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THE PAST, PRESENT, AND FUTURE OF INTERNATIONAL TRAFFICKING IN WOMEN FOR PROSTITUTION

By Michelle O. P. Dunbar*

I. Introduction

Prostitution is not a new phenomenon, nor is the trafficking in women a new concept. The global sex industry continues to be a large international business that brings immense economic benefits to everyone involved except the women forced to work as prostitutes.¹ More and more the international issue of trafficking in women has moved to the forefront of international, feminist, human rights, and labor discussions.² Many countries, including the United States, recognize that criminal activities across national borders, in particular the growing problem of sex trafficking in women and children pose a serious problem to the international community.³

An estimated four million people throughout the world are trafficked each year.⁴ This large number is a result of the rapidly expanding global sex market that has taken on new forms including sex tourism, the mail order bride trade, pornography, and the use of the Internet for purposes of sexual exploitation and the trafficking of persons.⁵ In some countries, government bureaucrat and local leaders have come to accept the

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¹ See Nora Demleitner, *Forced Prostitution: Naming an International Offense*, 18 FORDHAM INT'L L.J. 163, 189 (1994).

² See Laurie Hauber, Note, *The Trafficking of Women for Prostitution: A Growing Problem Within the European Union*, 21 B.C. INT'L & COMP. L. REV. 183, 183 (1998).

³ *White House Fact Sheet on U.S. - Italy Initiative to Combat Trafficking in Women and Children*, U.S. Newswire, May 6, 1998, available in LEXIS, National and International Desks.

⁴ Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT'L 303, 323 (1999).

institutionalization of forced prostitution because they believe that it has become a way to garner foreign currency.⁶

Moreover, the disturbing growth of the involvement of international organized crime in the sex trafficking of women demands increasing attention and concern.⁷ Traffickers in women and children, much like narcotics traffickers, now operate boldly across international borders.⁸ Women are sold and resold in every part of the world. Adult women are tricked into forced prostitution when they respond to advertisements for work in nightclubs, talent agencies or entertainment shows.⁹ The majority of these women are from Third World countries, however women from developed countries are also at risk.¹⁰ Any women regardless of her class, race or age may be forced into prostitution.¹¹

This paper will provide an overview of the history of trafficking in women for prostitution, including the conventions that have been introduced over the years, as well as a brief synopsis of the recommendations that have been suggested to combat the sex-trafficking in women problem.

⁵ Coalition Against Trafficking in Women, <http://www.uri.edu/artsci/wms/hughes/catw/statetp.htm> (Last visited May 17, 2000).

⁶ Christopher M. Pilkerton, *Traffic Jam: Recommendations for Civil and Criminal Penalties to Curb the Recent Trafficking of Women From Post-Cold War Russia*, 6 MICH. J. GENDER & L. 221, 227 (1999).

⁷ White House Fact Sheet on US, *supra* note 3.

⁸ *Id.*

⁹ Susan Jeanne Toepfer & Bryan Stuart Wells, *The Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women*, 2 MICH. J. GENDER & L. 83, 89 (1994).

¹⁰ Youngik Yoon, *International Sexual Slavery*,

<http://www.tourolaw.edu/Publicationsinternationallawrev/vol6/part7.html> (Last visited May 17, 2000).

¹¹ *Id.*

II. Defining the Trafficking in Women Concept

It is essential in an analysis of trafficking in women for prostitution, to have a clear contemporary understanding of the concept of "trafficking" before this issue can be effectively addressed.¹²

Trafficking in women is not limited to notions of forced prostitution. In an understanding of the general concept of trafficking, it is important to note that prostitution is not the only work associated with trafficking. Not all trafficking victims are prostitutes nor have all prostitutes been trafficked.¹³ "Those who voluntarily migrate for the purpose of voluntary sex-work or who voluntarily migrate for another purpose but end up in non-exploitive working conditions in the sex industry without having been forced, defrauded, or otherwise coerced, should not be considered as having been trafficked."¹⁴ However, those women that are coerced or tricked into working under violent, subservient labor conditions and physically transported from one area to another fall into the category of trafficked victims.¹⁵

Fundamental elements of trafficking include the abusive or servile situation the women are in and whether there is consent.¹⁶ Physical travel or transport is necessary under most definitions of trafficking in women.¹⁷ Trafficking may have the same effect on the victim if they are moved 5 miles across a state border or 500 miles within national boundaries.¹⁸

¹² Report From the Roundtable on the Meaning of "Trafficking in Person": A Human Rights Perspective, Women's Rights Advocacy Program (WRAP), 20 WOMEN'S RIGHTS L. REP. 11, 11 (1998).

¹³ *Id.* at 15.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Report From the Roundtable on the Meaning of "Trafficking in Person": A Human Rights Perspective, Women's Rights Advocacy Program (WRAP), 20 WOMEN'S RIGHTS L. REP. 11, 14 (1998).

¹⁸ *Id.* at 14.

Thus, a key issue that surrounds the trafficking element is that the victims are moved to different and perhaps unfamiliar surroundings.¹⁹ These victims are isolated and most often held in areas where they may not even understand the language. They have no legal identity as a result of confiscated documents, and they are at the mercy of their traffickers for subsistence.²⁰

A. Methods of Procuring Women

1. Trickery

Trafficking takes many forms, including sexual exploitation, forced labor, and domestic servitude.²¹ Victims are enticed into the trafficking network through various coercive tactics and are forced into exploitative situations against their will.²² These women are subjected to cruelty and violent abuse from their traffickers. One way to procure women for international prostitution is to kidnap them, and when they are brought to unfamiliar surroundings, whether it be another city or country, subject them to forced prostitution.²³

In addition to kidnapping, women are also sold into sexual bondage by their families.²⁴ In India, for example, parents sell their daughters to Arab men for less than three hundred dollars. When they receive the cash, there is no longer the burden of providing their daughter with an expensive dowry.²⁵ In Thailand, some parents sell their

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Becki Young, *Trafficking of Humans Across United States Borders: How United States Laws Can be Used to Punish Traffickers and Protect Victims*, 13 GEO. IMMIGR. L. J. 73, 73 (1998).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

daughters when they are babies, and they are raised like livestock.²⁶ After a certain age, the girls are then re-sold into the prostitution circuit to serve foreign tourists.²⁷

2. Promise of Gainful Employment

Another way of tricking women into forced prostitution in a foreign country is by the false promise of work.²⁸ In Japan, white American women are in high demand. Advertisements are placed in newspapers that offer wonderful job opportunities.²⁹ When women respond, an agent contacts them. After being given promises of job opportunities including, large salaries, these women are given a pre-paid ticket to Japan.³⁰ When these women arrive, they are then met by a different agent who informs them that their contracts have been bought out.³¹ Their passports are taken and their life as forced prostitutes has begun.³²

There are various legal instruments that exist which address the problem of trafficking of women for prostitution.³³ However, the enactment of international law is a positive step towards the eradication of the trafficking in women problem.

²⁶ Youngik Yoon, *International Sexual Slavery*,

<http://www.tourolaw.edu/Publicationsinternationallawrev/vol6/part7.html>. (Last visited May 17, 2000).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Youngik Yoon, *International Sexual Slavery*,

<http://www.tourolaw.edu/Publicationsinternationallawrev/vol6/part7.html> (Last visited May 17, 2000).

³² *Id.*

³³ Laurie Hauber, Note, *The Trafficking of Women for Prostitution: A Growing Problem Within the European Union*, 21 B.C. INT'L & COMP. L. REV. 183, 184 (1998).

III. International Law Past to Present

A. International Agreements and Conventions

1. 1800's – 1944

i. Contagious Diseases Acts

Early efforts to combat international trafficking in women for prostitution were greatly influenced by nineteenth-century feminist activism. Women like Josephine Butler first introduced the issue of the “white slave trade” to international attention.³⁴ Butler began feminist campaigns, which attempted to repeal the Contagious Diseases Acts in Britain.³⁵ Under the Acts, any woman that was identified as a prostitute was subjected to numerous internal examinations.³⁶ Women found to be infected were then sent to a special hospital ward for “whores.”³⁷ The Acts were repealed in 1883.³⁸

ii. International Agreement for the Suppression of the White Slave Traffic, 1904

One of the early international agreements that addressed the issue of trafficking in women was introduced in 1904. The International Agreement for the Suppression of the White Slave Traffic was enacted specifically for the end of trafficking with respect to “whites” only.³⁹ This problem of trafficking in women gained attention from the international community as a result of the concern over the exportation of European

³⁴ JO DOEZMA, FORCED TO CHOOSE BEYOND THE VOLUNTARY V. FORCED PROSTITUTION DICHOTOMY, GLOBAL SEX WORKERS 35 (Kamala Kempadoo & Jo Doezema, eds., 1998).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83. See also Stephanie Fariior, *The International Law on Trafficking in Women and Children for Prostitution: Making it Live up to its Potential*, 10 HARV. HUM. RTS. J. 213, 216 (1997).

Women to brothels.⁴⁰ Economic conditions were very bleak at this time and women were in a situation where they were susceptible to traffickers and forced prostitution.⁴¹ This agreement was not effective and as a result a new convention was enacted.

iii. International Convention for the Suppression of White Slave Traffic, 1910

The International Convention for the Suppression of White Slave Traffic was adopted in 1910.⁴² This Treaty bound its signatories to "severely punish any person who hired, abducted or enticed for immoral purposes any women under the age of twenty-one, or used violence, threats, fraud or any compulsion on a women over twenty-one to accomplish the same purpose, even if he or she committed the acts constituting the offense in different countries."⁴³

iv. International Convention for the Suppression of the Traffic in Women and Children, 1921⁴⁴

The International Convention for the Suppression of the Traffic in Women and Children was enacted in 1921.⁴⁵ This convention encouraged states to take a domestic approach to the trafficking problem by drafting legislation to promote legitimate

⁴⁰ Carol. H. Hauge, *Prostitution of Women and International Human Rights Law: Transforming Exploitation into Equality*, 8 N.Y. INT'L. L. REV. 23, 34 (1995).

⁴¹ Stephanie Farrow, *The International Law on Trafficking in Women and Children for Prostitution: Making it Live up to its Potential*, 10 HARV. HUM. RTS. J. 213, 216 (1997).

⁴² International Convention for the Suppression of White Slave Traffic, May 4, 1910, 211 C.T.S. 45. See also *id.* at 217.

⁴³ *Id.* See also Christopher M. Pilkerton, *Traffic Jam: Recommendations for Civil and Criminal Penalties to Curb the Recent Trafficking of Women From Post-Cold War Russia*, 6 MICH. J. GENDER & L. 221, 230 (1999).

⁴⁴ In addition to this Convention opened for signature Sept. 30, 1921 is the 1949 Protocol to this Convention. Signatories agree to make international trafficking in prostitution an offense under their law. Acceptance of the 1910 Convention entails acceptance of the 1904 White Slave Traffic Agreement. The 1949 Protocol just transfers depositary functions to the UN. The U.S. was not party to the 1910 Convention but was a signatory to the 1949 Protocol.

⁴⁵ Convention for the Suppression of Traffic in Women and Children, opened for signature Sept 30, 1921, 9 L.N.T.S. 416. The 1921 Convention extends the 1910 Agreement by (i) covering attempts at the 1910 Convention offenses; (ii) raising the age of protection from 20 to 21; (iii) requiring all possible measures to prosecute or extradite. See also Janie Chuang, *Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 75 (1998).

employment for trafficked immigrants and emigrants.⁴⁶ This Convention confused signatories, due to the difficulty of distinguishing between international trafficking and commercialized prostitution.⁴⁷

v. International Convention on the Suppression of the Traffic in Women of Full Age, 1933

The International Convention on the Suppression of the Traffic in Women of Full Age signed in 1933, required the punishment of persons who trafficked in women of full age.⁴⁸ This Convention extended the scope of punishable acts that had previously been criminalized only with regard to minors to women of a full age and declared that even consent did not exempt from penalty preparatory acts, attempts and the actual procurement of adult women for immoral purposes in another country.⁴⁹ Additionally, this Convention stated that consent was not a defense to the crime of trafficking⁵⁰ and addressed the fact that the level of force that was involved was important in determining which activities were punishable.⁵¹

2. 1945 - 1979

i. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949.

In 1949, the United Nations Economic and Social Council consolidated the aforementioned treaties into the Convention for the Suppression of the Traffic in Persons

⁴⁶ Christopher M. Pilkerton, *Traffic Jam: Recommendations for Civil and Criminal Penalties to Curb the Recent Trafficking of Women From Post-Cold War Russia*, 6 MICH. J. GENDER & L. 221, 231 (1999).

⁴⁷ *Id.*

⁴⁸ International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431. This Convention extends the earlier treaties to women of full age. See also Farnior, *supra* note 41, at 217.

⁴⁹ International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431. See also Nora Demleitner, *Forced Prostitution: Naming an International Offense*, 18 FORDHAM INT'L L.J. 163, 171 (1994).

⁵⁰ International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431.

⁵¹ Hauge, *supra* note 40, at 36.

and of the Exploitation of the Prostitution of Others.⁵² Each signatory state agreed to adhere to the concept of anti-trafficking, abide by specific enforcement measures, and agree to the use of social welfare tools in areas not addressed by criminal law enforcement, thus providing support for the survivors of prostitution.⁵³

Under this convention prostitution was considered legal and parties to the treaty agreed that prostituted women would "not be punished or subjected to any special supervision or registration" requirements.⁵⁴ Thus, the basic tenet of this convention was to punish the trafficker.⁵⁵

3. 1980 – Present

i. The Convention on the Elimination of All forms of Discrimination Against Women, 1980

The Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") was opened for signature in March 1980 and entered into force in September 1981.⁵⁶ As of October 1999, 165 States have ratified this convention.⁵⁷ CEDAW addresses a variety of issues that relate to the sexual exploitation of women.⁵⁸ This Convention provides, in a legally binding structure, "internationally accepted

⁵² Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271. This Convention consolidates and extends (e.g. Applies to male prostitution) the aforementioned treaties. The 1950 Final Protocol to the 1949 Convention provides only that the Convention does not prejudice stricter legislation than that which the Convention requires. July 25, 1951, 96 U.N.T.S. 316.

⁵³ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271. See also Pilkerton, *supra* note 46, at 232.

⁵⁴ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 49.

⁵⁵ Pilkerton, *supra* note 46, at 232.

⁵⁶ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 14. The Parties agree to take steps to eliminate discrimination against women in various areas of life. An independent Committee on the Elimination of Discrimination Against Women was established under the Convention in 1982 to consider periodic reports by parties on its implementation.

⁵⁷ The Convention on the Elimination of All Forms of Discrimination Against Women, Home Page, <http://www.un.org/womenwatch/daw/cedaw/index.html> (last visited April 24, 2000).

⁵⁸ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 14.

principles on the rights of women which are applicable to all women in all fields.”⁵⁹The basic legal tenet of CEDAW is the prohibition of all forms of discrimination against women.⁶⁰ The Convention further prescribes that steps should be taken by State Parties to ensure that all women are able to enjoy the rights to which they are entitled.

This Convention deals with prostitution within the broader framework of furthering women's rights in all aspects of culture and society by ending the oppression and exploitation women face in all areas of life.⁶¹ The provisions Article 6 of CEDAW mandate that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”⁶²

As with the 1949 Convention, exploiters of prostitution and not the prostitute herself are targeted by CEDAW.⁶³ Thus under this Convention, prostitution is not criminalized, just the facilitators are.

ii. Optional Protocol on the Right to Petition

On October 6, 1999, an Optional Protocol on the Right to Petition was adopted by the General Assembly.⁶⁴ This optional protocol will give individuals and groups of women the right to complain to the Committee on the Elimination of Discrimination Against Women (“the Committee”) about violations of the Convention. This process is called the communication procedure.⁶⁵ Consequently, the Committee is able to conduct inquiries into the abuse of women's human rights in countries that are party to the

⁵⁹ CEDAW, Home Page, *supra* note 57.

⁶⁰ *Id.*

⁶¹ Hauge, *supra* note 40, at 40.

⁶² CEDAW, *supra* note 58.

⁶³ Hauge, *supra* note 40, at 40.

⁶⁴ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, <http://www.un.org/womenwatch/daw/cedaw/protocol>. The United States has yet to sign the Optional Protocol to the Convention.

Optional Protocol, this is known as the inquiry procedure.⁶⁶ However, the Optional Protocol "calls upon All States that are party to the CEDAW convention to sign, ratify or accede to the Protocol as soon as possible."⁶⁷

B. International Labor Organization Conventions

There are two International Labor Organizations ("ILO") conventions which are applicable to trafficking for prostitution, the Forced Labour Convention adopted in 1930⁶⁸, and the 1957 Convention, Abolition of Forced Labour.⁶⁹ Under both of these Conventions, State Parties agree to eradicate the practice of forced labor.⁷⁰

1. Forced Labour Convention, 1930

This Convention was introduced for ratification by the members of the International Labor Organization (ILO) in accordance with the provisions of the Constitution of the ILO.⁷¹ Under the Constitution of the ILO, it is required that states parties submit reports to the ILO concerning measures that have been taken in relation to any ILO conventions they have ratified.⁷²

Nowhere in this Convention is the language of "trafficking" explicitly mentioned.⁷³ This Convention defines "forced or compulsory labour" under Article 2 as "all work or service which is exacted from any person under the menace of any penalty

⁶⁵ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, <http://www.un.org/womenwatch/daw/cedaw/protocol>. (Last visited May 17, 2000).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Forced Labor Convention, 1930 (C29), June 28, 1930, 39 U.N.T.S. 55, ILO CR 155. Parties to this Convention undertake to suppress the use of forced or compulsory labor in all its forms within the shortest possible period. The United States has not ratified this Convention.

⁶⁹ Abolition of Forced Labor Convention, 1957 (C105), June 25, 1957, 320 U.N.T.S. 291. Signatories to this Convention undertake to suppress the use of compulsory labor as a means of political coercion, mobilization of labor for economic development, labor discipline, etc.

⁷⁰ Stephanie Farnior, *The International Law on Trafficking in Women and Children for Prostitution: Making it Live up to its Potential*, 10 HARV. HUM. RTS. J. 213, 223 (1997).

⁷¹ Abolition of Forced Labor Convention, 1957 (C105), June 25, 1957, 320 U.N.T.S. 291.

⁷² *Id.*

and for which the said person has not offered himself voluntarily.”⁷⁴ Thus, while the term “trafficking” has not been used, causes of action may be applicable under the term forced or compulsory labor through this Convention.⁷⁵

2. Abolition of Forced Labour Convention, 1957

This Convention, which the United States ratified in 1991, has provided for a combination of previous conventions, including the Forced Labour Convention of 1930 and the Slavery Convention of 1926, into this International Convention.⁷⁶ Article One defines what forms of forced or compulsory labour are prohibited.⁷⁷ Subsection (b) of Article One provides that forced or compulsory labor will include its use as “method of mobiliz[ing] and using labour for purposes of economic development.”⁷⁸ This affects the heart of the sex trafficking issue, the traffickers profit from the international trafficking of women.

C. Non-Governmental Organizations

1. Coalition Against Trafficking in Women

Dr. Kathleen Barry has made a significant effort to create international law prohibiting trafficking.⁷⁹ Dr. Barry along with Dorchen Leidhold founded the Coalition Against Trafficking in Women (“CATW”).⁸⁰ The Coalition is an international feminist human rights organization and Non-Governmental Organization (“NGO”).⁸¹ CATW may

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* The United States has not ratified this Convention.

⁷⁶ Abolition of Forced Labour Convention, *supra* note 71.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Susan Jeanne Toepfer & Bryan Stuart Wells, *The Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women*, 2 MICH. J. GENDER & L. 83, 102 (1994).

⁸⁰ *Id.*

⁸¹ *Id.* at 103.

submit reports and testimony to the Commission on the Status of Women. The United Nations Commission then submits reports to the Economic and Social Council, which, in turn submits reports to the General Assembly.⁸² Hence, CATW works with national and international policy-makers, women's rights and human rights advocates, and the United Nations to promote the fundamental human right of all women to be free from sexual exploitation.⁸³

2. Global Alliance Against the Trafficking of Women

Global Alliance Against the Trafficking of Women ("GAATW"), is a coalition of NGOs working towards the elimination of trafficking in women.⁸⁴ The approach taken by GAATW in their efforts to eradicate the trafficking in women separates the act of recruitment from the end purposes of trafficking.⁸⁵ The Coalition defines trafficking as all acts that entail the transport and/ or recruitment of a person across or within national borders to work by means of, or through the threat of violence.⁸⁶

NGOs have been very involved in the fight against trafficking in women.⁸⁷ Additionally, NGOs have provided a numerous recommendations to international organizations and have had a profound impact in preventing trafficking in women and offering assistance to the trafficking victims.⁸⁸ However, because NGO

⁸² *Id.*

⁸³ Coalition Against Trafficking in Women, <http://www.uri.edu/artsci/wms/hughes/catw/statetp.htm> (Last visited May 17, 2000).

⁸⁴ Janie Chuang, *Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 78 (1998).

⁸⁵ *Id.* at 79.

⁸⁶ Global Alliance Against the Trafficking of Women, <http://www.inet.co.th/org/gaatw/about.html> (Last visited May 17, 2000).

⁸⁷ See Becki Young, *Trafficking of Humans Across United States Borders: How United States Laws Can be Used to Punish Traffickers and Protect Victims*, 13 GEO. IMMIGR. L. J. 73, 81 (1998).

⁸⁸ *Id.* at 82.

recommendations are not binding, they have little effect in terms of enforcement laws against traffickers.⁸⁹

IV. Is Trafficking in Women a Contemporary Form of Slavery?

A. The Debate

The question of whether trafficking in women should be considered under the slavery ideology is an ongoing debate in the international arena. While trafficking in women may not meet all the criteria of the traditional definition of "slavery", the practices of sex trafficking, and forced labor do share similar elements that deem them obvious candidates for inclusion under "modern forms of slavery."⁹⁰ Opposers of the trafficking as slavery concept are less inclined to accept that argument because of their belief of what is associated with traditional forms of slavery.⁹¹

1. History of Slavery

Historically, "slavery tends to be viewed in terms of the nineteenth century black slavery rather than be deemed a more general all-encompassing concept."⁹² "The legacy of slavery in the United States has been a legacy of the racial subordination and suppression of all African Americans."⁹³ Slavery set the unfair and unequal standard, for African-Americans as an entire race, that has continued into the twenty-first Century.⁹⁴ Slavery, for all African Americans, has spawned a history of physical violence and racial hatred, discrimination based on the color of one's skin and the overall and unequal access

⁸⁹ *Id.*

⁹⁰ Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT'L 303, 320 (1999).

⁹¹ *Id.*

⁹² See Nora Demleitner, *Forced Prostitution: Naming an International Offense*, 18 FORDHAM INT'L L.J. 163, 194 (1994).

⁹³ Janice Raymond, *Legitimizing Prostitution as Sex Work: UN Labor Organization (ILO) Calls for Recognition of the Sex Industry*, <http://www.uri.edu/artsci/wms/hughes/catw/legit.html> (1998) (Last visited May 17, 2000).

to all the basic rights of citizenship.⁹⁵ "Since the early 1900's sex trafficking and forced prostitution have been treated by the international community as distinct from other forms of slavery and slave-like practices, even though they give rise to similar effects."⁹⁶

2. Contemporary Forms of Slavery

The United Nations has always been committed to the abolition or elimination of slavery and related practices in all their forms and in every part of the world.⁹⁷ Although every nation on earth has outlawed slavery and the slave trade, it is argued that contemporary forms continue to exist.⁹⁸ These contemporary slave forms include debt bondage, forced labor, sexual and physical abuse of immigrant domestic workers, trafficking in people for purposes of prostitution and the resulting forced prostitution.⁹⁹ In 1999, an estimated 200 million people worldwide are subject to some form of contemporary slavery.¹⁰⁰

Using the slavery concept in a modern context will allow for a broader interpretation of categories under international law.¹⁰¹ Thus, "contemporary forms of slavery may be defined as implying "ownership of another in conjunction with the commodification of labor (including sex) through means of extreme physical or psychological coercion."¹⁰²

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Rassam, *supra* note 90, at 337.

⁹⁷ *Id.* at 304.

⁹⁸ *Id.*

⁹⁹ *Id.* at 305.

¹⁰⁰ Rassam, *supra* note 90, at 305

¹⁰¹ *Id.* at 320.

¹⁰² *Id.*

B. Slavery Conventions and Sub-Commissions

1. Slavery Convention, 1926

Various Conventions have been introduced to combat the trafficking in women crisis. Included in those conventions are anti-slavery treaties that may also be used to address the concept of trafficking in women for prostitution. The Slavery Convention of 1926 ("1926 Convention") defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."¹⁰³ Under this Convention, states parties are committed to the prevention and suppression of the slave trade and "the complete abolition of slavery in all slavery forms."¹⁰⁴

2. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956

In 1956, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery ("1956 Convention") was adopted by the United Nations.¹⁰⁵ This Supplement to the 1926 anti-slavery Convention requires parties to impose domestic criminal sanctions on individuals who engage in various activities including trafficking in women.¹⁰⁶

As with the numerous other Conventions that deal with trafficking in women, no provisions are contained for monitoring implementation, reviewing the information

¹⁰³ Slavery Convention, Sept. 25, 1926, 46 Stat. 2183, 60 L.N.T.S. 253. *See also* Fariior, *supra* note 70, at 221.

¹⁰⁴ Slavery Convention, Sept. 25, 1926, 46 Stat. 2183, 60 L.N.T.S. 253.

¹⁰⁵ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Apr. 30, 1957, 266 U.N.T.S. 3. *See also* Fariior, *supra* note 70, at 222.

¹⁰⁶ *See* Fariior, *supra* note 70, at 222.

submitted by states and making recommendations ore receiving petitions alleging violations of the treaty. ¹⁰⁷

3. The Working Group on Contemporary Forms of Slavery

In the late 1960s, early 1970s, the Economic and Social Council of the United Nations ("ECOSOC") suggested that the Sub-Commission on Prevention of Discrimination and Protection of Minorities ("Sub-Commission") create a permanent system that will give advice on how to best eradicate slavery and abolish the trafficking in women.¹⁰⁸ Thus, the Working Group on Slavery, later known as the Working Group on Contemporary Forms of Slavery was created.¹⁰⁹

Trafficking is a transnational problem that involves a transnational response. However until international remedies begin to be enforced consistently, there will be limited effect on the eradication of trafficking in women.

V. Enforcement

Trafficking in women is recognized by numerous State Parties¹¹⁰ to be an important issue, however the international law that addresses this issue lacks legal force.¹¹¹ These legal mechanisms that prohibit trafficking in women are difficult to enforce.¹¹² "These treaties are left to be implemented by committees in the United Nations bureaucracy that just collect and read reports concerning trafficking."¹¹³ Thus for many nations the signing and ratification of these treaties that on its face, prohibit

¹⁰⁷ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 266 U.N.T.S. 3.

¹⁰⁸ Rassam, *supra* note 90, at 340.

¹⁰⁹ *Id.*

¹¹⁰ These State Parties would include those signatories to the various anti-trafficking in women agreements, conventions, and treaties.

¹¹¹ Susan Jeanne Toepfer & Bryan Stuart Wells, *The Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women*, 2 MICH. J. GENDER & L. 83, 92 (1994).

¹¹² *Id.* at 91.

prostitution, are often a pretense.¹¹⁴ The only factors that provoke these countries to follow through with treaty obligations are pressure from NGOs, the international community and their own internal commitment to human rights.¹¹⁵

“Many treaties provide no private right of action for individual victims, so that when a violation occurs, a signatory nation must take action on behalf of the victim.”¹¹⁶ This “lack of enforcement” of obligations under treaty law may reflect the reluctance of signatory countries to pursue “a claim on behalf of an unpopular group such as trafficking victims.”¹¹⁷ Because women are often treated as second class citizens in many countries of the world, governmental efforts to promote their rights have a low priority or may be virtually nonexistent.¹¹⁸

Prior to October 1999, individual trafficking victims were unable to bring about claims on their behalf. However with the enactment of the Convention on the Elimination of All Forms of Discrimination Against Women's Optional Protocol, women may have a voice and a venue to be heard. Article Two of the Protocol provides that “[c]ommunications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party.”¹¹⁹ Article Seven of the Protocol allows for the Committee on the Elimination of Discrimination against

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Young, *supra* note 87, at 80.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See Toepfer & Wells, *supra* note 111, at 92.

¹¹⁹ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, <http://www.un.org/womenwatch/daw/cedaw/protocol>. (Last visited May 17, 2000).

women¹²⁰ to consider the merits of the communication and "transmit its views on the communication, together with its recommendation, if any, to the parties concerned."¹²¹

Despite the enforcement problems the treaties are still important because they do declare that trafficking in women is a violation of international law. There have been numerous attempts to remedy the trafficking in women crisis, with little or no success. Fundamental enforcement problems must be addressed in order for there to be a positive effect. Below is a discussion of various recommendations that have been raised in discussions of the international trafficking in women crisis.

VI. Recommendations

A. Domestic Remedies for International Trafficking

1. Application of Immigration Laws

Trafficked women are victims of traffickers.¹²² It is important for the United States to not only prosecute those US citizens who operate these organizations, but also to utilize existing immigration law to separate those who procure from those who are forced into prostitution.¹²³ In 1996 Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act.¹²⁴ While this Act contains language that may be applicable to trafficking, unfortunately both the trafficker and trafficking victim are affected.¹²⁵

¹²⁰ The Committee on the Elimination of Discrimination Against Women was established under the terms of CEDAW. There is a relationship between the States Parties and the Committee according to provisions included in Article 18 of the Convention. The Committee has the power to formulate suggestions and general recommendations based on examination of the State Parties reports.

¹²¹ Optional Protocol, *supra* note 119.

¹²² Christopher M. Pilkerton, *Traffic Jam: Recommendations for Civil and Criminal Penalties to Curb the Recent Trafficking of Women From Post-Cold War Russia*, 6 MICH. J. GENDER & L. 221, 253 (1999).

¹²³ *Id.* at 252.

¹²⁴ *Illegal Immigration and Immigrant Responsibility Act*, 8 U.S.C.A. §§1544 (1996).

¹²⁵ *Id.* See also Pilkerton, *supra* note 122, at 253.

By using immigration laws to identify domestic activity, United States officials may be better able not only to prosecute individuals for the crime of trafficking but also to deport them, however it is important for the laws to punish the traffickers and not the victims.

2. Trafficking Victims Protection Act, Bill H.R. 3244

Under consideration by Congress is the bipartisan bill for the Trafficking Victims Protection Act of 1999.¹²⁶ The Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE) "unanimously adopted a resolution calling the governments of OSCE participating states to adopt or strengthen legislation and enforcement mechanisms which would punish those who forcibly or fraudulently recruit and transport individuals within or across borders in order to force them into prostitution or slavery-like labor conditions."¹²⁷

This Act would authorize \$94.5 million for programs in the US and abroad to aid and assist victims of trafficking, by providing shelters, rehabilitation programs and relief from deportations for victims who expose their trafficker.¹²⁸ U.S. Congress recognizes the necessity for improved legislation to combat trafficking.¹²⁹ When enacted, this law will fortify US laws and penalties against trafficking so that the United States will become the last place that traffickers will want to commit their crimes.¹³⁰

¹²⁶ *Helsinki Commissioners: 'Mrs. Clinton, Support the 'Trafficking Victims Protection Act of 1999' as an Example in Istanbul!'* PR Newswire Association, available in LEXIS, Washington Dateline, November 17, 1999.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

3. US – Italy Working Group

President Clinton and Prime Minister Prodi of Italy are committed to taking the steps necessary to address the growing criminal enterprise of trafficking in women.¹³¹ They decided that new strategies were needed to eradicate trafficking in their respective countries and on an international level.¹³² These policies were to focus on strengthening the human rights protection of trafficking victims, increase the prosecution of trafficking associated crimes, assist victims with the prosecution of traffickers and coordinate the eradication of trafficking movement with all countries involved.¹³³

The United States and Italy recently established the U.S. – Italy Working Group on Trafficking in Women and Children.¹³⁴ This Group has agreed to the following joint actions:

1. Protection of the rights of victims of trafficking through: exchange of best practices with respect to assistance, protection and social integration of victims; common initiatives, including joint program strategies for victim outreach to be implemented separately in Italy and the United States; and protection of victims' families in source countries;
2. Joint public information campaigns in source countries with the cooperation of their authorities and non-governmental organizations;
3. The regular exchange of information, with the cooperation of the Italian National Anti-Mafia Directorate, and within the limits of existing legal provisions in the two countries as regards confidentiality of investigations, on
 - i) investigation;
 - ii) successful investigative methods and procedures; and
 - iii) statistical data and general analysis of trafficking
 - iv) Training for law enforcement, immigration and border officers in source countries to identify patterns and methods of trafficking and prevent trafficking through effective investigation and prosecution
 - v) Promotion of joint initiatives in multilateral force to combat trafficking in addition to efforts under way at the UN to develop a Convention on organized crime.¹³⁵

¹³¹ *White House Fact Sheet on U.S. – Italy Initiative to Combat Trafficking in Women and Children*, U.S. Newswire, May 6, 1998, available in LEXIS, National and International Desks.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

The two leaders, Clinton and Prodi, are determined that the United States and Italy will do their part by taking specific measures to combat trafficking in women and children. Both agreed that these joint actions would form an important element of our future bilateral law enforcement and political cooperation.¹³⁶

4. Racketeer Influenced and Corrupt Organizations Law (RICO)

In 1970 Congress enacted the Organized Crime Control Act which included the Racketeer Influenced and Corrupt Organizations law ("RICO").¹³⁷ RICO was formed to enhance criminal and civil punishments.¹³⁸ The underlying principle of RICO is to eliminate organized crime.¹³⁹ In many nations, the core activity of organized crime is racketeering or the provision of illegal goods or service.¹⁴⁰ Consequently, "[t]rafficking, the organization of an international prostitution ring among other forms of trafficking", fits the statutory provisions that are required for the use of criminal or civil RICO.¹⁴¹

Provisions of RICO include the focus on patterns of violence, the provision of illegal goods and services, corruption in the labor or management relations, corruption in government, criminal fraud by, through, or against various types of licit or illicit enterprises.¹⁴² Under RICO, the government or person with standing must prove injury that the defendant through the commission of two or more acts, constituting a pattern of racketeering activity, directly or indirectly, invests in or maintains an interest in, or

¹³⁵ *White House Fact Sheet on U.S. – Italy Initiative to Combat Trafficking in Women and Children*, U.S. Newswire, May 6, 1998, available in LEXIS, National and International Desks.

¹³⁶ *Id.*

¹³⁷ *Racketeer Influenced and Corrupt Organizations Act*, 18 U.S.C. §§1961-1968 (1994 & Supplement 1998). See also Pilkerton, *supra* note 122, at 247.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Pilkerton, *supra* note 122, at 247.

¹⁴¹ *Id.*

¹⁴² *Id.*

participates in an enterprise, the activities of which affect interstate or foreign commerce.¹⁴³

Involvement of organized criminal networks in the international trafficking industry shows that there may be a need to focus enforcement efforts on attacking the influence of organized crime.¹⁴⁴ RICO allows a private plaintiff to bring a civil action alleging a violation of certain state and federal laws. Thus, if the type of injury suffered by the trafficking victim would be categorized as an injury to business or property such victims would have standing to pursue a civil RICO action against their traffickers.¹⁴⁵

Currently, RICO is only law in the United States. However, the incorporation of RICO into international law may be an effective mechanism to remedy the international trafficking in women problem.

B. International Criminal Court

The creation of an international criminal court ("ICC") system along with an international law enforcement agency has long been recommended by legal scholars as an approach to international problems like the sex trafficking.¹⁴⁶ "Customary international law holds that a state may not maintain sovereignty over another state."¹⁴⁷ This bar on the use of one state's domestic law in another state effectively limits a state's ability to conduct legal investigations or execute arrest powers outside its jurisdiction.¹⁴⁸

The opposition to the establishment of an International Criminal Court ("ICC") debate suggest that in its creation there will be "(1) lack of standardized international

¹⁴³ *Id.*

¹⁴⁴ See Becki Young, *Trafficking of Humans Across United States Borders: How United States Laws Can be Used to Punish Traffickers and Protect Victims*, 13 GEO. IMMIGR. L. J. 73, 86 (1998).

¹⁴⁵ *Id.* at 87.

¹⁴⁶ Youngik Yoon, *International Sexual Slavery*,

<http://www.tourolaw.edu/Publications/internationalallawrev/vol6/part7.html>. (Last visited May 17, 2000).

¹⁴⁷ Pilkerton, *supra* note 122, at 239.

criminal code; (2) dependence on voluntary participation; (3) authoritative power which may confuse the benefits of a comparable extradition treaty causing divergence of resources from more practical and readily achievable means; (4) the glamorization of crime by the international press; and (5) a politicized court that would remove leaders for corrupt reasons."¹⁴⁹ Many countries fear that a joint criminal justice union will severely limit their sovereignty.¹⁵⁰ Others express the viewpoint that with the creation of an ICC is a concern over the release of sensitive information that may result in threat to each State Parties international safety and security.¹⁵¹

In order for there to be a positive change in the area of international law, the international community must acquiesce to an international criminal court with the understanding that the courts will have jurisdiction over important problems in the international arena.¹⁵² Since most countries are in agreement that the kidnapping and sale of women and forced prostitution are in violation of international law, the proposed international criminal court should have jurisdiction to enforce the relevant conventions and punish the violators.¹⁵³ The theory behind the creation of an ICC is that it will have jurisdiction over criminals brought before it, for crimes committed anywhere in the world.¹⁵⁴ A country would be allowed to enforce an internationally recognized law upon an individual even if it could not prosecute that individual in its own courts.¹⁵⁵

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 243.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Yoon, *supra* note 146.

¹⁵³ *Id.*

¹⁵⁴ Pilkerton, *supra* note 122, at 242.

¹⁵⁵ *Id.*

International sex trafficking involves physical movement from one area to another.¹⁵⁶ This includes movement from one country to another or even one continent to another. As a result, one single country cannot effectively deal with the international context.¹⁵⁷ "Instead of enforcing international law, the current international police organizations ineffectively gathers crime statistics from the international community."¹⁵⁸ Under the proposed system, nations that are involved with the ICC agency may choose candidates from their own enforcement agency to compete for positions in the new Agency.¹⁵⁹

While the opposition to the creation of an ICC has raised valid concerns, it has also been said that sovereignty will not be lost. The establishment of an ICC allows for a more efficient means of enforcing agreements that are already in place. The adoption of an international code of laws would not only demonstrate solidarity against transnational crime but would also allow for the adoption of proven domestic laws into the international arena.

C. International Justice Commission

The creation of an International Justice Commission ("IJC") has been proposed that would be responsible for international extraditions associated with universally accepted extradition treaties.¹⁶⁰ This IJC would be created with equal representation from participating states.¹⁶¹ This Commission would be responsible for all extraditions and the basic responsibility of the ICC.¹⁶² Thus, the establishment of an International Justice

¹⁵⁶ Yoon, *supra* note 146.

¹⁵⁷ Pilkerton, *supra* note 122, at 241.

¹⁵⁸ Yoon, *supra* note 146.

¹⁵⁹ Pilkerton, *supra* note 122, at 236.

¹⁶⁰ *Id.* at 243.

¹⁶¹ *Id.*

¹⁶² *Id.*

Commission would facilitate international camaraderie against transnational criminal activity.

VII. Conclusion

More needs to be done not only on an international level but also on a domestic level as well to put a glitch in the thriving business of trafficking in women. International Conventions have been written and even ratified but unless there is enforcement, there will be no change in the global sex industry. Unless traffickers including brothel owners and pimps that are involved in the trafficking in women industry are prosecuted and brought to justice, they and others will not be deterred.