Social Reproduction of American Families*, 52 DEPAUL L. REV. 809 (2003).

⁵⁰ See, e.g., Chris Revaz, *The Optional Protocols to the UN Convention on the Rights of the Child on Sex Trafficking and Child Soldiers*, 9 HUM. RTS. BRIEF 13, 13-16 (2001); Sandrine Valentine, *Trafficking of Child Soldiers: Expanding the United Nations Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict*, 9 NEW ENGLAND INT'L & COMP. L. ANN. 109, 109-34 (2003).

⁵¹ See, e.g., Sara Dillon, *Making Legal Regimes for Intercountry Adoptions Reflect Human Rights Principles: Transforming the United Nations Convention on the Rights of the Child with the Hague Convention on Intercountry Adoption*, B.U. INT'L. L.J. 179, 179-257 (2003); Bridget Hubing, Comment, *International Child Adoptions: Who Should Decide What is the Best Interest of the Family?*, NOTRE DAME J. L. ETHICS & PUB. POL'Y 655, 665-98 (2001); Comment, *Independent Adoptions: Is the Black and White Benning to Appear in the Gray-Marker Adoptions?*, 18 DUQ. L. REV. 629, 629-52 (1980); Lisa M. Katz, Comment, *A Modest Proposal? The Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*, 9 EMORY INT'L L. REV. 283, 283-328 (1995); Holly Kennard, Comment, *Curtailing the Sale and Trafficking of Children: A Discussion of the Hague Conference Convention in Respect of Intercountry Adoptions*, U. PA. J. INT'L ECON. L., 623, 623-49 (1994); Sara Wallace, Comment, *International Adoptions: The Most Logical Solution to the Disparity between the Numbers of Or-*

work. There are also those forms of exploitation that are rarely mentioned, remain largely unstudied, and are unique as they appear in the legislation of only one country. This is the case with the Israeli law against trafficking, which makes specific reference to trafficking for the purpose of child bearing.⁵³

Neither the U.N. Protocol nor the *travaux préparatoires* make reference to begging as a form of exploitation. Article 3(1) of the Protocol states that “[e]xploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁵⁴ The phrase “at a minimum” is the key, as it could be interpreted in opposing ways – that the omission was intentionally restrictive, or intentionally left a gap to be filled expansively. The possible interpretations lead to the following relevant interpretative questions: Did the drafters of the U.N. Protocol intend to limit trafficking in persons to only the types of exploitation explicitly mentioned in Article 3? Is this the reason why they did not refer to begging, with Article 3 representing the lowest common denominator of agreement (i.e. intentional omission)? Or did the drafters simply include, *at a minimum*, the forms of exploitation that were already known to them, without an intention to provide an exhaustive list leaving the possibility for new forms of trafficking to be covered by the scope of Article 3 (i.e. gap)?

As Silvia Scarpa, an expert on human trafficking, argues, along with others, that the U.N. Protocol “makes reference to some specific forms of exploitation; however, the list is not exhaustive and it may include other forms as well.”⁵⁵ With regard to the definition of exploitation, the U.N. Legislative Guide underlines the words “*at a minimum*”⁵⁶ in italics, thus

phaned and Abandoned Children in Some Countries and Families and Individuals Wishing to Adopt Others?, ARIZ. J. INT’L & COMP. L. 689-724 (2003).

⁵² See Special Rapporteur on trafficking in persons, especially women and children, *Integration of the Human Rights of Women and the Gender Perspective*, U.N. Doc. E/CN.4/2005/71 (Dec. 22, 2004) (by Sigma Huda).

⁵³ Mohamed Mattar, Executive Dir., The Protection Project, U.N. Office on Drugs & Crime: Launch of the International Framework for Action to Implement the Trafficking in Persons Protocol 3 (Oct. 9, 2009), available at <http://www.protectionproject.org/speeches/> (noting that the “Israeli law refers to giving birth to a child and taking the child away, or what we call trafficking for the purpose of child bearing.”).

⁵⁴ U.N. Protocol, *supra* note 2, at art. 3(1).

⁵⁵ SILVIA SCARPA, TRAFFICKING IN HUMAN BEINGS: MODERN SLAVERY 5 (2008).

⁵⁶ Legislative Guide, *supra* note 3, at 268, ¶ 32.

indicating that the list of exploitation forms is not meant to be exhaustive. In the *travaux préparatoires*, there is no mention that the drafters intentionally excluded begging from the scope of Article 3. What the *travaux préparatoires* does clarify is that references to slavery and similar practices may include illegal adoption in some circumstances;⁵⁷ that forms of sexual exploitation other than in the context of trafficking in persons are not covered by the Protocol;⁵⁸ and that the removal of a child's organs for legitimate medical or therapeutic reasons cannot form an element of trafficking if a parent or guardian has validly consented.⁵⁹ Since the latter two forms of exploitation were excluded from the scope of Article 3, and begging is not among them, it could be concluded that the drafters did not intend to exclude begging from the scope of the Protocol.

It could also be speculated that the drafters did not know of, or did not reflect on, this form of trafficking. Although illegal adoptions were recognized as a form of exploitation falling within the scope of the Protocol, the drafters did not explicitly include that form of exploitation in the text of Article 3 indicating that the list is not exhaustive.

In addition to a *travaux préparatoires* interpretation, one could certainly also suggest an interpretation of the Protocol as a "living instrument." Scarpa clarifies that the choice of language was made in order to encompass any new form of exploitation, known or unknown, which was not, or could have not been foreseen by the drafters, concluding that the Protocol's definition is well-equipped to fight against any new form of trafficking-related exploitation.⁶⁰ She states that "apart from the forms of exploitation that are explicitly mentioned by the UN Trafficking Protocol there are others, including street begging . . . that can be surely added to its list."⁶¹ The present study argues that forced begging is one of those forms of exploitation not specifically mentioned, but nevertheless included in the scope of the definition.

A number of international instruments, reports, and guidelines include begging as a form of trafficking-related exploitation. The European Union (EU) Brussels Declaration on Preventing and Combating Trafficking in Human Beings explicitly includes begging, by referring to trafficking in human beings as "an abhorrent and worrying phenomenon involving coercive sexual exploitation, labour exploitation in conditions akin to slavery,

⁵⁷ *Travaux préparatoires*, *supra* note 43, at ¶ 66.

⁵⁸ *Id.* at ¶ 64 (explaining that state parties may address prostitution in domestic laws without prejudice).

⁵⁹ *Id.* at ¶ 65.

⁶⁰ SCARPA, *supra* note 55, at 7.

⁶¹ *Id.*

exploitation in begging and juvenile delinquency as well as domestic servitude.”⁶² The Declaration further states that “[a] global approach to trafficking must address all forms of exploitation, including sexual exploitation, labour exploitation, in particular child labour, and begging.”⁶³

The U.N. Special Rapporteur on trafficking in persons had not referred to begging until her 2009 report, where begging is explicitly mentioned as one of the child trafficking-related exploitations:

The scope of the Special Rapporteur’s mandate covers all the forms and manifestations of trafficking, and therefore includes: (1) Trafficking in children - children who are trafficked for sexual purposes, adoption, child labour (e.g. domestic work, babysitters/nannies, *begging*, criminal activities like selling drugs, etc.), and participation in armed conflict - mercenaries/child soldiers, sex slaves.⁶⁴

In her 1999 Report, drawing attention to the situation of begging victims particularly in India, Cambodia, and Thailand, the U.N. Special Rapporteur on the sale of children referred to begging as one of the identified “aims of trafficking.”⁶⁵ A number of legal experts treat begging as included within the scope of the Protocol, including Ann Jordan, an expert on forced labor and trafficking, who considers that “[t]he criminal law definition is broad enough to cover each and every form of trafficking – from trafficking into forced begging or domestic work to trafficking into forced prostitution or farm labor.”⁶⁶ A UNICEF and Terre des Hommes report states that “the recruitment of children as beggars, pickpockets or thieves is generally viewed as trafficking when children are forced to hand over some or all of their earnings to another.”⁶⁷ At the U.N. Office on Drugs and Crime and U.N. Division for the Advancement of Women Expert Group Meeting on good practices in legislation on violence against women, the

⁶² 2003 O.J. (C 137) 2.

⁶³ *Id.*

⁶⁴ Special Rapporteur on Trafficking in Pers., Especially Women and Children, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, U.N. Doc. A/HRC/10/16 (Feb. 20, 2009) (by Joy Ngozi Ezelio) (emphasis added).

⁶⁵ Special Rapporteur on the sale of children, child prostitution, and child pornography, *Report on the Sales of Children, Child Prostitution, and Child Pornography*, ¶ 72-74, U.N. Doc. E/CN.4/1999/71 (Jan. 29, 1999) (by Ofelia Calcetas-Santos).

⁶⁶ ANN D. JORDAN, INT’L HUMAN RIGHTS LAW GROUP, *THE ANNOTATED GUIDE TO THE COMPLETE UN TRAFFICKING PROTOCOL* 7 (2002).

⁶⁷ UNICEF & TERRE DES HOMMES, *supra* note 21, at 19.

Executive Director of the Protection Project, Professor Mohamed Mattar, explicitly pointed out that begging is covered by the U.N. Protocol:

[T]he UN Protocol extended the definition of trafficking in persons to include not only exploitation of the prostitution of others, but other forms of exploitation, including domestic service, *begging*, involvement of children in armed conflict, transnational marriages, marriages for child bearing, illegal adoption, removal of human organs and other forms of criminal activities.⁶⁸

International organizations' reports refer to organized begging as a form of trafficking in persons. An article in 1998, especially focusing on trafficked children in Cambodia, defined child begging as "a new kind of trafficking."⁶⁹ The International Organization for Migration (IOM) report on trafficking in South Eastern Europe includes begging as a form of trafficking related exploitation, where according to the report about 6.5 percent of trafficking victims are victims of forced begging.⁷⁰

In addition, the human trafficking indicators by the U.N. Office on Drugs and Crime include begging and petty crime as a separate category of trafficking.⁷¹ The Prevention of Human Trafficking in the Russian Federation Project, in cooperation with the EU and IOM, also lists begging as a separate specific category of trafficking-related exploitation.⁷² A report on trafficking in persons in Cambodia treats begging as a separate category from forced labor.⁷³

Begging could be discussed as a slavery-like practice, which is explicitly mentioned in the U.N. Protocol. Another interpretational route – more common and more widely accepted – is to subsume begging under the

⁶⁸ Mohamed Mattar, U.N. Office on Drugs & Crime, Div. for Advancement of Women, *Legal Approaches to Trafficking as a Form of Violence against Women: Implications for a More Comprehensive Strategy in Legislation on the Elimination of Violence against Women*, 3, U.N. Doc. EGM/GPLVAW/2008/EP.09 (May 19, 2008) (emphasis added).

⁶⁹ Int'l Labour Office, *supra* note 14, at 17.

⁷⁰ SURTEES, *supra* note 28, at 33.

⁷¹ U.N. OFFICE ON DRUGS & CRIME, HUMAN TRAFFICKING INDICATORS, available at <http://www.unodc.org/unodc/en/human-trafficking/publications.html#Leaflets>.

⁷² Prevention of Human Trafficking in the Russian Federation, Int'l Org. for Migration, & Eur. Union, *Prevention of Human Trafficking in the Russian Federation*, FAQ, NO2SLAVERY, <http://www.no2slavery.ru/eng/faq/> (last updated May 13, 2011).

⁷³ ARCPPT, *supra* note 1, at 12.

larger umbrella of forced labor.⁷⁴ That interpretative technique suggests treating forced begging as a category of forced labor as defined by the International Labor Organization (ILO) Conventions.⁷⁵ Forced or compulsory labor is “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.”⁷⁶ Scarpa discusses street begging as a trafficking-related exploitation falling under forced labor exploitation.⁷⁷ A number of reports, including the U.S. Trafficking in Persons Report also adopt that approach to begging.⁷⁸ Forced begging can certainly be in the forced labor category.

Nevertheless, in line with the interpretation of the Protocol as a living instrument able to encompass any new form of trafficking in persons not foreseen by the drafters, efforts should be made to progressively, and through interpretation, include begging as a separate legal category of exploitation.

In relation to the opposition of forced versus voluntary involvement, Scarpa argues that street begging is not always related to trafficking in persons:

The phenomenon of street begging is not always related to human trafficking; therefore, it can be subdivided between the practice involving whole families that is a consequence of a condition of extreme poverty and the *forced* one, occurring when adults—especially mutilated or disabled ones—or minors are obliged to beg by a third person or an organized group who take all—or most of—the money they earn. In this latter case forced street begging may also be a form of exploitation related to trafficking in persons.⁷⁹

⁷⁴ *Id.* at 45.

⁷⁵ Int’l Labour Org., Convention concerning the Abolition Forced Labour, June 25, 1957, NO. 105, 320 U.N.T.S. 291 [hereinafter ILO Convention No. 105]; Int’l Labour Org. Convention concerning the Abolition of Forced Labour, June 28, 1930. No. 29, 39 U.N.T.S. 55 [hereinafter ILO Convention No. 29]. The U.N. suggests interpreting forced begging in accordance with these Conventions. *See* Legislative Guide, *supra* note 3, at 259-262.

⁷⁶ ILO Convention No. 29, *supra* note 73, at Art. 2 (1). *See also* Roe I v. Bridgestone Corp., 492 F. Supp. 2d 988, 1003-05 (S.D. Ind. 2007) (discussing the ILO Convention as evidence of the prohibition against forced labor in customary international law in an Alien Tort Statute case).

⁷⁷ SCARPA, *supra* note 55, at 31.

⁷⁸ U.S. TIP REPORT, *supra* note 11, at 33.

⁷⁹ SCARPA, *supra* note 55, at 31.

This differentiation prompts the following questions: Should a dual distinction be made between “familial begging” and “forced begging” at all, and especially when minors are involved? Similar to the debates on trafficking for the purpose of prostitution, is all organized begging inherently and necessarily harmful? Can familial emotionally-related persuasion be considered psychological coercion?⁸⁰ Could a child be legally considered a victim of his own parents in the context of trafficking in persons for the purpose of begging? The present study challenges the distinction between organized familial begging and organized forced begging arguing that both are trafficking in persons.

Some of the concerns posed by the above-mentioned questions are in part addressed by the observation that since the definition of trafficking does not require the means element when minors are involved, whether child beggars have been forced or not is irrelevant.⁸¹ When minors are involved, the key issue instead is whether the *exploitation* element could be met, and not whether consent is present. The one key question – which is still not addressed – is proving whether a parent financially *exploits* his or her children when making them beg.

Some argue that in the case of Albanian children taken to Greece by their own parents to beg and earn money for the family, it is difficult to describe them as trafficked, although in essence they were involved in the same activities as trafficked children.⁸² “Current legislation punishes these criminal activities if they are committed by traffickers, but in most cases it is the parents who are forcing the children to beg. Under the current legislation it is very difficult to punish parents or tutors,” said Holta Kotherja,

⁸⁰ See *United States v. Kozminski*, 487 U.S. 931, 944-53 (1988), for a discussion of familial duty as psychological coercion in the context of involuntary servitude. The Court did not accept the argument of familial duty as psychological coercion, and instead reiterated that coercion in the context of involuntary servitude could only be physical or legal. *Id.*

⁸¹ U.N. Protocol, *supra* note 2, at art. 3. When the victim is a minor only the elements of action and exploitation are necessary. *Id.* Therefore, whether involvement is achieved through voluntary or coercive means is irrelevant. *Id.* When the victim is over 18 years of age, the action must take place through the “means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” in order to constitute “trafficking in persons.” *Id.*

⁸² Tapia, *supra* note 32.

Head of the Legal Clinic for Minors at the Albanian Helsinki Committee, part of an NGO network that acts to protect human rights.⁸³

A UNICEF report indicates that while all the interviewed children were exploited in different ways, “not all had experiences that fall under the international definition of child trafficking. In some cases, it could not be qualified if the children had been recruited and moved with the intent of exploiting them.”⁸⁴ Another study considers that “if no one is controlling [beggars] or profiting from their activities, they are not considered victims of trafficking. However, some children who migrate abroad without being trafficked subsequently fall under the control of a pimp or another adult who makes money [off] of them.”⁸⁵ At the point when the handler takes the money the beggar has earned, the smuggled child becomes a trafficking victim. That should be the case irrespective of whether the handler is a parent or a relative.

Keeping the victims-centered approach in focus, the U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power clarifies: “A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and *regardless of the familial relationship between the perpetrator and the victim.*”⁸⁶ Even though the Declaration has a “soft law” character, it still might be useful to identify the line. The best interest of the child is a well-established principle that must be taken into consideration as well.⁸⁷ A parent who has made his child beg and profited financially from the exploitation should be considered to have exploited the child. This leads to the assessment of whether begging could always be said to be harmful to the health and well-being of the child. Part 6 is dedicated to that ongoing discussion. Apart from legal issues, the question also touches upon the cultural debates with regard to begging, which are presented in the next section. The cultural aspect of the activity is very important for understanding and combating the phenomenon. However, it is argued here that cultural diversity is not a technically relevant legal parameter when assessing whether the element of exploitation is met.

⁸³ *Id.*

⁸⁴ Dottridge, *supra* note 30, at v.

⁸⁵ UNICEF & TERRE DES HOMMES, *supra* note 21, at 20.

⁸⁶ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, Annex ¶ 2, U.N. Doc. A/RES/40/34 (Nov. 29, 1985) (emphasis added).

⁸⁷ *See, e.g.*, Convention on the Rights of the Child, art. 3, 1577 U.N.T.S. 3 (“The best interests of the child shall be a primary consideration.”).

D. The Transnational Element

As an additional element, the term “transnational crime” is of major importance, as Art. 3 of the Convention on Transnational Organized Crime limits the scope to acts as defined by Art. 2.⁸⁸ That means that the U.N. Trafficking Protocol applies only to transnational crime involving an organized criminal group:⁸⁹

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:
 - (a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and
 - (b) Serious crime as defined in article 2 of this Convention; where the offence is transnational in nature and involves an organized criminal group.
2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:
 - (a) It is committed in more than one State;
 - (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
 - (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
 - (d) It is committed in one State but has substantial effects in another State.⁹⁰

The transnational element has been controversial posing the question whether internal trafficking can also be considered to fall within the scope of the Protocol. With regard to begging, it is questionable whether an activity by a group of handlers controlling child beggars who operate locally in only one country could be considered trafficking.

Nevertheless, some legal experts argue that even if the Protocol restricts the definition of trafficking, the phenomenon of trafficking and na-

⁸⁸ Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res 55/255, art. 2-3, U.N. Doc. A/RES/55/255.

⁸⁹ The U.N. Protocol is applied *mutatis mutandi* to the U.N. Convention. *Id.* at art. 1.

⁹⁰ U.N. Protocol, *supra* note 2, at art. 3.

tional criminal laws do not necessarily have to be limited.⁹¹ The Legislative Guide to the Protocol clarifies the meaning of Article 3(2) stating that:

[I]n domestic law, the offences established in accordance with the Convention of participation in an organized criminal group, corruption, money-laundering and obstruction of justice and the Protocol offenses of trafficking in persons, smuggling of migrants and trafficking in firearms must apply equally, regardless of whether the case involved transnational elements or is purely domestic.⁹²

According to Jordan, “[d]omestic legislation should go further than the Trafficking Protocol and include all domestic and cross-border trafficking and should punish individual traffickers as well as organized criminal groups. Trafficking within some countries is as serious as, or more serious than, cross-border trafficking.”⁹³

The European regional instrument, the Council of Europe Convention, explicitly mentions in Article 2: “This Convention shall apply to all forms of trafficking in human beings, *whether national or transnational*, whether or not connected with organised crime.”⁹⁴ Therefore, at least at the European level, transnationality and a link to an organized criminal group are not requirements for the application of Council of Europe Convention.

The U.N. Special Rapporteur on trafficking in persons stated in her 2004 report that she would also take action to combat the internal phenomenon.⁹⁵ In regard to child trafficking, the UNICEF Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe points out that “[s]ince trafficking in persons is so routinely connected with the cross-border movement of the children and adults concerned, there is a serious risk that victims of internal trafficking are overlooked.”⁹⁶ The Guide’s very first recommendation is “[e]nsuring that child trafficking, *including internal trafficking*, is criminalized in accordance with the UN Protocol.”⁹⁷

⁹¹ See, e.g., JORDAN, *supra* note 66, at 14.

⁹² Legislative Guide, *supra* note 3, at ¶ 18.

⁹³ JORDAN, *supra* note 66, at 14.

⁹⁴ COUNCIL OF EUROPE CONVENTION, *supra* note 8, at art. 2 (emphasis added).

⁹⁵ Special Rapporteur on trafficking in persons, especially women and children, *Integration of the Human Rights of Women and the Gender Perspective*, *supra* note 52, at ¶ 26.

⁹⁶ UNICEF, REFERENCE GUIDE ON PROTECTING THE RIGHTS OF CHILD VICTIMS OF TRAFFICKING IN EUROPE 29 (2006) [hereinafter UNICEF REFERENCE GUIDE].

⁹⁷ *Id.* at 175 (emphasis added).

It should also be noted that transnational organized crime does not encompass only *cross-border* activity, but according to Article 3(2) of the U.N. Convention, includes acts committed in more than one state, acts in one state but with a substantial planning and preparation in another state, acts involving an organized criminal group that engages in criminal activities in more than one state, or acts committed in one state with substantial effects in another.⁹⁸ If it is proven that the beggars' ring or the ring handlers operate (or in the past have operated) in another state, or that somehow the activity has an impact on another state, the element of transnationality is met.

E. The Organized Structured Group Element

The second additional element is the organized structured criminal group element, as stated in Article 2 of the U.N. Convention:

For the purposes of this Convention:

- (a) "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;
- (b) "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- (c) "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.⁹⁹

The "number of members" element (three or more persons) and the nature of the group could be challenging to prove in the context of begging when a criminal gang is not involved. In some cases, it is the family that induces children to beg. According to the definition, a parent couple cannot be considered a trafficker. The same applies to sporadic activity where there is no plan, structure, or organization. Some begging is certainly of that type and cannot be considered trafficking. However, an interpretation of the familial unit as an organized structured group is still conceivable if one con-

⁹⁸ U.N. Protocol, *supra* note 2, at art. 3.

⁹⁹ *Id.* at art. 2.

siders the father as the head of the unit, the mother and the uncles as trafficking coordinators, and the children as the exploited individuals.

In conclusion, if all five (four for minors) elements of trafficking are treated cumulatively, it becomes difficult to recognize if organized familial begging is simply the case of a family entering illegally to beg collectively. On the other hand, that scenario could also be seen as trafficking as a group of minors are compelled through the use of a position of vulnerability (the means element) and recruited (the action element) by their extended family of more than three people who are organized in a criminal structure (the organized criminal group element), which takes the money from their begging (the exploitation element) in their home country after doing the same in a foreign country (the transnational element). Thus, familial begging can fulfil the elements of human trafficking. Future jurisprudence would be especially instructive in clarifying cases of forced begging to include familial begging.

F. Other International Instruments Relevant to the Protection of Begging Victims

Finally, a brief review of other international instruments relevant to trafficking in persons for the purpose of begging, apart from the U.N. Protocol, should be included, as they additionally enhance the protection of begging victims.

The International Covenant on Civil and Political Rights (ICCPR) covers slave trade, compulsory labor, and servitude in Article 8, all of which are relevant to forced begging.¹⁰⁰ Pursuant to Article 24, which provides for the rights of the child, in an important series of comments by the Human Rights Committee addressed to Mexico, Guatemala and Venezuela, the link between the conditions of street children and their vulnerability to trafficking was established.¹⁰¹

¹⁰⁰ See International Covenant on Civil and Political Rights art. 3, 6-7, Mar. 23, 1976, 999 U.N.T.S. 171 (equality is discussed in article 3; life in article 6; and torture and cruel, inhuman, or degrading treatment or punishment is discussed in article 7); see also Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development*, U.N. Doc. A/HRC/7/3 (Jan. 15, 2008) (by Manfred Nowak) (establishing human trafficking of women as falling within the mandate of the U.N. Special Rapporteur on Torture).

¹⁰¹ See U.N. Human Rights Committee (UNHRC), Concluding Observation of the Human Rights Committee: Mexico, ¶ 14, U.N. Doc. CCPR/C/79/Add.109 (Jul. 27, 1999); UNHRC, *Concluding Observation of the Human Rights Committee: Guate-*

The International Covenant on Economic, Social and Cultural Rights (ICESCR) refers in Article 6.1 to the right to freely choose work.¹⁰² For female victims of begging, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is further applicable.¹⁰³

As many victims of begging are children, the Convention on the Rights of the Child (CRC) plays a pivotal role in the protection of beggar victims of trafficking. The CRC is widely considered as the main instrument that addresses child trafficking.¹⁰⁴ Article 35 states, “State Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”¹⁰⁵

Additional protection provisions are in Articles 3 (the best interests of the child), 11 (cooperation against illicit transfers of children), 12 (expression of views), 19 (protection from all forms of physical and mental violence, abuse and exploitation), 20 (special assistance and protection for children deprived of family environment), 32 (economic exploitation), 34 (protection from sexual exploitation and abuse), 33 (protection from involvement in illicit production and trafficking of drugs), and 39 (recovery and social reintegration of victims of abuse and exploitation). Article 36 addresses any other form of exploitation threatening the child, and organized begging can also be considered to fall within that scope: “State Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.”¹⁰⁶ In General Comment Number 6 on separated and unaccompanied children,¹⁰⁷ the Committee on the Rights of

mala, ¶ 26, U.N. Doc. CCPR/CO/72/GTM/Add.1 (Sept. 19, 2003); UNHRC, *Concluding Observation of the Human Rights Committee: Venezuela*, ¶ 24, U.N. Doc. CPR/CO/71/VEN (Apr. 6, 2001).

¹⁰² See International Covenant on Economic, Social and Cultural Rights art. 8-10, 13, Jan. 3, 1976, 993 U.N.T.S. 3. Article 8.1 concerns the right to form unions, Article 9 social security and Article 13 education. Especially relevant to child begging is article 10.3 (protection of children from exploitation).

¹⁰³ U.N. Convention on the Elimination of All Forms of Discrimination against Women art. 11, Sept. 3, 1981, 1249 U.N.T.S. 13.

¹⁰⁴ See Special Rapporteur on trafficking in persons, especially women and children, *supra* note 52, at ¶ 20.

¹⁰⁵ Convention on the Rights of the Child, *supra* note 87, at art. 35.

¹⁰⁶ *Id.* at art. 36.

¹⁰⁷ Comm. on the Rights of a Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, ¶ 12-17, 39th Sess., U.N. Doc. CRC/GC/2005/6 (Sept. 1, 2005) [hereinafter General Comment No. 6].

the Child emphasized the increase in child trafficking, restated states' obligations to guarantee protection to trafficked children, and warned of the danger of re-trafficking. Like the Human Rights Committee, it established that "there is often a link between trafficking and the situation of separated and unaccompanied children."¹⁰⁸

If begging is considered a form of forced labor, ILO Conventions Numbers 29 and 105 regarding forced and compulsory labor are instrumental.¹⁰⁹ ILO Conventions Number 138 on the Minimum Age for Admission to Employment¹¹⁰ and Number 182 on the Worst Forms of Child Labor provide additional protection.¹¹¹ The latter instrument is the broadest international instrument covering exploitation of children, together with the CRC. The worst forms of child labor do not explicitly include begging but include the larger categories, which could encompass forced begging, such as trafficking of children, forced or compulsory labor, procuring or offering of a child for illicit activities, or work likely to harm the health, safety or morals of children.¹¹²

In an Optional Protocol to the CRC, sale of children is defined as "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration."¹¹³

¹⁰⁸ *Id.* at ¶ 23.

¹⁰⁹ See sources accompanying *supra* note 75.

¹¹⁰ Int'l Labour Org., Convention on the Minimum Age for Admission to Employment, June 26, 1973, No. 138, 1015 U.N.T.S. 297.

¹¹¹ Int'l Labour Org., Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Art. 3, 1999, No. 182, 2133 U.N.T.S. 161.

¹¹² Convention 182 defines the worst forms of child labor as follows:

all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. *Id.*

¹¹³ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography art. 2(a), Jan. 18, 2002, 2171 U.N.T.S. 227.

The link to child trafficking was underlined by the Special Rapporteur on the sale of children, who recognized that “in most cases where there is sale there is also trafficking involved.”¹¹⁴

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families addresses slavery and forced and compulsory labor, and the efforts to be taken to combat dissemination of false and misleading information.¹¹⁵ Unfortunately, the major trafficking destination countries, including Western European countries, are not parties to this convention.¹¹⁶

Reference to refugee law should also be made here, and especially to the principle of *non-refoulement*. The principle was affirmed by the Committee of the Rights of the Child with regard to the rights of trafficked children.¹¹⁷

Finally, on the regional level, the Council of Europe Convention on Action against Trafficking in Human Beings is one of the most sophisticated instruments to fight trafficking in persons. Article 4 of the European Convention on Human Rights¹¹⁸ could also be considered to offer protection to the rights of trafficking victims. Although not specifically referring to trafficking in persons, the European Court of Human Rights in *Siliadin v. France* established protection of the rights of victims under Article 4 on slavery, servitude and forced labor.¹¹⁹

IV. TOWARDS A VICTIMS-CENTERED HUMAN RIGHTS APPROACH

One of the most important efforts to be undertaken with regard to trafficking for begging relates to the protection of begging victims and the establishment of their rights. Within the discourse of trafficking in person at large, there is an indication that policy and law should be moving towards a victims-centered approach.¹²⁰ The Council of Europe Convention, for ex-

¹¹⁴ Special Rapporteur on the sale of children, child prostitution and child pornography, *supra* note 65, at ¶ 5.

¹¹⁵ G.A. Res 45/168, art. 11, 68, U.N. Doc. A/RES/45/158 (Dec. 18, 1990). Article 11 addresses slavery and article 68 measures the dissemination of misleading information. *Id.*

¹¹⁶ *Id.*

¹¹⁷ See General Comment No 6, *supra* note 107, at ¶¶ 26-28.

¹¹⁸ Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and 14 art. 4, Jun. 1, 2010, C.E.T.S. No. 194.

¹¹⁹ *Siliadin v. France*, No. 73316/01, Eur. Ct. H.R. (2005).

¹²⁰ See, e.g., SCARPA, *supra* note 55, at 198-201; UNICEF & TERRE DES HOMMES, *supra* note 21.

ample, presents a positive development.¹²¹ Nevertheless, a pure law enforcement approach to the problem has been prevalent until recently.

The U.N. Trafficking Protocol is adopted within the framework of international efforts to fight against transnational organized crime. Thus, a criminal law enforcement approach with regard to punishment of traffickers and suppression of crime is inherent in the U.N. Protocol from its inception. As human rights lawyer Joan Fitzpatrick argues, the thrust of the U.N. Trafficking Protocol is to “increase information sharing and mutual criminal assistance among states in order to identify and prosecute the organized crime groups engaged in trafficking.”¹²²

It is generally considered that a victims-centered approach to trafficking in persons is still largely lacking. With regard to the Protocol, the Special Rapporteur on violence against women stated that “the first modern international instrument on trafficking is being elaborated in the context of crime control, rather than with a focus on human rights,” this being “a failure of the international human rights community to fulfil its commitment to protect the human rights of women.”¹²³ In 2004, the U.N. Special Rapporteur on trafficking in person underlined that trafficking is still seen as a “law and order problem” with no focus on human rights.¹²⁴

Resolution 1337 of the Parliamentary Assembly of the Council of Europe identified repressive migration policies in destination countries and urged for initiatives focused on the human rights approach to trafficking in persons.¹²⁵ During the drafting process of the Council of Europe Convention, the law enforcement approach to illegal immigration was criticized by the Assembly:

8. [The Assembly. . .] regrets the fact that the current wording of the draft is far from guaranteeing effective and sufficient protection of victims, contrary to the objective pursued. The Assembly has the impression that the Council

¹²¹ Council of Europe Convention, *supra* note 8, at art. 5 (referring to the promotion of a human-rights based and child-sensitive approach).

¹²² Joan Fitzpatrick, *Trafficking as a Human Rights Violation: The Complex Intersection of Legal Frameworks for Conceptualizing and Combating Trafficking*, 24 MICH. J. INT’L LAW 1143, 1166 (2003).

¹²³ Special Rapporteur on violence against women, its causes and consequences, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, ¶ 7, U.N. Doc E/CN.4/2000/68 (Feb. 29, 2000) (by Radhika Coomaraswamy).

¹²⁴ Special Rapporteur on trafficking in persons, especially women and children, *supra* note 52, at ¶ 10.

¹²⁵ EUR. PARL. ASS. RES. 1337, ¶ 4 (June 25, 2003).

of Europe member states are not willing to make the distinction between illegal migration and trafficking in human beings. The measures for the protection of victims, which should be at the heart of the convention, have become weaker in the course of the negotiations. The current draft convention gives the impression of reflecting the member states' desire to protect themselves from illegal migration rather than of accepting that trafficking in human beings is a crime and that its victims must be protected. In its current form, the convention thus loses much of its force and ends up not being very convincing.¹²⁶

In the European context, Scarpa argues that the most important EU legislative acts on trafficking in persons do not have victims' human rights "as their ultimate goal,"¹²⁷ despite that the more recent EU Council Directive 2005/c 311/01 states that "the EU recognises the importance of taking forward a human rights and victims-centered approach."¹²⁸ Mark Dottridge's report highlights "the need to ensure that child trafficking is viewed in the broadest possible manner and addressed within a child rights framework."¹²⁹ Inglis,¹³⁰ Marks and Clapham,¹³¹ and UNICEF and Terre des Hommes¹³² all call for adopting a victims-centered human rights approach.

With that in the background, the following sections outline three of the central principles of the victims-centered approach and argue for a paradigm shift, which should also be applicable to the treatment of begging victims.

¹²⁶ EUR. PARL. ASS. OPINION 253, ¶ 8 (Jan. 26, 2005), available at <http://assembly.coe.int/Documents/AdoptedText/ta05/EOPI253.htm>.

¹²⁷ SCARPA, *supra* note 55, at 171.

¹²⁸ Council Directive 311/01, art. 3, 2005 O.J. (C311) 1 (EU). Scarpa acknowledges that the "recent European Commission Communication and the Council Action Plan on trafficking in persons . . . adopted a human rights centred approach." SCARPA, *supra* note 55, at 171.

¹²⁹ DOTTRIDGE, *supra* note 30, at v; see also Barri Flowers, *The Sex Trade Industry's Worldwide Exploitation of Children*, 575 ANNALS AM. ACAD. POL. & SOC. SCI. 147, 155 (2001).

¹³⁰ Shelly Inglis, *Expanding International and National Protection Against Trafficking for Forced Labor Using a Human Rights Framework*, 7 BUFF. HUM. RTS. L. REV. 55, 100-02 (2001).

¹³¹ SUSAN MARKS & ANDREW CLAPHAM, INTERNATIONAL HUMAN RIGHTS LEXICON 411-29 (2005).

¹³² UNICEF & TERRE DES HOMMES, *supra* note 21, at 13.

A. *The Victims-Centered Approach and its Principles*

Tal Raviv, a legal scholar specializing in issues relating to trafficking in persons, considers that under the U.N. Protocol, states undertake obligations “not to act in a way that results in a human rights violation, and [to] prevent private actors present in its territory from acting in such a way.”¹³³ The Council of Europe Convention goes further and offers more extensive protection than the U.N. Protocol; to date, it is the most sophisticated legal instrument on trafficking and especially the protection of trafficking victims.¹³⁴ Apart from the convention, a number of international soft law instruments are focused on improving victims’ protection.¹³⁵

The victims-centered human rights approach guarantees the protection of, assistance to, and rights of trafficking victims. It can be summarized as follows: “The persons concerned, their needs and rights shall be at the centre of . . . policy against human trafficking. This means first and foremost a clear commitment . . . to follow a *human rights centered approach*”¹³⁶

The victims-centered approach entails putting the human person in the center of efforts. Three main principles are outlined here: 1) the principle of non-punishment of trafficking victims; 2) the principle of non-discrimination; and 3) the possibility of obtaining a residence permit in the destination country. These principles are discussed in turn and applied to begging victims’ rights.

B. *The Principle of Non-punishment*

The non-punishment provision in the Council of Europe Convention states: “Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on vic-

¹³³ Tal Raviv, *International Trafficking in Persons: A Focus on Women and Children – The Current Situation and the Recent International Legal Response*, 9 CARDOZO WOMEN’S L.J. 659, 667 (2003).

¹³⁴ Council of Europe Convention, *supra* note 8, at art. 10-17, 28.

¹³⁵ See U.N. Econ. & Soc. Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, U.N. Doc. E/2002/68/Add.1 (May 20, 2002); UNICEF, *GUIDELINES ON THE PROTECTIONS OF CHILD VICTIMS OF TRAFFICKING* (2006); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, U.N. Doc. A/RES/40/30 (Nov. 29, 1985).

¹³⁶ Memorandum from the European Commission: *Fighting trafficking in human beings – an integrated approach and proposals for an action plan* Brussels (Oct. 19, 2005), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/05/381&format=HTML>.

tims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”¹³⁷

According to the U.S. Trafficking Victims Protection Act of 2000, “[v]ictims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.”¹³⁸ In addition, the U.S. TIP Report assesses the adequacy of efforts by governments around the world to combat trafficking in persons according to criteria including whether trafficking victims are fined, jailed, incarcerated or expediently deported in the particular country.¹³⁹

In Dottridge’s report, out of the twelve interviewed children who had contacted the authorities, four were referred to a shelter, four were immediately repatriated, four were held in a police station for days, two were placed in a detention centre for three months, and in one case, it took *a full year* before the trafficked child was referred for assistance.¹⁴⁰ The only boy in the study was arrested as a juvenile delinquent upon contact with the authorities in the destination country, and spent time in prison.¹⁴¹ In Thailand, many children, young boys in particular, are arrested and deported.¹⁴² As noted in a UNICEF Report:

Under the administrative arrangement that exists between countries in the Commonwealth of Independent States (CIS), the Volgograd agreement, children found earning money in the streets of a country other than their own are held in juvenile detention centres and transported back to their own countries. However, little attention is paid to finding out whether they have been trafficked.¹⁴³

¹³⁷ Council of Europe Convention, *supra* note 8, at art. 26.

¹³⁸ Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7101(b)(19) (2006).

¹³⁹ U.S. TIP REPORT, *supra* note 11.

¹⁴⁰ Dottridge, *supra* note 30, at 36.

¹⁴¹ *Id.* at 22.

¹⁴² ARCPPT, *supra* note 1, at 15.

¹⁴³ UNICEF & TERRE DES HOMMES, *supra* note 21, at 26 (discussing the Volgograd agreement in which child caught begging on the streets of a foreign country will be held in a juvenile detention center and transported back to their home country).

Authorities in many cases do not identify begging victims properly and mistreat them. The above examples are all contrary to the principle of non-punishment.

The non-punishment model presented here exemplifies the progressive thinking that if a trafficking-related crime is committed by the victim as a consequence of being trafficked the legal system must exonerate that crime.¹⁴⁴ The general non-punishment model should be tested with regard to begging victims by posing two questions. First, is begging a crime? Secondly, if it is a crime, can it be proven that the unlawful acts committed are a result of being trafficked?

Legal systems around the globe treat begging differently. A review is provided in Part 6. Here, the discussion on begging as a crime is approached conceptually. On a philosophical level the activity can be considered legal or illegal, tolerable or intolerable, necessary or demoralizing, depending on the theoretical lens one considers. There is one recurring question underlying the debate: as with prostitution, should begging be considered a crime, or just another type of economic activity?

An argument for banning begging is grounded in public order. From the point of view of city planning and tourism, beggars on the street are not an aesthetically pleasing sight, and might create the impression of poverty and disorder. Such an atmosphere is neither favorable for local citizens nor foreign tourists. In response, one could pose the question: is being “annoying” enough of a reason to make a practice unlawful? It could be argued that such rationale balances the little discomfort that the well-off would encounter against the fact that the beggar has nothing to eat, and that siding with the aesthetic pleasure and comfort of the well-off majority is at the expense of the unfortunate ones who have no other choice but to beg.

It could be argued that one should obtain only what one earns through his or her own efforts. Asking others for money is immoral, and the activity should be criminalized. Following that flawed rationale, however, would mean that charitable organizations, student scholarships, and even state social assistance services are illegal institutions.

From an economic point of view, begging is an illicit activity because no tax is being paid on the accumulated revenues. Such an argument, however, could easily be classified as heartless by human rights advocates. Furthermore, there are examples of revenues that ones in need receive that are not subject to taxation, such as student scholarships and some cultural or clean technology activities.

¹⁴⁴ See, e.g., U.N. OFFICE ON DRUGS & CRIME, MODEL LAW AGAINST TRAFFICKING IN PERSONS 40 (2009).

According to cultural relativism,¹⁴⁵ if begging is a part of the lifestyle, culture, and family of Roma and nomadic communities, who constitute a share of the beggars in Europe, then the law should be sensitive to that minority group's distinct culture. On the other hand, the law should favor the individual's rights and well-being, and protect one from crimes even when such interventions clash with the cultural norms of that individual's group.¹⁴⁶ "Customs, traditions, common practices, religious imperatives and group or collective rights may not take precedence over the best interest of the child [or the adult]. This is an important principle to keep in mind, especially when trafficked children come from a particular ethnic or religious group."¹⁴⁷

From a development perspective, it could be argued that in developing countries where due to lack of other opportunities, disadvantaged groups depend on the income from begging as a means of basic sustenance. Thus, the activity should not be criminalized until those groups attain opportunities for alternative means of sustenance. On the other hand, begging creates a vicious cycle, especially when children are considered, as they cannot attend school. Begging is an activity which "handicaps"¹⁴⁸ one's future, rather than leading to the "way out."

A human rights perspective would analyze whether begging violates the human rights of any of the actors involved. Part 6 of this study proposes the "inherently harmful" test. It is suggested that this legal test could be used when assessing whether begging ought to be criminalized, decriminalized, or legalized.

Irrespective of whether begging is considered a crime or not, it is imperative that begging victims are not treated as criminals even in the

¹⁴⁵ Cultural relativism is the belief system that certain practices should be understood only in terms of that individual's own culture. This principle was established by Franz Boas in the twentieth century. See, e.g., MARIA BAGHRAMIAN, RELATIVISM 67 (2004).

¹⁴⁶ For the sake of intellectual rigor, the cultural relativism argument merits a more careful examination, going beyond that *prima facie* rejection of culturally relativist claims. However, to examine that in detail is beyond the scope of the present study. Future research on the topic is encouraged.

¹⁴⁷ UNICEF & TERRE DES HOMMES, *supra* note 21, at 25.

¹⁴⁸ See Terre des Hommes, *New Campaign "Begging Handicaps my Future,"* Child Protection in Eur. (Aug. 4, 2008), <http://www.tdh-childprotection.org/news/new-campaign-begging-handicaps-my-future> (discussing the campaign launched by Terre des Hommes and the Organization for Security and Co-operation in Europe that aims to raise awareness for how giving money to begging children feeds the vicious cycle of exploitation and trafficking in Kosovo).

legal systems which criminalize begging. The Special Rapporteur on the sale of children reiterates that “as with prostitution, where begging is carried out by way of an organized syndicate, the minors involved should only ever be treated as the victims and never [as] the perpetrators.”¹⁴⁹ This principle of non-punishment of trafficking victims for their involvement in unlawful activities should be applied not only with regard to minors, but with regard to adults as well.

Secondly, even if the activity of begging *per se* is not considered criminal, it might be related to a secondary crime that arises from the act of trafficking. Like victims trafficked for prostitution, begging involving foreigners and across borders might be violating immigration laws with illegal entry¹⁵⁰ and working without a valid permit.

The Explanatory Report to the Council of Europe Convention provides some guidance:

[T]he requirement that victims have been compelled to be involved in unlawful activities shall be understood as comprising, at a minimum, victims that have been subject to any of the illicit means referred to in Article 4 [such as threat or use of force, coercion, abduction, etc.], when such involvement results from compulsion.¹⁵¹

It should follow that in the European context being compelled is already contained in the status of the individual as a trafficking victim for the particular activity concerned. If one is already a trafficking victim, the means that prove lack of consent are already proven. It should also follow that a minor should not have to prove having been compelled in order to be exonerated from punishment for activities that are considered part of the “trafficking process.”

The factual circumstances should be reviewed on a case-by-case basis. Whether a victim is considered to have been compelled also largely

¹⁴⁹ Special Rapporteur on the sale of children, *supra* note 65, at ¶ 131.

¹⁵⁰ However, with the enlargement of the EU, the illegal entry issue becomes increasingly less important. Groups of Romanian beggars in EU countries, for example, do not violate migration laws by entering the country.

¹⁵¹ Council of Europe Convention, *supra* note 8, at Explanatory Report ¶ 273 (referring to article 4 of the Council of Europe Convention Against Trafficking in Human Beings).

depends on how national legislation and jurisprudence treat the definition of compulsion.¹⁵²

C. *The Principle of Non-discrimination*

Article 3 of the Council of Europe Convention defines non-discrimination:

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.¹⁵³

The non-discrimination principle has proven difficult to implement due to lack of political will.¹⁵⁴ States still discriminate on the basis of nationality. Dottridge's report cites a child victim who was sent back to her home country with the words: "You go to the police in your town and solve your problems there."¹⁵⁵ Such a treatment goes against the non-discrimination principle, as it distinguishes on the basis of national origin. As pointed out earlier,¹⁵⁶ in some cases, boys, as opposed to girls, are discriminated against on the basis of sex by being arrested and/or jailed.

According to UNICEF, the recognition of the principle of non-discrimination – i.e. that all children are entitled to the same protection irrespective of "status, nationality, race, sex, language, religion, ethnic or social origin, birth or other status"¹⁵⁷ – means that states must guarantee the same protection to begging children citizens and non-citizens alike. An example of a good practice is the trafficking victims protection system of the United States, which provides benefits to non-U.S. citizen-victims of trafficking,

¹⁵² In the jurisdiction of the United States, see *United States v. Veerapool*, 312 F.3d 1128, 1130 (9th Cir. 2002) (referring to coercion through legal means as including withholding of passport).

¹⁵³ Council of Europe Convention, *supra* note 8, at art. 3.

¹⁵⁴ Although it must be admitted that this lack of political will can prove difficult if not impossible to illustrate, no government has made fighting human trafficking a primary goal. Therefore, lack of political will may only be inferred from lack of corresponding state actions.

¹⁵⁵ Dottridge, *supra* note 30, at 32.

¹⁵⁶ See *supra* Part IV.B; see also ARCPPT, *supra* note 1, at 15.

¹⁵⁷ UNICEF REFERENCE GUIDE, *supra* note 96, at 147.

which are almost identical to the benefits provided to U.S. citizen-victims.¹⁵⁸

Apart from the above-mentioned discriminatory grounds, the U.N. Protocol Legislative Guide underlines that “the Trafficking in Persons Protocol also applies to the protection of victims regardless of transnationality and involvement of an organized criminal group.”¹⁵⁹ When granting assistance, governments may not discriminate between victims of internal trafficking and victims of cross-border trafficking, nor between victims trafficked by organized criminal groups and victims trafficked in a sporadic, non-organized manner.¹⁶⁰

Finally, discrimination can also occur on the basis of willingness to cooperate – an element not mentioned in any instrument as a discriminatory ground, *as such*. Assistance and protection are sometimes offered only to those victims who agree to cooperate with law enforcement agencies and to testify against their traffickers – what has been largely criticized for being an EU “reward system” for “useful victims.”¹⁶¹ The trend is nevertheless changing, which is an indication that the EU might be moving closer to a victims-centered approach, although progress is achieved slowly.¹⁶² Positive change in the treatment of trafficking victims should always be applied to begging victims, as well.

D. The Possibility to Obtain a Residence Permit

The U.N. Protocol does not oblige states to grant a residence permit to victims of trafficking. In the European context, during the drafting of the Council of Europe Convention the Assembly proposed to include a provision on a residence permit of at least six months.¹⁶³ The proposal was not accepted, perhaps for fear of illegal immigration.¹⁶⁴

¹⁵⁸ E-mail communication from U.S. Department of Justice Trafficking in Persons Unit, Victims Protection Div., Table of Benefits.

¹⁵⁹ Legislative Guide, *supra* note 3, at ¶ 25.

¹⁶⁰ SCARPA, *supra* note 55, at 62.

¹⁶¹ *Id.* at 188.

¹⁶² For a comparison between earlier EU Council Framework Decision 2002/629/JHA and the later EU Council Directive 2004/81/EC, see *id.* at ch. 5.

¹⁶³ Eur. Parl. Ass’n, Draft Council of Europe Convention on Trafficking in Human Beings, Opinion No. 253, ¶ 14 (Jan. 26, 2005).

¹⁶⁴ In a similar vein, although according to Art. 12 and 16 of the Council of Europe Convention victims shall have access to the labor market, the Explanatory Report clarifies that “the Convention *does not establish an actual right of access to the labour market*, vocational training and education. It is for the Parties to decide the

However, good legal practices can be identified in national legislation. Article 18 of the Italian Immigration Law 286 provides for a special residence permit, regardless of cooperation with local authorities. The prerequisite for the permit is a situation of danger. It also grants access to social services and education, social security, and the possibility to apply for a work permit. It is valid for six months, with the possibility of renewal.¹⁶⁵

The U.S. T-visa¹⁶⁶ provides the possibility for 5,000 victims of trafficking to apply and obtain residence permits every year, although victims must have complied with any reasonable request in investigations.¹⁶⁷ Traditional asylum law might be an alternative to the T-visa,¹⁶⁸ and also according to international asylum law when a human rights framework is applied to it.¹⁶⁹ It has also been suggested that trafficking victims in the United States may even qualify for assistance and residence permit with approval by the U.S. Agency for International Development (USAID) when a T-visa application has been denied.¹⁷⁰

Within the European context, it must be mentioned that different conditions apply to minors. Article 10 of European Council Directive of 2004 refers to the principle of the best interests of the child, according to which the reflection period may be extended and minor non-nationals shall have access to education in the same way nationals do.¹⁷¹ This is an especially relevant provision for the protection of child begging victims in EU countries.

With regard to adults, however, the Directive provides that a residence permit could be denied for “reasons relating to public policy” to any-

conditions governing access.” (emphasis added). Council of Europe Convention, *supra* note 8, at Explanatory Report ¶ 166.

¹⁶⁵ D.Lgs. 25 luglio 1998 n. 286 (It.); *see also* SCARPA, *supra* note 55, at 97.

¹⁶⁶ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, I-914, Application for T Non-immigrant Status, OMB No. 1615-0099, (expires Mar. 31, 2011).

¹⁶⁷ But for a critical view on the “extreme hardship” test of the T-visa, *see generally* Jennifer Wetmore, *The New T-visa: Is the Higher Extreme Hardship Standard Too High for Bona Fide Trafficking Victims?*, 9 *NEW ENG. J. INT’L & COMP. L.* 159 (2003) (arguing that the standard for bona fide victims of trafficking is higher than that for refugees and asylum seekers).

¹⁶⁸ *See, e.g.*, Tala Hartsough, Comment, *Asylum for Trafficked Women: Escape Strategies Beyond the T Visa*, 13 *HASTINGS WOMEN’S L.J.* 77, 102-16 (2002).

¹⁶⁹ *See generally* Jacqueline Bhabha, *Internationalist Gatekeepers? The Tension Between Asylum Advocacy and Human Rights*, 15 *HARV. HUM. RTS. J.* 155 (2002).

¹⁷⁰ Enck, *supra* note 6, at 379-80.

¹⁷¹ Council Directive 2004/81, art. 10, 2004 O.J. (L 261) 22 (EC).

one, including trafficking victims who cooperate with the authorities.¹⁷² Public policy could easily encompass restrictive immigration policies.

There is a general tendency to view trafficking victims as criminals to be deported; this is even more evident in the case of beggars, as opposed to victims of other forms of trafficking. Already existing provisions should be effectively applied with regard to begging victims. Additionally, begging victims' identification procedures should be developed. Furthermore, when repatriation of children beggars is concerned, there must be an individual risk assessment and care on case-by-case basis, taking into consideration the child's best interests and views.¹⁷³ Interviews with child trafficking victims in South Eastern Europe revealed that most children felt their concerns were not taken into consideration with regard to repatriation and most did not know what would happen to them.¹⁷⁴

Restrictive migration policies and preoccupation with the punishment of traffickers, at the expense of protection of victims, are obstacles to effective protection and the granting of residence permits for begging victims. With migration challenges facing destination countries, much more effort would be necessary to make political actors grant victims the rights they are entitled to.

V. ADDRESSING THE DEMAND FOR TRAFFICKING FOR BEGGING: THE PSYCHOLOGICAL APPROACH

This final section focuses on the specific efforts that should be undertaken to combat trafficking in persons for the purpose of begging. Trafficking research tends to examine the three Ps: protection, prosecution, and prevention.¹⁷⁵ When it comes to prevention, there is a tendency to identify and address market forces labelled as push and pull factors, or supply and demand sides.¹⁷⁶

The supply side with regard to child begging has already been addressed in the literature to some extent. One identified root cause is the

¹⁷² *Id.* at art. 6(4).

¹⁷³ Convention on the Rights of the Child, *supra* note 87, at art. 3, 12.

¹⁷⁴ Dottridge, *supra* note 30, at 13.

¹⁷⁵ See generally Comm. on the Rights of the Child, *General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted by States Parties*, U.N. Doc. CRC/C/58 (Nov. 20, 1996); see also Special Rapporteur on Specific Groups and Individuals, *Migrant Workers*, ¶ 44, U.N. Doc. E/CN.4/2005/85 (Dec. 27, 2004) (by Gabriela Rodriguez Pizarro).

¹⁷⁶ See generally Alex Y. Seita, *The Role of Market Forces in Transnational Violence*, 60 ALB. L. REV. 635 (1997).

culturally defined “hierarchical undervaluing of youth.”¹⁷⁷ For the South Eastern European region, Dottridge’s report cites poverty, domestic violence, abuse, and parental alcohol addiction as root causes for child trafficking, as many of the interviewed children responded to family problems and violence by leaving home, which in turn exposed them to the risks of being trafficked.¹⁷⁸ Education seems to be a key concept in addressing the supply of children trafficked, as the study discovered that “[a]ll six respondents who had completed compulsory schooling and continued with their education had not left home on their own initiative, but were abducted by traffickers or others who abused them.”¹⁷⁹ The Dottridge report proposes ways to tackle trafficking, which include providing children with information, introducing “life skills” and critical thinking into the school curriculum, urging children to stay in school, monitoring drop-out instances, creating safe economic opportunities, and reducing domestic violence.¹⁸⁰

Limited research has focused on the demand related to begging. The following sections intend to contribute to this gap in literature, to define and examine the demand for begging, and propose ways to eliminate it.

A. *Addressing the Demand through Exposing*

In 2006, the U.N. Special Rapporteur on trafficking in persons stated:

The definition of demand, which is an economic term, can be adapted to the context of trafficking to describe it as the desire “for labor that is exploitative or services which breach the human rights of the person delivering those services.” It includes demand for sexual exploitation; for cheap labour and domestic workers; for organ removal and sale; for illicit adoption and forced marriages; for criminal activities or begging or for exploitation within the army.¹⁸¹

¹⁷⁷ See, e.g., ACPPT, *supra* note 1, at 18.

¹⁷⁸ Dottridge, *supra* note 30, at v.

¹⁷⁹ *Id.* at 12. However, it should be recognized that the ability to attend school might be an intermediate variable influenced by the identified root causes including poverty.

¹⁸⁰ *Id.* at 39-44.

¹⁸¹ Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶ 51, U.N. Doc. A/HRC/10/16 (Feb. 20, 2009) (by Joy Ngozi Ezeilo).

The U.N. Toolkit to Combat Trafficking in Persons defines demand as the desire “for labor that is exploitative or services which breach the human rights of the person delivering those services.”¹⁸² As the U.N. Special Rapporteur on trafficking in persons indicated, “demand must be understood expansively, as any act that fosters any form of exploitation that, in turn, leads to trafficking.”¹⁸³

There is specific demand for children’s economic exploitation – cheap labor, begging and pickpocketing.¹⁸⁴ However, in the broader reading of demand, certain behaviors such as giving money to child beggars can also “motivate traffickers and controllers to demand children and not adults for begging.”¹⁸⁵ Going a step further, there is a thus far unexamined “consumer-oriented” demand for begging, which fuels the illicit activity. It is necessary to understand the need, which is fulfilled by donating money to beggars, and especially child beggars. Psychological theories within social psychology and evolutionary psychology could be instructive.

General sociological theories explain altruism as the selfless concern for the well-being of others.¹⁸⁶ Under that theory, when applied to begging, it should follow that simple exposure to the truth that the beggar is actually not receiving the money should be sufficient to interrupt the chain. A survey in Albania of 400 respondents showed that only fourteen percent of those surveyed realized that the money collected by begging children ends up in traffickers’ pockets.¹⁸⁷ Exposing the harmful and fraudulent nature of the activity would eliminate the “feel good” effect and defeat the conviction that one is actually helping the beggar. Exposing would also convince individuals that by giving money they are in fact contributing to the suffering and exploitation of the forced beggars by generating revenues for the trafficking pimps and thus fuelling the illicit activity. Worachet

¹⁸² U.N. OFFICE ON DRUGS & CRIME, TOOLKIT TO COMBAT TRAFFICKING IN PERSONS at 457, U.N. Sales No. E.08.V.14 (2008).

¹⁸³ Special Rapporteur on trafficking in persons, especially women and children, *supra* note 52, at ¶ 52.

¹⁸⁴ EUR. COMM., REPORT OF THE EXPERT GROUP ON TRAFFICKING IN HUMAN BEINGS 67-68 (DEC. 22, 2004).

¹⁸⁵ UNICEF & TERRE DES HOMMES, *supra* note 21, at 23.

¹⁸⁶ Alfred Comte is credited with coining the term “altruism,” which he juxtaposed with egoism. STEPHEN G. POST *et al.*, ALTRUISM AND ALTRUISTIC LOVE: SCIENCE, PHILOSOPHY, AND RELIGION IN DIALOGUE 90 (2002). Many critics, however, believe that there is always some sort of self-serving motivation in the desire to help others. *Id.* I rely on Comte’s conception of altruism as disinterested and selfless concern for the well-being of others. *Id.*

¹⁸⁷ Tapia, *supra* note 32.

Khieochan, head of the Mirror Foundation's Stop Child Begging Project in Thailand stated that it is necessary to educate the public about giving money to beggars: "[i]nstead of helping the children, giving money only contributes to the problem."¹⁸⁸ Influencing the public who donates money to beggars has already been identified as a strategy by an NGO in Greece, as well. Greek NGO ARSIS concluded that the best interest of the child meant cutting the supply of money, which is what motivates traffickers, and informing the public that the begging children were actually exploited and that they were better off without donations.¹⁸⁹ ARSIS's message was: "Don't give money to children in the streets. You don't help children in the streets by giving them money."¹⁹⁰ In the case of Albanians trafficked to beg in Greece, it has been reported that the number of trafficked beggars has decreased and some effect could be attributed to the public information campaigns.¹⁹¹

Within evolutionary psychology, the "selfish gene" theory has gained prominence. It explains altruism in terms of individual sacrifice to protect the lives of kin and community, because in this way the individual acts in the interest of, and to protect their own genes.¹⁹² If applied to begging, it follows that helping the needy and young ones within one's own circle/community increases the chances of the community's survival and of one's own genes. That might shed some light into why passersby give more money to children than they do to adults, and more money to handicapped and unhealthy children rather than healthy ones. By donating, they identify the young ones who are at highest death risk, and try to improve their survival chances. Also, small communities should be more prone to donating to beggars, as the smaller the community, the higher the chance that one is protecting own genes by giving. Following that theory, men should also be more likely than women to donate to beggars. Exposing the true nature of the activity through informational campaigns contributes to breaking the cycle because givers realize they are not helping save the young in the community.

There are limitations to the selfish gene theory. Following the "selfish gene," begging children who seem to belong to the community would receive more than children who seem to be foreigners. As such, the theory cannot explain foreign tourists' altruism towards local children, or locals'

¹⁸⁸ Acad. for Educ. Dev., *supra* note 17.

¹⁸⁹ UNICEF & TERRE DES HOMMES, *supra* note 21, at 61.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² RICHARD DAWKINS, *THE SELFISH GENE* (Oxford University Press 1989).

kindness towards poor migrants who visibly do not come from this community and do not carry the giver's genes.

Social psychology theories can be more instructive in that respect. Giving is explained in that field by reciprocity theories, which could be applicable, as beggars might also provide something in return – not a monetary, but a “feel-good” return. Social comparison theory by Leon Festinger, one of the fathers of social psychology, posits that human beings need to look for reassurance of their own value and achievements by comparing to others.¹⁹³ Giving to beggars who have less underscores that the giver has more. Actual giving is perhaps stronger in activating that process than simply looking at beggars on the street who have less. Actual giving demonstrates to others as well. This is how the feel-good return could be potentially explained.¹⁹⁴

To address and eliminate the feel-good return then, it might not be enough to expose the real chain through which the child is being exploited. In such case, the beggar still has less than the giver, and the social comparison dynamic is not eliminated. The key would be to emphasize that the giver is being cheated in order to bring the giver's self-esteem down and distract from the social comparison dynamic. The “you are being cheated” message should be voiced equally because the “you are not helping them” message does not eliminate all psychological demand that giving to beggars fulfils. “You are being cheated” brings self-esteem down rather than up, as the giver feels as a person who is easily cheated by others, and not so much as an individual who owns more than others.

To address public concerns about whether to give because they are unsure if the child is a truly needy child or rather is a trafficked child, the appeal “don't give money” could be substituted with “give food, not money.” Food feeds the child and is of no interest to trafficking pimps. It is likely that food would not be accepted by beggars who are a part of the trafficking ring. The public should be encouraged to offer food and not money to beggars on the street.

Another concern for the well-being of children is that they would be punished by traffickers when they do not bring enough. Here a call must be made between short-term and long-term impact. A campaign in Kosovo reads: “begging handicaps my future” and the public should be educated on this dynamic.¹⁹⁵

¹⁹³ See generally Leon Festinger, *A Theory of Social Comparison Processes*, 7(2) HUMAN RELATIONS 117 (1954).

¹⁹⁴ Actual psychological experiments on that topic are welcome as a way of understanding demand.

¹⁹⁵ *Terre des Hommes*, *supra* note 148.

In conclusion, addressing the demand through exposing is a cost-effective strategy. Strategies addressing the supply side suggest improvement of services and schools, and creation of economic opportunities, all of which require funding. Instead, addressing the demand for begging requires *not* giving money,¹⁹⁶ which could be more easily achieved in less economically fortunate countries and communities.

B. The Swedish Model of Addressing Demand

In this final section, the Swedish model¹⁹⁷ of addressing the demand for trafficking for sexual exploitation is discussed. A parallel is drawn to forced begging, arguing that like prostitution, begging should be considered inherently harmful, particularly when children are involved, and should be criminalized.

In addition, the analysis opens the question regarding whether “consumers” – i.e. passersby who donate to beggars, could be punished, like persons under Swedish jurisdiction who are punished for the procurement of sexual services. The Swedish law of 1999 punishes the sex client and not the sex trafficking victim in order to discourage demand.¹⁹⁸

The question whether prostitution is inherently harmful fuels the debate on prostitution, defined by the radical feminist approach (which views prostitution as a form of exploitation or slavery),¹⁹⁹ and the liberal feminist pro-choice approach (which views prostitution as a legitimate form of employment).²⁰⁰ That debate dominated the drafting of one of the U.N.

¹⁹⁶ Although it should be admitted that informational campaigns tend to be costly.

¹⁹⁷ See generally Gunilla Ekberg, *The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 10 VIOLENCE AGAINST WOMEN 1187 (2002) (discussing a Swedish law that focuses on punishing “the men who assume the right to purchase persons” for trafficking purposes).

¹⁹⁸ *Id.*

¹⁹⁹ CATHERINE MACKINNON, *WOMEN’S LIVES, MEN’S LAWS* 151-61 (2005) (proffering the view that prostitution is an institution that denies women every imaginable civil right, including the right to liberty, life, and security of person, and freedom from torture, arbitrary arrest, and cruel and inhumane punishment); see also Mary Ann Becker, Book Review, *DEPAUL L. REV.* 1043, 1044 (2003) (reviewing KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY: THE GLOBAL EXPLOITATION OF WOMEN* (1995), which argues that prostitution is a symptom of a male-dominated society).

²⁰⁰ For the view that prostitution is simply another form of employment, see generally Susan Thompson, *Prostitution—A Choice Ignored*, 21 *WOMEN’S RTS. L. REP.*

Protocols²⁰¹ and also defines the three categories of response to prostitution,²⁰² criminalization,²⁰³ legalization,²⁰⁴ and decriminalization,²⁰⁵ although it must be admitted that there are those authors who take the individual case-by-case assessment approach in determining the harm to the individual.²⁰⁶

The three-options approach can be applied to the case of trafficking for the purpose of begging. Part 5 discussed *inter alia* when begging should be considered a crime. To illustrate the variety of approaches that states have taken, it takes only a few examples to prove that begging is treated differently across the globe and indeed presents a controversial issue.

Cambodia has no law on begging, while Thailand just recently proposed legislation that would legalize begging in 2008. The activity is a crime in San Marino where Article 283 condemns begging as a profession and punishment includes imprisonment from two months to one year.²⁰⁷ In

217 (2000); Martha C. Nussbaum, "Whether from Reason or Prejudice": Taking Money for Bodily Services, 27 J. LEG. STUD. 693 (1998).

²⁰¹ See Anne Gallagher, *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis*, 23 HUM. RTS. Q. 975 (2001).

²⁰² For a general overview of the three approaches, see generally Jessica Drexler, *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 (1996).

²⁰³ For the view that prostitution is inherently harmful, even when properly regulated, and, for this reason, should be criminalized, see generally Vendita Carter & Evelina Giobbe, *Duet: Prostitution, Racism and Feminist Discourse*, 10 HASTINGS WOMEN'S L.J. 37 (1999); Belinda Cooper, *Prostitution: A Feminist Analysis*, 11 WOMEN'S RTS. L. REP. 99 (1989).

²⁰⁴ For the view that prostitution is *not* inherently exploitative and if regulated, should serve as a proper income source, see generally Kenneth Shuster, *On the Oldest Profession: A Proposal in Favor of Legalized but Regulated Prostitution*, 5 U. FLA. J.L. & PUB. POL'Y 1 (1992).

²⁰⁵ See Marjorie E. Murphy, *A Question of Procurement: Not Prostitution*, 87 COLUM. L. REV. 1075 (1987) (reviewing ARLENE CARMEN & HOWARD MOODY, *WORKING WOMEN: THE SUBTERRANEAN WORLD OF STREET PROSTITUTION* (1985), which advocates for decriminalization). See generally Sylvia A. Law, *Commercial Sex: Beyond Decriminalization*, 73 S. CAL. L. REV. 523 (2000).

²⁰⁶ See generally Elizabeth Bernstein, *What's Wrong with Prostitution? What's Right with Sex Work? Comparing Markets in Female Sexual Labor*, 10 HASTINGS WOMEN'S L.J. 91 (1999) (discussing radical feminist critiques of prostitution, pro-sex feminist defenses of prostitution, and contextualized feminist approaches to various aspects of the sex-work industry).

²⁰⁷ Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, *supra* note 65, at ¶ 131.

Thailand, the 2008 bill provides for local authorities to issue a begging license if the beggar can prove that he or she is underprivileged, disabled, homeless, or elderly without care.²⁰⁸ At the same time, Thailand amended existing laws and, under the Anti-Trafficking in Persons Act of 2008,²⁰⁹ organ amputation for profit and trafficking for the purpose of begging were criminalized.²¹⁰ The two strategies could go hand in hand: criminalizing trafficking and legalizing the activity itself. Beggars in Thailand believe that the bill licensing their activity would improve their situation, but activists warn on the dangers of legalization.²¹¹

The present research proposes the “Inherently Harmful” test in determining whether begging is a human rights violation in itself. The question could be answered by accessing the extent to which the activity is *inherently* harmful to the human person. One of the main reasons for the variety of legal approaches is that begging could provide a way of sustenance to the truly needy. As this analysis takes the human rights approach to begging, it should be noted also that if begging is removed as a lawful breadwinning activity because it is considered inherently harmful, from a human rights achievement standpoint it could actually be doing more harm than good. With that in mind, the present study nevertheless argues for criminalization of begging as an inherently harmful activity. This view is also confirmed by one of the leading Indian activist fighting against child trafficking and forced begging in India, K.K. Devaraj.²¹²

It is relevant to analyze the harmful effect in terms of human dignity, the right to health, the right to education, and the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, among others. As far as begging is concerned, standing or sitting on the street, especially when it involves young children, could be considered inherently harmful. It exposes children to the dangers of street crime, sexual exploitation, and health problems due to weather conditions. When minors are concerned, it deprives the beggar of dignity and of the opportunity to attend school. The activity and the exploitation should be considered inherently harmful, which presents an additional argument for outlawing the practice (apart from public order concerns). The analysis here draws the line

²⁰⁸ Apinya Wipatayotin, *Government Regulated Begging in Thailand*, BANGKOK POST (Aug. 21, 2008), available at <http://traffickingproject.blogspot.com/2008/08/government-regulated-begging-in.html>.

²⁰⁹ The Anti-Trafficking in Persons Act, B.E. 2551 (2008) (Thail.).

²¹⁰ *Id.*

²¹¹ Wipatayotin, *supra* note 208.

²¹² E-mail communication from K.K. Devaraj, Executive Director of Bombay Teen Challenge (May 14, 2009).

between institutions that may incidentally become a facilitator for exploitation and ones that are inherently harmful. A counter parallel should be drawn with regard to trafficking for the purpose of domestic servitude. Domestic work, such as vacuum cleaning, doing the dishes and laundry, and cooking, is not inherently harmful in itself, but the institution may become a venue for exploitation. It is difficult to regulate domestic servitude, as it happens “behind closed doors,” in private homes. Nevertheless, the activity is not inherently harmful in itself, while street begging is. There are those who even argue that the institution of international domestic servants must be abolished altogether²¹³ in order to combat trafficking in persons for the purpose of domestic servitude. In this context, the banning of street begging, being inherently harmful, proves even less controversial. The rationale is similar to the link between banning prostitution and trafficking for sexual exploitation – to do away with the institutions and venues that make trafficking possible. Trafficked beggars, as established, should not be punished, however. One of the most pressing questions arising in such a context is how to distinguish criminals from victims.

A parallel could be drawn to the Swedish law outlawing the practice of prostitution by punishing the client and protecting the victim, also known as the “Swedish model”²¹⁴ for addressing demand. Punishing the client here means fining passersby who donate to beggars on the street. Perhaps that could be one way to deal with the demand, which creates economic incentives to organize forced begging. As with prostitution, however, it would be difficult to prove that “consumers” know that the beggar is a trafficked person, rather than a hungry child. The logical link, relying on the fact that there are public information campaigns and the individual knew or reasonably should have known, might be too distant to be convincing. In any case, a discussion on punishing the “clients” in the context of begging is encouraged as a part of efforts to criminalize the activity.

VI. CONCLUSION AND RECOMMENDATIONS

The case of trafficking for the purpose of begging presents a challenging topic in light of the international legal definition of trafficking in

²¹³ MOHAMED Y. MATTAR, U.N. OFFICE ON DRUG & CRIME, *COMBATING TRAFFICKING IN PERSONS IN ACCORDANCE WITH THE PRINCIPLES OF ISLAMIC LAW*, available at http://www.unodc.org/documents/human-trafficking/islamic_law_TIP_E_ebook_18_March_2010_V0985841.pdf.

²¹⁴ See generally Gunilla Ekberg, *The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 10 VIOLENCE AGAINST WOMEN 1187 (2004).

persons. Many cases of organized forced begging, nevertheless, fit the international legal standards.

Trafficking for the purpose of begging should be treated as a separate category of trafficking-related exploitation. It should extend beyond the transnational element and organized criminal group element and should encompass a wider range of activities, which include internal trafficking, familial begging, cases where there is only one trafficker, and the trafficker is a parent, and cases where the victim is an adult and the means element could be proven through the more subtle means (psychological coercion or abuse of position of vulnerability).

It is argued here that begging must be criminalized as a deterrent to trafficking for the purpose of begging, and that a distinction between victims and traffickers must be made by punishing the traffickers and protecting the victims. Even if donating to street beggars is not criminalized *per se*, all efforts must be made to discourage giving money to street beggars through targeted campaign messages and emphasizing most of all that the “consumer” is being cheated.

Further research on specific regional case studies, going beyond the South Eastern Europe and Asia regions, is necessary. In addition, more psychological research, including psychological experiments conducted with control groups to establish what conditions prompt donations on the street, should also be helpful in identifying how to address the “demand” and break the exploitative chain.

Additional research on related exploitation forms such as exploitation for petty crime and illicit drug transfer would be instructive on establishing a link with forced begging. The link between sexual exploitation and begging, as two child-victims cases already indicate, is also an avenue for a future research topic.

*Jus cogens*²¹⁵ and universal jurisdiction might be useful concepts with regard to trafficking in persons and could lead to potentially interesting results, if trafficking in persons is viewed as slavery²¹⁶ and therefore a *jus*

²¹⁵ The Vienna Convention on the Law of Treaties of 1969 defines peremptory norms in Art. 53 as: “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” Vienna Convention on the Law of Treaties, art. 53, May 23, 1969, 1155 U.N.T.S. 331.

²¹⁶ See SCARPA, *supra* note 55, at 78-81 (arguing that trafficking in persons is slavery and therefore a *jus cogens* norm); see also Prosecutor v. Kunarac, Kovac and Vukovic, Case Nos. IT-96-23 & IT-96-23/1-A, Judgment, ¶ 154 (Jun. 2, 2002) (discussing universal jurisdiction as arising out of *jus cogens* status).

cogens norm, which in turn triggers universal jurisdiction. More legal research as to how these two norms might apply to trafficking for the purpose of begging is necessary. Furthermore, international and domestic jurisprudence on the issue is much needed and welcome. Hopefully, courts would apply the norms on trafficking in persons with regard to begging as well.

In addition, international agreement on the definition of begging/forced begging is needed to address the multifaceted problem, including its transnational aspects. As this research shows, organized begging is not only a domestic jurisdiction problem; it is a human rights violation and a transitional crime issue. In this light, it is relevant to call for drafting an international convention on begging in general, or alternatively, an additional protocol to the already existing international and regional instruments.²¹⁷

In these final remarks, the discourse goes from a law enforcement approach to a victims-centered approach, and back. Helping to see and reframe the problem as one in which traditional governmental concerns, such as public order, arise in order to facilitate a more rigorous response is also necessary where it is obvious that such framing would be beneficial to trafficked victims. Indicating a way in which government authorities would see more “hard security” implications and, therefore, more incentives to tackle the problem as a priority, is a technique that the human rights advocate should explore for the sake of a victims-centered approach.

In conclusion, Terre des Hommes should be quoted:

There is a tendency for the trafficking debate and related understanding of the phenomenon, to gravitate into a criminal approach on the one hand, and a human rights or protection approach on the other hand. This creates a false impression of opposing perspectives when, in reality, both dimensions are inherently linked and are essential to prevent and combat trafficking.²¹⁸

The choice should not be either/or – human rights must be mainstreamed into the criminal law enforcement foundation. However, when in doubt as to whether a measure would further harm or put the begging victim in danger, primacy should always be given to the begging victim’s rights and well-being. Due to the scope of trafficking for purposes of begging, more public attention must be paid to the problem in order to combat it, and shift the focus away from punishing victims towards a more victims-centered approach.

²¹⁷ See SCARPA, *supra* note 55, at 211 (recommending that an additional protocol on trafficking of human organs be added to the U.N. Protocol).

²¹⁸ UNICEF & TERRE DES HOMMES, *supra* note 21, at 18.

