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The International Market for Trafficking in Persons for the Purpose of Sexual Exploitation: Analyzing Current Treatment of Supply and Demand

Meredith Flowe

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Cover Page Footnote

International Law; Commercial Law; Law

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Thirty-year-old Mara left her husband and two children in Ukraine to take a housekeeping job in Italy. Recruiters from an employment agency promised her a high salary. But once there, she was taken to a brothel where the owner said he had purchased her for several hundred dollars. He said she owed him money for the plane ticket. For nine months, Mara was controlled by this trafficker, who beat her when she refused a client. If a man complained about her, the brothel owner increased her debt. Mara was freed only when the Italian police raided the brothel. Charged with prostitution, she was deported to Ukraine.¹

Lila, a 19-year-old Romanian girl who had already endured physical and sexual abuse from her alcoholic father, was introduced by an “acquaintance” to a man who offered her a job as a housekeeper/salesperson in the U.K. When she arrived in the U.K., the man sold her to a pimp and Lila was forced into prostitution. She was threatened that she would be sent home in pieces if she did not follow every order. After an attempted escape, her papers were confiscated and the beatings became more frequent and brutal. Months later, after being re-trafficked several times, Lila was freed in a police raid. She was eventually repatriated back to Romania²

The trafficking of women and children into sexual slavery is one of the gravest human rights abuses confronting the international community today. This Comment will present an

¹ OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERSONS, U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT JUNE 2007, at 26 (2007) [hereinafter TRAFFICKING IN PERSONS REPORT JUNE 2007], available at <http://www.state.gov/documents/organization/82902.pdf>.

² OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERSONS, U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT JUNE 2008, at 5 (2008) [hereinafter TRAFFICKING IN PERSONS REPORT JUNE 2008], available at <http://www.state.gov/documents/organization/105501.pdf>.

overview of the scope of human trafficking, a profile of its victims and perpetrators, and the supply and demand factors causing this human rights problem. This comment will then examine the following questions: (1) How can national legislation most effectively address the supply and demand components of human trafficking for the purposes of prostitution; and (2) what steps can legislators take to increase involvement of non-state actors including corporations and non-governmental organizations (NGOs) in the fight against human trafficking?

I. An Introduction to Human Trafficking for Forced Prostitution

A. What is Human Trafficking?

International concern for prevention of human trafficking for the purposes of sexual exploitation has existed since the beginning of the twentieth century.³ In 2008, the international community agreed for the first time on how to define “trafficking in persons” in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Protocol).⁴ The Protocol defined “trafficking in persons” as

³ See Janie Chuang, *Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 74-75 (1998). The trafficking of women from Europe to brothels throughout the colonial empires led to the International Agreement for the Suppression of White Slave Trafficking in 1904. *Id.* at 74. The international community enacted further agreements including: the 1910 International Convention for the Suppression of White Slave Traffic; the 1921 International Convention for the Suppression of the Traffic in Women and Children; the 1933 International Convention on the Suppression of the Traffic in Women of Full Age; the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; and the 1979 United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). *Id.* at 74-75, 78.

⁴ U.N. GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING, U.N. OFFICE ON DRUGS & CRIME, THE VIENNA FORUM REPORT: A WAY FORWARD TO COMBAT HUMAN TRAFFICKING 2 (2008) [hereinafter VIENNA FORUM REPORT], available at <http://www.un.org/ga/president/62/ThematicDebates/humantrafficking/ebook.pdf>. The Vienna Forum to Fight Human Trafficking global conference was held between February 13 and 15, 2008 and raised much awareness was raised regarding trafficking. *Id.* at 3. Forum participants included over 1,500 senior government officials, delegates of U.N. Member States, business leaders, representatives of NGOs and international and regional organizations, academics, activists, and victims from more than 116 countries. *Id.*

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.⁵

Human trafficking is distinct from human smuggling. The "smuggling of migrants" is defined as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident."⁶ Smuggling differs from trafficking because it does not involve coercion, and instead can be a voluntary decision by individuals to pay the smuggler to help them gain illegal entry to another country.⁷ In

⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime art. 3, Nov. 15, 2000 [hereinafter Protocol], *available at* http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf; *see also* OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERSONS, U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT JUNE 2005, at 10, 12 (2005) [hereinafter TRAFFICKING IN PERSONS REPORT JUNE 2005], *available at* <http://www.state.gov/documents/organization/47255.pdf> (noting further that many countries misunderstand this definition and overlook internal trafficking in national legislation).

⁶ Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime art. 3, Nov. 15, 2000, *available at* http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_smug_eng.pdf.

⁷ *See* Tom Obokata, *Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors Under International Human Rights Law*, 17 INT'L J. REFUGEE L. 394, 396-97 (2005); *see also* Gergana Danailova-Trainor & Patrick Belser, *Globalization and the Illicit Market for Human Trafficking: An Empirical Analysis of Supply and Demand 2* (Int'l Labour Office, Working Paper No. 53, 2006), *available at* http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081931.pdf ("While smuggling refers to the illegal but voluntary transportation across borders, trafficking is defined by exploitation and forced labour."); TRAFFICKING IN PERSONS REPORT JUNE 2005, *supra* note 5, at 12 (discussing that many countries fail to distinguish between trafficking and smuggling of migrants).

addition, the relationship with the smuggler ends when the individual arrives in the destination country, whereas the victim of trafficking endures exploitation after arrival in the destination location.⁸

B. The Scope of the Problem

There is no international consensus on the scale of twenty-first century slavery.⁹ This stems from the “lack of quantitative information and understanding regarding the scope and development of the crime of human trafficking around the world.”¹⁰

The United Nations Office on Drugs and Crime (UNODC) reports that human beings are trafficked from 127 countries of origin to be exploited in 137 destination countries.¹¹ Kevin Bales, an expert in modern day slavery, estimates that there are 27 million people enslaved worldwide.¹² The International Labour Organization (ILO) projects that 12.3 million individuals are currently suffering under forced labor (including forced child labor), debt bondage, or sexual servitude.¹³ Of these 12.3 million individuals, the ILO estimates that 2.4 million were trafficked

⁸ Obokata, *supra* note 7, at 396-97.

⁹ See, e.g., Richard Re, *A Persisting Evil, The Global Problem of Slavery*, HARV. INT'L REV., Winter 2002, at 32, 32 (noting that the number of enslaved individuals has been estimated anywhere from 27 to 270 million).

¹⁰ VIENNA FORUM REPORT, *supra* note 4, at 17.

¹¹ ANTI-HUMAN TRAFFICKING UNIT, U.N. OFFICE ON DRUGS & CRIME, TRAFFICKING IN PERSONS: GLOBAL PATTERNS 17 (2006), available at <http://www.unodc.org/documents/human-trafficking/HT-globalpatterns-en.pdf>.

¹² KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY 8 (Univ. of Cal. Press rev. ed. 2004) (1999).

¹³ TRAFFICKING IN PERSONS REPORT JUNE 2008, *supra* note 2, at 7; see also BALES, *supra* note 12, at 19-20 (“*Debt bondage* is the most common form of slavery in the world. A person pledges him- or herself against a loan of money, but the length and nature of the service are not defined and the labor does not reduce the original debt Ownership is not normally asserted, but there is complete physical control of the bonded laborer.”); Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 (2008) (“The term ‘debt bondage’ means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”).

either internally or across national borders.¹⁴ A research study sponsored by the U.S. government estimated that 800,000 individuals are trafficked across national borders each year. However, this estimate does not account for the millions of individuals trafficked within the borders of their own countries.¹⁵

The majority of slaves, approximately 15 to 20 million, are bonded laborers in India, Pakistan, Bangladesh, and Nepal.¹⁶ Other hotbeds of slavery include Southeast Asia, Northern and Western Africa, and portions of South America.¹⁷ However, slavery does not only exist in the global south; its presence is felt everywhere, including Europe and the United States.¹⁸

The U.S. government projects that 18,000 to 20,000 individuals are trafficked into the United States each year.¹⁹ It is estimated that there are "30,000 to 50,000 sex slaves in captivity in the United States at any given time."²⁰ In Europe, it is estimated that as many as 120,000 women and children are trafficked annually into Western European countries.²¹ In 2008, Europol reported an increasing trend "in recent years in the number of victims trafficked into the [European Union], particularly through and from the Russian Federation, Ukraine, [and] Central and South Eastern Europe."²² EU Member States, in their trafficking investigations, also frequently identify victims from Asia, Africa,

¹⁴ Danailova-Trainor & Belser, *supra* note 7, at 1.

¹⁵ TRAFFICKING IN PERSONS REPORT JUNE 2008, *supra* note 2, at 7.

¹⁶ BALES, *supra* note 12, at 9.

¹⁷ *Id.*

¹⁸ *See id.*

¹⁹ *See* U.S. DEP'T OF STATE, ASSESSMENT OF U.S. ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 1 (2003), available at <http://www.state.gov/documents/organization/23598.pdf>. *Contra* Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 (2008) ("Approximately 50,000 women and children are trafficked into the United States each year.").

²⁰ Peter Landesman, *The Girls Next Door*, N.Y. TIMES MAG., Jan. 25, 2004, at 30, 32.

²¹ JUSTICE & HOME AFFAIRS, EUROPA, TRAFFICKING IN WOMEN, THE MISERY BEHIND THE FANTASY, ¶ 5, http://ec.europa.eu/justice_home/news/8mars_en.htm (last visited Mar. 31, 2010).

²² *Trafficking in Human Beings in the European Union: A Europol Perspective*, EUROPOL, Feb. 2008, at 1, http://www.europol.europa.eu/publications/Serious_Crime_Overviews/Trafficking_in_human_beings_2008.pdf.

and Latin America.²³

C. Profile: Victims²⁴

The typical victims of trafficking are “women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities” in their home countries.²⁵ However, these factors do not apply to all victims of trafficking.²⁶ Other individuals are also vulnerable to trafficking, including educated persons with employment in their home country who have higher education degrees and the capability to speak multiple languages, because they have “[g]reater freedom of movement and travel, low cost international transport, global communication links, . . . previously unavailable opportunities to work overseas and self confidence.”²⁷ Donna M. Hughes, an expert on sex trafficking and professor at the University of Rhode Island, found that some women in Russia and Ukraine are aware that they may be working as prostitutes in the destination country, “[b]ut their idea of prostitution is ‘Pretty Woman,’ which is one of the most popular films in Ukraine and Russia. They’re thinking, ‘This may not be so bad.’”²⁸

The U.S. State Department estimates that eighty percent of transnational victims are women and girls, with minors making up as much as fifty percent.²⁹ According to the U.S. Central Intelligence Agency, seventy-five percent of all transnational victims are trafficked into sexual slavery.³⁰

Often overlooked as victims, men and boys constitute two percent of victims trafficked for the purposes of sexual

²³ *Id.*

²⁴ Note that the victim profile presented contains generalizations of victim characteristics and does not apply to *all* victims of human trafficking.

²⁵ Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101(b)(4) (2008).

²⁶ See *Trafficking in Human Beings in the European Union*, *supra* note 22, at 2.

²⁷ *Id.*

²⁸ Landesman, *supra* note 20, at 33, 36. See also PRETTY WOMAN (Touchstone 1990).

²⁹ See TRAFFICKING IN PERSONS REPORT JUNE 2008, *supra* note 2, at 7.

³⁰ C.I.A., *Field Listing, Trafficking in Persons*, in THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/fields/2196.html> (click on “World” heading). (last visited Mar. 31, 2010)

exploitation.³¹ Further, the U.S. State Department noted that “the practice [of trafficking boys into prostitution] might be far more widespread than reported due to social stigmas associated with sex with boys.”³²

The average age of victims is dropping: “[W]hile most girls used to be in their late teens and 20’, 13-year-olds are now far from unusual.”³³ An increased demand for “more aggressive, dangerous sex” is leading traffickers to recruit younger girls “because they are more pliable.”³⁴ The conditions faced by trafficking victims of all ages exposes them to health risks, including HIV/AIDS and other deadly diseases.³⁵

D. Victim's Burden: Physical and Psychological Harm

The physical and psychological impact of commercial sexual exploitation is significant and has lasting effects if victims are able to escape from their traffickers.³⁶

A 2006 study found that 76 percent of 207 trafficked women interviewed were physically assaulted by their trafficker, pimp, madam, brothel and club owner, clients, or boyfriend. The same study found that 90 percent of victims reported being physically forced or intimidated into sex or other sexual acts, and 91 percent of victims reported being threatened with death, beatings, increased debt, harm to their children and families, or re-trafficking.³⁷

In addition, many trafficking victims are confronted with “social ostracism” upon return to their home countries because of the time spent in the commercial sex industry abroad.³⁸ This danger of stigmatization and isolation is particularly acute for

³¹ TRAFFICKING IN PERSONS REPORT JUNE 2008, *supra* note 2, at 9.

³² *Id.*

³³ Landesman, *supra* note 20, at 72.

³⁴ *Id.*

³⁵ Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101(b)(11) (2008).

³⁶ TRAFFICKING IN PERSONS REPORT JUNE 2008, *supra* note 2, at 21.

³⁷ *Id.*

³⁸ OFFICE OF WOMEN IN DEV., U.S. AGENCY FOR INT'L DEV., THE REHABILITATION OF VICTIMS OF TRAFFICKING IN GROUP RESIDENTIAL FACILITIES IN FOREIGN COUNTRIES 3 (2007), available at http://pdf.usaid.gov/pdf_docs/PNADK471.pdf.

victims who contract HIV/AIDS.³⁹

E. Profile: Traffickers

Trafficking is perpetrated by “[i]nternational criminal syndicates, . . . [f]amily operations with extended family across country borders, . . . [i]ndependently owned businesses with contractors/agents, . . . [l]oosely based acquaintances [or] organizations,” and “[i]ndividuals.”⁴⁰ In the European Union, many of the criminal entities involved in trafficking satisfy much of the EU criteria for organized crime.⁴¹ U.S. congressional findings have concluded that “[t]rafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises” and “is the fastest growing source of profits for organized criminal enterprises worldwide.”⁴²

Regardless of the type of organization, the roles carried out by traffickers include recruiting victims; transporting victims; providing counterfeit identity and/or travel documents; managing safe houses, bars, nightclubs, and brothels; collecting and distributing profits; money laundering and managing of assets; and corrupting law enforcement and/or public officials.⁴³ In countries of destination, traffickers often operate brothels in private homes or utilize legal businesses such as massage parlors and escort services as commercial fronts for prostitution.⁴⁴ The international

³⁹ See *id.* Even “[w]omen and girls who are not infected with HIV, but who have been victims of trafficking, are often assumed to be infected and are consequently stigmatized and ostracized.” *Id.*

⁴⁰ VIENNA FORUM REPORT, *supra* note 4, at 25.

⁴¹ *Trafficking in Human Beings in the European Union*, *supra* note 22, at 4.

⁴² Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101(b)(8) (2008).

⁴³ *Trafficking in Human Beings in the European Union*, *supra* note 22, at 4.

⁴⁴ See, e.g., Police Shut Down Spa, Arrest Owner on Sex Charges, WSOC-TV (Charlotte, N.C.), July 19, 2008, <http://www.wsoc.tv.com/news/16932900/detail.html> (“The owner of the Island Day Spa . . . was charged with human trafficking and maintaining a place of prostitution.”); S.M. Berg, *Sex Trafficking Strikes Closer to Home than Thought*, PORTLAND ALLIANCE, Nov. 2004, available at <http://www.theportlandalliance.org/2004/nov/pdxtrafficking.htm> (“Portland’s Broadway Massage was closed for sexual exploitation and prostitution, Officer Greg Duvic of the Portland Police Vice Division offered. ‘Every escort agency, every massage business we have ever investigated has turned out to be a front for prostitution.’”); Landesman, *supra* note 20, at 32 (“[L]aw-enforcement officials say [there] are dozens of active stash houses and apartments in the New York metropolitan area—mirroring hundreds more in other major cities like Los Angeles, Atlanta and Chicago—where under-age girls and young

consensus is that there is a deficiency in the knowledge of traffickers, trafficking chains, and the hierarchies that exist within trafficking organizations.⁴⁵

Traffickers often use trickery and deceit to gain the confidence of potential victims, which “[v]ery often . . . involve promises of a better life through employment, educational opportunities, or marriage.”⁴⁶ According to the U.S. House of Representatives, “[t]raffickers lure women and girls into their networks through false promises of decent working conditions at relatively good pay as nannies, maids, dancers, factory workers, restaurant workers, sales clerks, or models.”⁴⁷ Recruiters may take the form of a family friend, an employment agency, or an individual in the victim’s community.⁴⁸ “Traffickers also buy children from poor families and sell them into prostitution or into various [other] types of forced or bonded labor.”⁴⁹ There are also many cases in which the victim is not recruited or purchased, but abducted by the trafficker.⁵⁰

Traffickers are often identified as men, but women are also involved in trafficking as recruiters, pimps and madams, and brothel operators.⁵¹ Recruiting female traffickers is attractive to trafficking organizations because in many countries, the “governments frequently exhibit leniency toward female criminals . . . and [they] receive lighter sentences than men.”⁵² In addition, previous victims of sex trafficking sometimes become recruiters of new victims.⁵³

women from dozens of countries are trafficked and held captive.”).

⁴⁵ VIENNA FORUM REPORT, *supra* note 4, at 15.

⁴⁶ TRAFFICKING IN PERSONS REPORT JUNE 2008, *supra* note 2, at 7. “Women, eager for a better future, are susceptible to promises of jobs abroad as babysitters, housekeepers, waitresses, or models—jobs that traffickers turn into the nightmare of forced prostitution without exit.” *Id.* at 8.

⁴⁷ 22 U.S.C. § 7101(b)(4).

⁴⁸ Shaheen P. Torgoley, *Trafficking and Forced Prostitution: A Manifestation of Modern Slavery*, 14 TUL. J. INT’L & COMP. L. 553, 562 (2006).

⁴⁹ 22 U.S.C. § 7101(b)(4).

⁵⁰ See, e.g., Torgoley, *supra* note 48, at 562 (discussing that in Albania, girls were so frequently abducted from school that many parents stopped sending their children to school).

⁵¹ TRAFFICKING IN PERSONS REPORT JUNE 2008, *supra* note 2, at 11.

⁵² *Id.*

⁵³ See *id.*

Physical and psychological pressures are combined with financial incentives to turn victims into traffickers. In part to avoid detection by authorities, traffickers grant some victims limited freedom—and even reward them financially—while coercing them through other means to return to their home countries and recruit one or more women to replace them.⁵⁴

F. Supply and Demand: The Push and Pull Factors of Human Trafficking

Despite the international consensus that human trafficking is illegal, and the international agreements and domestic laws prohibiting trafficking, a vibrant international market exists for trafficking women and children into forced prostitution.⁵⁵ Human trafficking is the “third largest shadow economy after drugs and arms.”⁵⁶ The profit generated by human trafficking for forced prostitution is estimated, by Interpol, to be 19 billion dollars annually.⁵⁷ The International Labor Organization (ILO) reported annual profit estimates of US \$217.8 billion or US \$23,000 per victim.⁵⁸ It is a human rights abuse that depends upon the supply of trafficking victims in countries of origin and a demand for the prostitution of these victims in the countries of destination.⁵⁹

The regions that contain primarily countries of origin are the Commonwealth of Independent States, Central and Southeastern Europe, West Africa, and Southeast Asia.⁶⁰ Countries reported primarily as countries of destination include states in North America, Western Europe, and Asia, in particular West Asia.⁶¹

⁵⁴ *Id.*

⁵⁵ Danailova-Trainor & Belser, *supra* note 7, at 3.

⁵⁶ Karin Strohecker, *Soaring Human Trafficking Demands Govt Crackdown-UN*, REUTERS AFRICA, Feb. 12, 2008, at 27; *see also* Eur. Parl. Assembly, *Council of Europe Convention on Action against Trafficking in Human Beings and its Convention and its Explanatory Report*, at 3, CETS No. 197 (2005) [hereinafter *Convention and its Explanatory Report*], available at http://www.coe.int/T/E/human_rights/trafficking/PDF_Conv_197_Trafficking_E.pdf.

⁵⁷ TRAFFICKING IN PERSONS REPORT JUNE 2008, *supra* note 2, at 34.

⁵⁸ *Id.*

⁵⁹ Danailova-Trainor & Belser, *supra* note 7, at 3 (focusing on demand from brothel owners and pimps, not demand from customers).

⁶⁰ U.N. OFFICE ON DRUGS & CRIME, TRAFFICKING IN PERSONS: GLOBAL PATTERNS, Apr. 2006, at 80.

⁶¹ *Id.*

States used frequently as transit countries for trafficking include those in Central and Southeastern Europe and Western Europe.⁶² Countries in Southeast Asia, Central America, and Western Africa are also used as transit states.⁶³

As mentioned in the previous section, traffickers often operate within large organizations that handle the entire process from recruitment, to exploitation, to disbursement of profits.⁶⁴ Thus, unlike other markets, there are no visible 'buying' and 'selling' transactions available to analyze.⁶⁵ The conclusion that no accurate data exists on the "price" of trafficking victims follows from this lack of traditional transactions.⁶⁶ However, it can be presumed that trafficking organizations are operating with the goal of maximizing profit.⁶⁷ Thus, traffickers weigh the benefits gained by operating against the costs of operating.⁶⁸ The benefits include the profits gained by the organization through prostituting the victims.⁶⁹ The costs of operating encompass both operating overhead and the probability of being discovered by law enforcement authorities and subsequent possible criminal penalties.⁷⁰ A trafficking organization will continue to operate if it concludes that the possible benefits exceed the possible penalties.⁷¹ Trafficking continues to "thrive because it remains a low risk—high reward enterprise for organized crime."⁷²

An ILO study empirically analyzed transnational sex trafficking and concluded that the demand for trafficking victims is "higher in countries that are more open to globalization and that have a higher incidence of prostitution" and the supply of trafficking victims "increases when female youth unemployment is high in the countries of origin."⁷³ The U.S. Congress also

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Trafficking in Human Beings in the European Union*, *supra* note 22, at 6.

⁶⁵ Danailova-Trainor & Belser, *supra* note 7, at 5.

⁶⁶ *Id.*

⁶⁷ *Id.* at 6.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 5.

⁷¹ Danailova-Trainor & Belser, *supra* note 7, at 5.

⁷² *Id.* at 6 (citing Europol's 2003 assessment of human trafficking).

⁷³ *Id.* at 1, 13-14 (study did not analyze whether there was a correlation between

concluded that “[t]he low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.”⁷⁴ In addition, high levels of corruption in countries of origin enable traffickers to recruit a larger supply of victims.⁷⁵ From a demand perspective, the study’s data supported the conclusion that “economic and financial reforms, the lowering of trade barriers and the elimination of much regulation have created ample room for illicit trade, expanding the flexibility of traffickers to exercise their activities and move around their profits.”⁷⁶ Further, the quality of border control influences the demand for trafficking victims.⁷⁷

According to Antonio Maria Costa, Executive Director of the United Nations Office on Drugs and Crimes (UNODC), affordable transportation and instantaneous global communication are also contributing factors: “All of this has facilitated things like trade and services, (yet it has) also facilitated the trafficking in human beings.”⁷⁸ The victims of trafficking are essentially “human beings [being treated] as a commodity to be bought and sold” into the commercial sex industry in destination countries.⁷⁹

To eradicate the practice of sex trafficking will require states, international governmental organizations, and non-state actors to work collaboratively to address both the supply and demand factors that sustain the existence of a market for victims trafficked into forced prostitution.⁸⁰ States can address supply and demand factors within their borders with domestic legislation.⁸¹ Further, states can utilize domestic legislation to encourage and increase

the demand for trafficking victims and the legal status of prostitution in the countries of destination; “[f]emale youth unemployment refers to the share of the female labor force ages 15-24 without work but available for and seeking employment”; “sample include[d] a total of about 390,000 victims trafficked annually out of 31 countries of origin, and a total of 340,000 victims trafficked into 37 countries of destination.”).

⁷⁴ Trafficking Victims Protection Act of 2000, 22 U.S.C. §7101(b)(2) (2008).

⁷⁵ Danailova-Trainor & Belser, *supra* note 7, at 9.

⁷⁶ *Id.* at 19.

⁷⁷ *See id.*; *see also* *Trafficking in Human Beings in the European Union*, *supra* note 22, at 3 (overview of “push” and “pull” factors that create the market for human trafficking into EU Member States).

⁷⁸ Strohecker, *supra* note 56.

⁷⁹ *Convention and its Explanatory Report*, *supra* note 56, at 27.

⁸⁰ *See* Danailova-Trainor & Belser, *supra* note 7, at 3.

⁸¹ *See supra* text accompanying notes 52-77.

the involvement of non-state actors in the fight against sex trafficking.⁸²

II. Current Anti-Trafficking Legislation: Effects on Supply and Demand

This section will examine the treatment of human trafficking supply and demand factors in the Council of Europe Convention on Action Against Trafficking in Human Beings (Convention), the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Protocol), and the United States Trafficking Victims Protection Act (TVPA).

A. *Council of Europe Convention Against Trafficking in Human Beings*

The Council of Europe⁸³ has been at the forefront of developing strategies to address human trafficking. The forty-six member States of the Council of Europe are countries of origin, transit, and destination for human trafficking victims.⁸⁴ In 1991, the Council of Europe approved "Recommendation No. R(91)11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults, which was the first international instrument dealing comprehensively with these matters."⁸⁵ During the decade following the adoption of Recommendation No. R(91)11, the Council of Europe continued to implement further measures to "put forward a pan-European strategy taking in definitions, general measures, a methodological and action framework, prevention, victim assistance and protection, criminal measures, judicial cooperation and arrangements for international co-operation and co-ordination."⁸⁶ In 2002, the Parliamentary Assembly of the Council of Europe

⁸² *Id.*

⁸³ *Convention and its Explanatory Report*, *supra* note 56, at 28 (Note that the forty-six member states of the Council of Europe provide a unique context to analyze both supply and demand factors of the market for human trafficking for sexual exploitation because it includes countries of origin, transit, and destination.).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 29.

recommended that the Council of Ministers draft a European convention on human trafficking that would be open to both member and non-member states.⁸⁷ The Convention Against Trafficking in Human Beings was adopted by the Council of Europe on May 16, 2005, and has since been signed and ratified by eighteen member states and signed by twenty-two member states.⁸⁸

The Council of Europe, while acknowledging the importance of other international instruments addressing human trafficking, considers the Convention a beneficial addition because it “contains more precise provisions” pertinent to the European region that extend beyond the “minimum standards agreed upon in other international instruments.”⁸⁹ Further, it stressed that “[e]xperience has shown that putting legal instruments in place at [the] regional level valuably reinforces action at [the] world level.”⁹⁰ In the Explanatory Report to the Convention, the Council of Europe summarized the “added value” of the Convention as,

[First,] the affirmation that trafficking in human beings is a violation of human rights and violates human dignity and integrity, and that greater protection is therefore needed for all of its victims. Secondly, the Convention’s scope takes in all forms of trafficking (national, transnational, linked or not to organised crime, and for purposes of exploitation) in particular with a view to victim protection measures and international cooperation. Thirdly, the Convention sets up monitoring machinery to ensure that Parties implement its provisions effectively. Lastly, the Convention

⁸⁷ *Id.* at 30.

⁸⁸ See Council of Europe, *Convention on Action against Trafficking in Human Beings, Signature and Ratification Status*, May 16, 2005, CETS No. 197, available at <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=1&DF=&CL=ENG> (Member States Signed and Ratified: Albania, Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, France, Georgia, Latvia, Malta, Moldova, Montenegro, Norway, Portugal, Romania, Slovakia. Member States Signed: Andorra, Belgium, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Poland, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland, The Former Republic of Macedonia, Ukraine, and United Kingdom).

⁸⁹ *Convention and its Explanatory Report*, *supra* note 56, at 34.

⁹⁰ *Id.* at 28.

mainstreams gender equality in its provisions.⁹¹

1. Supply

Supply factors for human trafficking are addressed by the Convention in Article 5–Prevention of Trafficking in Human Beings, Article 12–Assistance to Victims, Article 13–Recovery and Reflection Period, Article 15–Compensation and Legal Redress, Article 16–Repatriation and Return of Victims, and Article 26–Non-punishment Provisions.⁹²

Article 5 of the Convention requires states to “establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.”⁹³ Research is integral to addressing the supply of women and children vulnerable to trafficking because an accurate understanding of the underlying reasons traffickers are able to recruit victims in countries of origin will enable states to develop effective prevention initiatives.⁹⁴ Campaigns to educate and raise awareness about human trafficking will decrease supply by empowering potential victims with information regarding tactics used by traffickers and the dangers associated with entering arrangements to travel to foreign countries for employment.⁹⁵ The implementation of social and economic initiatives and job training programs will provide potential victims with greater economic opportunity.⁹⁶ This will decrease the likelihood that potential victims will risk traveling abroad for employment purposes, thus decreasing the supply of victims.⁹⁷ Lastly, the provision specifically extends the awareness raising and education programs to address “professionals concerned” with human trafficking.⁹⁸

⁹¹ *Id.* at 32.

⁹² *Id.* at 3.

⁹³ *Id.* at 9.

⁹⁴ See *Convention and its Explanatory Report*, *supra* note 56, at 9, art. 5, ¶ 2.

⁹⁵ See *id.*

⁹⁶ See *id.*

⁹⁷ See *id.*

⁹⁸ See *id.*

The drafters of the Convention considered “professionals concerned” to include law enforcement officers, social workers, doctors, and other professionals who may interact with victims and traffickers.⁹⁹ If “professionals concerned” are educated about trafficking in persons, they are more likely equipped to develop and implement preventative measures to decrease the supply of victims.¹⁰⁰ Further, Article 5 requires when executing and strengthening trafficking prevention programs, to use gender mainstreaming¹⁰¹ and a child-sensitive approach in the development, implementation, and assessment of all the policies and programs.¹⁰² This provision acknowledges the importance of targeting prevention initiatives at the segments of society most vulnerable to victimization by traffickers: women and children.¹⁰³

Additionally, Article 5 directs states to examine their immigration policies and “take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry and stay on its territory.”¹⁰⁴ If states take measures to ensure that information is available to potential victims regarding how to legally immigrate and seek employment in their country, it will counteract traffickers’ misinformation and empower potential victims to identify traffickers’ offers and decline them, thus decreasing the supply of trafficking victims.¹⁰⁵

The Convention also includes several provisions that have the potential to decrease the number of rescued trafficking victims that are re-trafficked after returning to their country of origin. First, Article 12—Assistance to Victims—requires that “[e]ach Party adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery.”¹⁰⁶ If victims are returned to their country of origin

⁹⁹ *Convention and its Explanatory Report*, *supra* note 56, at 42, ¶ 103.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 42, ¶ 104. “The concept of gender mainstreaming refers to ‘[i]ncorporating equal opportunities for women and men into all Community policies and activities.’” *Id.*

¹⁰² *See id.* at 9, art. 5, ¶ 3.

¹⁰³ *See id.* at 9, art. 5, ¶ 2.

¹⁰⁴ *Convention and its Explanatory Report*, *supra* note 56, at 9, art. 5, ¶ 4.

¹⁰⁵ *Id.* at 42.

¹⁰⁶ *Id.* at 11, art. 12, ¶ 1.

without assistance for the physical and psychological injuries they receive, they are more vulnerable to being re-trafficked, thus increasing the supply of victims.¹⁰⁷ Further, this assistance is conditioned on the individual's identification as a victim of trafficking, but is "not made conditional on his or her willingness to act as a witness" against his or her trafficker.¹⁰⁸

Second, Article 13—Recovery and Reflection Period—mandates that each state "provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim."¹⁰⁹ This time period allows victims to begin their physical and psychological recovery in an environment protected from traffickers prior to returning to their country of origin or starting a new life in the destination country if they are permitted to stay.¹¹⁰ This strengthened physical and mental well-being makes victims less susceptible to further victimization by traffickers, thus decreasing the potential supply of victims.¹¹¹

Third, Article 15—Compensation and Legal Redress—seeks to guarantee that victims are compensated for the damages suffered.¹¹² Article 15 addresses the issue of compensation by requiring states to include provisions in their domestic law for informing victims of their rights of redress under the state's laws, providing "the right to legal assistance and to free legal aid for victims" and "the right of victims to compensation from the perpetrators."¹¹³ The Convention further requires that states ensure compensation for victims by "establish[ing] a fund for victim cooperation or measures or programmes aimed at social

¹⁰⁷ See *TRAFFICKING IN PERSONS REPORT JUNE 2008*, *supra* note 2, at 21; Danailova-Trainor & Belser, *supra* note 7, at 9.

¹⁰⁸ *Convention and its Explanatory Report*, *supra* note 56, at 12, art. 12, ¶ 6 (emphasis added).

¹⁰⁹ *Id.* art. 13, ¶ 1; *see also id.* at 51, ¶ 177 ("At present countries which have a period of that kind in their domestic law have lengths of one month, 45 days, two months, three months or unspecified . . . The Group of Experts on trafficking in human beings which the European Commission set up by decision of 25 March 2003 recommended . . . a period of at least 3 months.").

¹¹⁰ *Id.* at 50, ¶ 173.

¹¹¹ *See id.* at 28, ¶ 179 ("To help victims recover and stay free of traffickers for that period, it is essential to provide assistance and protection.").

¹¹² *See id.* at 13, art. 15, ¶ 4.

¹¹³ *Convention and its Explanatory Report*, *supra* note 56, at 13, art. 15, ¶ 2.

assistance and social integration of victims, which could be funded by assets” resulting from sanctions against perpetrators.¹¹⁴ This measure provides an additional method preventing rescued victims from reentering the supply of trafficking victims.¹¹⁵

Fourth, Article 16—Repatriation and Return of Victims—mandates that when a Party to the Convention returns a victim of trafficking to their country of origin, it does so with “due regard for the rights, safety and dignity of that person . . . and shall preferably be voluntary.”¹¹⁶ This provision respects the need to support a victim’s reintegration into society and decreases the likelihood the victim will be re-trafficked.¹¹⁷

Lastly, Article 26—Non-punishment Provisions—mandates that “[e]ach Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities to the extent that they have been compelled to do so.”¹¹⁸ Article 26 recognizes that victims of trafficking are *victims* and have engaged in illegal acts, such as prostitution, not because they *chose* to do so, but because they were *compelled* by their traffickers.¹¹⁹ This is an important distinction in the effort to decrease the supply of victims because if victims of trafficking are treated as criminals and not given assistance with their physical and psychological trauma and reintegration into society, these victims are vulnerable to being re-trafficked upon return to their country of origin.¹²⁰

2. Demand

As discussed in the previous section, trafficking organizations will only continue to operate if the costs of operating are outweighed by the possible benefits.¹²¹ The Convention includes provisions that have the potential to decrease demand by raising

¹¹⁴ *Id.* art. 15, ¶ 4.

¹¹⁵ *See id.*

¹¹⁶ *Id.* art. 16, ¶ 2.

¹¹⁷ *See id.*

¹¹⁸ *Convention and its Explanatory Report*, *supra* note 56, at 15, 16, art. 26.

¹¹⁹ *Id.*

¹²⁰ *See id.*

¹²¹ Danailova-Trainor & Belser, *supra* note 7, at 19. *See also supra* notes 56-82 and accompanying text.

the costs of operating.¹²² These provisions include increasing the number of successful criminal prosecutions of traffickers, extending liability to corporate actors implicated in trafficking, and requiring traffickers to compensate victims.¹²³

The Convention adopts the definition of 'trafficking in persons' from the UN Protocol¹²⁴ in Article 4(a).¹²⁵ Then, in Article 4(b), the Convention states that consent of the victim to any form of exploitation included in the definition, for example prostitution, is irrelevant in determining that the individual is a *victim* of trafficking.¹²⁶ It is important to extend prosecution to these cases because "while someone may wish employment, and possibly be willing to engage in prostitution, that does not mean that they consent to be subjected to abuse of all kinds."¹²⁷ The determination that consent is irrelevant will permit prosecution of traffickers in cases where the victim may have consented to being transported and knew they would be working as prostitutes.¹²⁸ Establishing consent as irrelevant increases the possibility that traffickers will be prosecuted, thus increasing the cost of operating and decreasing demand.

Another measure that will increase the number of successful prosecutions is the "recovery and reflection" period.¹²⁹ As mentioned above, Article 13 permits individuals reasonably believed to be victims of trafficking to remain in the country of destination for at least thirty days.¹³⁰ This provides victims with the opportunity to contemplate whether or not they will cooperate with authorities in the prosecution of their traffickers.¹³¹ This will strengthen prosecutions because this "period is likely to make the victim a better witness: statements from victims wishing to give evidence to the authorities may well be unreliable if they are still

¹²² See *Convention and its Explanatory Report*, *supra* note 56.

¹²³ *Id.*

¹²⁴ Protocol, *supra* note 5, art. 3.

¹²⁵ *Convention and its Explanatory Report*, *supra* note 56, at 37, ¶ 72.

¹²⁶ *Id.* at 8, art. 4(b).

¹²⁷ *Id.* at 40, ¶ 97.

¹²⁸ See *id.*

¹²⁹ *Convention and its Explanatory Report*, *supra* note 56, at 12, art. 13, ¶ 1.

¹³⁰ See *id.*

¹³¹ *Id.* at 50, ¶ 174.

in a state of shock from their ordeal.”¹³² Additionally, this period allows a victim to make an “informed decision”¹³³ about cooperation because the victim has the time to “be in a reasonably calm frame of mind and know about the protection and assistance measures available and the possible judicial proceedings against the traffickers.”¹³⁴

Further, in Article 28, the Convention provides for protections of victims, the victims’ families when appropriate, witnesses, and other individuals that collaborate with law enforcement in prosecuting traffickers.¹³⁵ These measures also contribute to decreasing traffickers’ demand for victims because these provisions will increase the cooperation of victims and other witnesses, which will lead to more convictions of traffickers.¹³⁶

However, it is important to note that the Convention requires that states ensure that prosecution of trafficking offenses under their domestic legislation is “not dependent upon the report or accusation made by a victim.”¹³⁷ Thus, the decision of a victim not to cooperate with law enforcement will not preclude the prosecution of the victim’s trafficker(s).¹³⁸ The “recovery and reflection period,” protection for witnesses, and the ability of law enforcement to prosecute traffickers without victim cooperation all increase the probability of criminal sanctions and will deter demand by increasing the costs of operating for traffickers.¹³⁹

The Convention’s requirement, in Chapter IV, that states adopt or strengthen their criminal law in relation to trafficking-related offenses will increase prosecutions and lead to more severe penalties, which will result in a reduction in demand for victims.¹⁴⁰ Individual members of transnational trafficking organizations may have been tried and convicted for trafficking-related offenses in multiple states.¹⁴¹ Many states that were parties to the Convention

¹³² *Id.*

¹³³ *Id.* at 12, art. 13, ¶ 1.

¹³⁴ *Id.* at 51, ¶ 174.

¹³⁵ *Convention and its Explanatory Report*, *supra* note 56, at 16, art. 28.

¹³⁶ *See id.* at 51, ¶ 174.

¹³⁷ *Id.* at 16, art. 27, ¶ 1.

¹³⁸ *Id.*

¹³⁹ *See id.*; *see also id.* at 64, ¶ 277.

¹⁴⁰ *Id.* at 14–16, art. 18–26.

¹⁴¹ *Convention and its Explanatory Report*, *supra* note 56, at 63, ¶ 265.

had domestic legal systems that penalized an individual with prior convictions more harshly, but “[t]raditionally, previous convictions by foreign courts were discounted on the grounds that criminal law is a national matter and that there can be differences of national law, and because of a degree of suspicion of decisions by foreign courts.”¹⁴² This approach was altered by Article 25, which mandated that states “adopt such legislative and other measures providing for the possibility to take into account final sentences passed by another Party in relation to [trafficking] offenses.”¹⁴³ Due to this change, traffickers with previous convictions will be confronted with harsher penalties if convicted again, regardless of the country in which they are arrested, thus increasing the operating costs for traffickers.¹⁴⁴

The Convention also requires that states adopt legislation that criminalizes the act of “forging a travel or identity document,” “procuring or providing” a travel or identity document, or “retaining, removing, concealing, damaging or destroying a travel or identity document of another person” if those acts are “committed intentionally and for the purpose of enabling the trafficking in human being.”¹⁴⁵ Additionally, the Convention dictates that states will adopt legislation that criminalizes “aiding and abetting” traffickers in committing any offense contained within the definition of trafficking in human beings as defined in Article 4,¹⁴⁶ or “aiding and abetting” the offenses related to travel or identity documents in Article 20.¹⁴⁷ Both of these provisions have the potential to deter demand by increasing penalties for traffickers at various levels of involvement in trafficking organizations.¹⁴⁸

Article 6 of the Convention explicitly addresses measures needed “to discourage the demand that fosters all forms of exploitation of persons . . . that leads to trafficking.”¹⁴⁹ The

¹⁴² *Id.*

¹⁴³ *Id.* at 16, art. 25.

¹⁴⁴ *See id.* at 63, ¶ 265; *see also* Danilova-Trainor & Belser, *supra* note 7, at 6.

¹⁴⁵ *Convention and its Explanatory Report*, *supra* note 56, at 14, art. 20.

¹⁴⁶ *Id.* at 8, art. 4.

¹⁴⁷ *Id.* at 14, art. 20.

¹⁴⁸ *See id.*

¹⁴⁹ *Id.* at 9, art. 6.

signatories are instructed to “adopt or strengthen legislative, administrative, educational, social, cultural, or other measures including” research, awareness campaigns, and “preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.”¹⁵⁰ The Convention provisions explicitly address demand for the prostitution services of human trafficking victims, but, if implemented, these measures would also influence the demand of traffickers for human trafficking victims.¹⁵¹ If there is greater awareness and understanding of the victimization of these women and children, there will be fewer customers seeking to utilize the services of human trafficking victims.¹⁵² This will decrease the potential profits available to traffickers, thus decreasing demand for trafficking victims because the cost of operating will be higher than potential benefits.¹⁵³

In addition to affecting supply, the requirements of Article 15 also have the ability to decrease demand.¹⁵⁴ If victims are informed of their right to seek compensation from their traffickers under Article 15, and have access to legal assistance, they are more likely to do so.¹⁵⁵ The possibility of having to provide victims with monetary compensation will factor into traffickers’ cost-benefit analysis as well and decrease demand on account of victim compensation now being a potential operational cost.¹⁵⁶

The Convention also deters demand for victims through requiring states to “consider adopting such legislative and other such measures as may be necessary to establish as criminal offences . . . the use of services which are which are the object of exploitation as referred to in Article 4 . . . with the knowledge that the person is a victim of trafficking in human beings.”¹⁵⁷ Penalties

¹⁵⁰ *Id.* at 9, art. 5(d).

¹⁵¹ See Danailova-Trainor & Belser, *supra* note 7, at 4.

¹⁵² See *Convention and its Explanatory Report*, *supra* note 56, at 43, ¶ 109.

¹⁵³ See Danailova-Trainor & Belser, *supra* note 7, at 4.

¹⁵⁴ See *Convention and its Explanatory Report*, *supra* note 56, at 13, art. 15, ¶¶ 1-4.

¹⁵⁵ *Id.*

¹⁵⁶ See Danailova-Trainor & Belser, *supra* note 7, at 5-6.

¹⁵⁷ See *Convention and its Explanatory Report*, *supra* note 56, at 14, art. 19.

for customers patronizing the prostitution services of persons they know to be trafficking victims would decrease use of those services.¹⁵⁸ Therefore, if such legislation were adopted and enforced, it would increase the risk of profit loss for traffickers, thus leading to a decrease in demand for victims.¹⁵⁹

Lastly, the Convention takes the important step of extending liability to corporations that benefit from trafficking in persons.¹⁶⁰ Article 22 states that:

1. [E]ach Party shall adopt such legislative and other measures as may be necessary to ensure that each legal person¹⁶¹ can be held liable for a criminal offense established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- a) a power of representation of the legal person;
- b) an authority to take decisions on behalf of the legal person; or
- c) an authority to exercise control within the legal person.

2. Apart from the cases already provided for in paragraph 1, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.¹⁶²

Thus, corporate liability is created for any criminal human trafficking actions taken by any person in a leadership position in the entity.¹⁶³ Further, an agent or employee of the entity who

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 14, art. 22.

¹⁶¹ *Id.* at 60, ¶ 247 (A legal person may mean “commercial companies, associations and similar legal entities.”).

¹⁶² *Id.* at 14-15, art. 22, ¶¶ 1-2.

¹⁶³ *Convention and its Explanatory Report*, *supra* note 56, at 14-15, art. 22, ¶¶ 1-2.

commits a criminal action in relation to human trafficking for the benefit of the entity will also be held liable if the act was possible due to the failure of the entity leader to properly supervise the agent or employee.¹⁶⁴ The Convention requires that when liability is found, each state will ensure that those entities are “subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.”¹⁶⁵

The extension of corporate liability will discourage demand for victims in the Parties to the Convention because it increases the associated risk for legal commercial businesses involved with trafficking organizations.¹⁶⁶ For example, the balance of the cost-benefit analysis of an owner of a massage parlor or night club that permitted traffickers to utilize his or her business to prostitute trafficking victims will shift with the increased risk of corporate liability and the owner may decide the risk is too high to continue the relationship with the traffickers.¹⁶⁷ The cost-benefit analysis may shift as well for other entities that may have previously worked with trafficking organizations to provide transportation or housing for victims.¹⁶⁸ Further, because the provision also extends liability if the action of an agent or employee was possible due to lack of supervision, entity leaders will be encouraged to strengthen their monitoring of agents and employees. All of these outcomes will increase the difficulty of operating for traffickers, thus driving up the cost of operating a trafficking organization and decreasing the demand for victims.¹⁶⁹

3. *Institutionalizing Internal and Multilateral Efforts*

The Convention also includes several measures that will ensure that the previously discussed provisions affecting supply

¹⁶⁴ *Id.* at 61, ¶ 249. In this context, failure to supervise should be interpreted to include not taking appropriate and reasonable steps to prevent employees or agents from engaging in criminal activities on the entity's behalf. *Id.* Such appropriate and reasonable steps could be determined by various factors, such as the type of business, its size, and the rules of good practices in force. *Id.*

¹⁶⁵ *Id.* at 16, art. 23, ¶ 2.

¹⁶⁶ *See id.* at 16, art. 22, ¶¶ 1-2.

¹⁶⁷ *Id.*

¹⁶⁸ *See id.*

¹⁶⁹ *See Convention and its Explanatory Report*, *supra* note 56, at 16, art. 22, ¶¶ 1-2; *see also* Danailova-Trainor & Belser, *supra* note 7, at 5-6.

and demand are implemented efficiently and effectively. Article 29 sets forth guidelines for states to use to set up internal human trafficking positions or entities that have the necessary independence, training, and financial resources to “ensure co-ordination of the policies and actions of their governments’ departments and other public agencies against trafficking in human beings.”¹⁷⁰ National coordination is essential to capturing and prosecuting trafficking organizations, which are typically “mobile and [able to] adapt rapidly to change (for example, changes in a country’s law) by redeploying . . . [S]ome trafficking organizations have been found to have a rotation system for the women they exploit, moving them from place to place so as to avert surveillance.”¹⁷¹ Effective coordination of national policies, as Article 29 states, requires not only the development of structures to facilitate coordination between law enforcement and other agencies, but also the training and financial resources to provide authorities with specialized training in combating human trafficking.¹⁷²

Furthermore, states are encouraged to develop mechanisms to monitor trafficking within their borders and to implement “national legislation requirements.”¹⁷³ This is an integral component of the Convention. If states’ compliance with the Convention is not monitored and assessed, then implementation of the Convention’s provisions will be weakened.¹⁷⁴ Further, the development of an internal mechanism to monitor and assess progress provides states with a framework to readjust and tailor policies to their state’s specific needs, thus strengthening the potential of the Convention to address the supply and demand factors that maintain the market for trafficking in persons in that particular country.¹⁷⁵

In addition, the Convention provided for the creation of a body to monitor compliance of states with the Convention, The Group of Experts on Action Against Trafficking in Human Beings

¹⁷⁰ *Convention and its Explanatory Report*, *supra* note 56, at 18, art. 29, ¶ 2.

¹⁷¹ *Id.* at 66, ¶ 295.

¹⁷² *Id.* at 18, art. 29, ¶ 1.

¹⁷³ *Id.* ¶ 4.

¹⁷⁴ *See id.*

¹⁷⁵ *See id.* at 66, ¶ 292.

(GRETA) and details the evaluation process to be used by GRETA.¹⁷⁶ This provides another mechanism to ensure the accountability of the states and provide a source of data to assist states in strengthening their policies and efforts.¹⁷⁷

4. *Partnering with Non-State Actors*

The Convention also explicitly encourages that Parties to the Convention to involve non-state actors, such as non-governmental organizations, in the implementation of provisions affecting both supply and demand.¹⁷⁸ The inclusion of non-governmental organizations and other non-state actors such as corporations in states' efforts to address trafficking has the potential to increase both the expertise and resources available to combat trafficking, especially in regards to prevention and victim assistance.¹⁷⁹

As discussed, the Convention's provisions utilize multiple approaches to address the supply and demand factors that create and sustain the market for trafficking in persons. The next section will analyze the methods used by the UN Protocol to decrease the

¹⁷⁶ See *Convention and its Explanatory Report*, *supra* note 56, at 20, art. 36, ¶¶ 1-2 ("GRETA shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as a multidisciplinary expertise. They shall be elected by the Committee of the Parties for a term of office of 4 years, renewable once, chosen from amongst nationals of the States Parties to this Convention."); see also *id.* at 20, art. 37, ¶ 1 ("The Committee of the Parties shall be composed of the representatives on the Committee of Ministers of the Council of Europe of the member States Parties to the Convention and representatives of the Parties to the Convention, which are not members of the Council of Europe.").

¹⁷⁷ See *id.* at 21, art. 38 (listing procedures for GRETA's evaluation of states' compliance with the Convention).

¹⁷⁸ See *id.* at 9, art. 5 (Prevention of trafficking in human beings); *id.* at 10, art. 7, ¶ 2 (Border measures "legislative or other appropriate measures to prevent . . . means of transport by commercial carriers . . . shall include the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State."); *id.* at 11, art. 12 (Assistance to victims); *id.* at 16, art. 27, ¶ 3 (Ex parte and ex officio applications "in accordance with the conditions provided for by its internal law, to any group, foundation, association or nongovernmental organizations which aims at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning" human trafficking); *id.* at 20, art. 35 (Co-operation with Civil Society).

¹⁷⁹ See *Convention and its Explanatory Report*, *supra* note 56, at 75-76, ¶¶ 352-53; see also *id.* at 66, ¶ 292.

supply of and demand for victims.

B. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children

In 2000, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children was adopted as a supplement to the United Nations Convention against Transnational Crime.¹⁸⁰ More than 110 countries have signed the Protocol, and in March 2007, the United Nations formed the Global Initiative to Fight Human Trafficking (UNGIFT) to “promote the global fight on human trafficking, on the basis of international agreements reached at the U.N.”¹⁸¹ The Protocol states in the Preamble:

[Declaring] that effective action to prevent and combat trafficking in persons especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including protecting their internationally recognized human rights.

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking.¹⁸²

The “comprehensive international approach” called for by the Protocol is needed to address the supply and demand factors permitting the market in human trafficking to exist.¹⁸³ The market will continue to exist if there are not complimentary efforts coordinated between countries of origin, transit, and destination.¹⁸⁴

¹⁸⁰ Protocol, *supra* note 5, at 9, art. 16, ¶ 1 (United Nations Convention against Transnational Crime is also known as the “Palermo Convention.”). *See id.* at 1, art. 1, ¶ 1 (stating that “[t]his Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.”).

¹⁸¹ United Nations Global Initiative to Fight Human Trafficking, <http://www.ungift.org/ungift/en/about/index.html> (last visited Mar. 31, 2010).

¹⁸² Protocol, *supra* note 5, at 1 (emphasis in original).

¹⁸³ *Id.*

¹⁸⁴ *See id.*

1. Supply

The Protocol addresses supply factors in Article 6—Assistance to and Protection of Victims of Trafficking in Persons,¹⁸⁵ Article 7—Status of Victims of Trafficking in Persons in receiving states,¹⁸⁶ Article 8—Repatriation of Victims of Trafficking in Persons,¹⁸⁷ and Article 9—Prevention of Trafficking in Persons.¹⁸⁸

Article 6 of the Protocol concerns assistance provided to victims after they escape or are rescued from traffickers in the destination country.¹⁸⁹ As discussed previously, victims frequently report being threatened with “death, beatings, . . . harm to their children and families, or re-trafficking.”¹⁹⁰ Therefore, in order to decrease the number of victims vulnerable to being re-trafficked, it is important to assist victims with their physical and mental well-being and reintegration into society, either in the country of destination or the victim’s home country.¹⁹¹ Article 6 requires states “in appropriate cases and to the extent possible under [their] domestic law . . . to protect the privacy and identity of victims of trafficking [including] making legal proceedings relating to such trafficking confidential.”¹⁹² Further, Article 6 mandates that states “provide for the physical safety of victims” while victims are located in their territory.¹⁹³ Both these provisions are integral to decreasing the supply of victims vulnerable to being re-trafficked because both provisions create a barrier between the victim and traffickers who may seek to intimidate the victim into being trafficked again upon return to the country of origin.¹⁹⁴ Article 6 compels states to “ensure that [their] domestic legal system contains measures that offer victims of trafficking in persons the

¹⁸⁵ *Id.* at 3-4.

¹⁸⁶ *Id.* at 4.

¹⁸⁷ *Id.* at 4-5.

¹⁸⁸ Protocol, *supra* note 5, at 5-6, art. 9.

¹⁸⁹ *Id.* at 3-4.

¹⁹⁰ See TRAFFICKING IN PERSONS REPORT JUNE 2008, *supra* note 2, at 21.

¹⁹¹ See Danailova-Trainor & Belser, *supra* note 7, at 9.

¹⁹² Protocol, *supra* note 5, at 3, art. 6, ¶ 1.

¹⁹³ *Id.* at 4, art. 6, ¶ 5.

¹⁹⁴ See *id.* at 3, art. 6, ¶ 1.

possibility of obtaining compensation for damage suffered.”¹⁹⁵ Compensation to victims provides the potential of resources to help victims reintegrate into society after their ordeal, thus decreasing the likelihood they will be susceptible to re-trafficking, which will decrease the supply of victims.¹⁹⁶

A troubling aspect of Article 6 is that it only requires that states “*consider* implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons.”¹⁹⁷ If victims of trafficking are not provided with these types of assistance the likelihood is dramatically increased.¹⁹⁸

With respect to preventing victims from re-entering the supply of potential victims, the Protocol also requests that states “*consider* adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in [their] territory, temporarily or permanently, in appropriate cases.”¹⁹⁹ This provision, while asking states to “give appropriate consideration to humanitarian and compassionate factors,” only requires *consideration*, not action on the part of states to ensure that victims susceptible to further victimization upon return to their countries of origin be allowed to remain in the destination country.²⁰⁰ If states disregard this potential victimization and the possibility of re-trafficking upon return, the size of the supply of victims will not be affected.²⁰¹ Article 8 is helpful in deterring the possibility of states disregarding this danger because it mandates that repatriation of victims of trafficking “shall be with due regard for the safety of that person . . . and shall preferably be voluntary.”²⁰²

Factors affecting the supply of victims are addressed directly

¹⁹⁵ *Id.* at 4, art. 6, ¶ 6.

¹⁹⁶ *See id.* The Protocol does not specify whether compensation would be given through state funds or monetary sanctions of traffickers. Thus, it is unclear if this provision would impact the demand of traffickers for victims because it is not apparent their costs of operation would rise.

¹⁹⁷ *See id.* at 3-4, art. 6, ¶ 3 (emphasis added).

¹⁹⁸ Protocol, *supra* note 5, at 3-4, art. 6, ¶ 3.

¹⁹⁹ *Id.* at 4, art. 7, ¶ 1 (emphasis added).

²⁰⁰ *See id.* at 4, art. 7, ¶ 2.

²⁰¹ *See id.*

²⁰² *See id.* at 4-5, art. 8, ¶ 2.

by Article 9 which mandates states to adopt “comprehensive policies, programmes and other measures” to prevent trafficking and protect victims from re-victimization.²⁰³ States are expected to engage in the process of forming and/or strengthening “bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.”²⁰⁴ These programs will decrease the supply of potential victims.²⁰⁵ Bilateral and multilateral cooperation will improve the potential of initiatives to effectively address factors supporting the supply of victims because it will bring the expertise and information of both countries of origin and destination to the effort.²⁰⁶

In addition to the benefits of bilateral and multilateral government cooperation in addressing supply, the Protocol also encourages states to provide opportunities for non-governmental and other organizations in civil society to join the effort to prevent trafficking and provide assistance to victims.²⁰⁷ The inclusion of non-governmental entities buttresses governmental efforts by bringing additional expertise and financial resources to the effort to decrease the supply of initial and re-trafficked victims.²⁰⁸

2. Demand

In addition to addressing supply factors, the Protocol includes provisions aimed at criminalization (Article 5), assisting and protecting victims (Article 6), repatriation (Article 8), prevention and diminishing demand (Article 9), information exchange and training (Article 10), border measures (Article 11), and security

²⁰³ Protocol, *supra* note 5, at 5, art. 9, ¶ 1.

²⁰⁴ *Id.* ¶ 4.

²⁰⁵ See *id.* See also Danailova-Trainor & Belser, *supra* note 7, at 9.

²⁰⁶ See Protocol, *supra* note 5, at 5, art. 9, ¶ 4.

²⁰⁷ See Protocol, *supra* note 5, at 3, art. 6, ¶ 3 (“Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.”); see also *id.* at 5, art. 9, ¶ 3 (“Policies, programmes and other measures established [to prevent the trafficking of persons] . . . shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.”).

²⁰⁸ See generally *id.* at 3, art. 6, ¶ 3 (noting that states should consider collaborating with non-governmental organizations). See also *id.* at 5, art. 9, ¶ 3.

and control of documents (Article 12).²⁰⁹

Article 5 of the Protocol mandates that all states ensure that human trafficking-related offenses are criminalized in the states' domestic legislation.²¹⁰ The establishment of criminal offenses for human trafficking will increase the risks and penalties for traffickers.²¹¹ This will increase the cost of operating; thus it will be a deterrent to continuing to operate and will ultimately decrease the demand for victims.²¹²

The provisions in Article 6 have the potential to decrease demand for victims as they require states to provide victims with "[a]ssistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders" and ensure the victims' "physical safety" while in the state's territory.²¹³ If victims are assured that they are safe from their traffickers they are more likely to cooperate with law enforcement in the prosecution of their traffickers, strengthening prosecutors' cases and increasing the likelihood of conviction.²¹⁴ If traffickers are at risk of being convicted more frequently of criminal offenses related to their trafficking operations, their costs of operation will increase, therefore decreasing their level of trafficking activities and, consequently, the demand for victims.²¹⁵

However, the potential of the Article 6 provisions is weakened because protection only extends to the physical safety of the victim and does not provide for measures to ensure the physical safety of the victim's family members or for other witnesses.²¹⁶ Traffickers often threaten victims with harm to their family

²⁰⁹ See Protocol, *supra* note 5.

²¹⁰ See *id.* at 3, art. 5, ¶ 1.

²¹¹ See *id.*; see also Danailova-Trainor & Belser, *supra* note 7, at 6.

²¹² See Protocol, *supra* note 5, at 3, art. 5, ¶ 1; see also Danailova-Trainor & Belser, *supra* note 7, at 6 (indicating that "[i]f the trafficker finds that the benefits are much larger than the costs, then a decision to engage in and continue with the activity is made.").

²¹³ See Protocol, *supra* note 5, at 3-4, art. 6, ¶¶ 2(b), 5.

²¹⁴ See TRAFFICKING IN PERSONS REPORT JUNE 2008, *supra* note 2, at 27-28.

²¹⁵ See Danailova-Trainor & Belser, *supra* note 7, at 6.

²¹⁶ See Protocol, *supra* note 5, at 4, art. 6, ¶ 5 (providing that "[e]ach State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory" yet failing to provide for the protection of witnesses and family members).

members; therefore, even though the victims are assured of their own personal safety, they may be discouraged from cooperating with law enforcement out of fear for their family members' safety.²¹⁷ Without the victim's cooperation, the likelihood of conviction will not increase, and there will be no change in demand for victims.²¹⁸

Article 8 of the Protocol complements Article 6's inclusion of the victim in criminal proceedings.²¹⁹ It provides that returning a victim to his or her country of origin "shall be with due regard . . . for the status of any legal proceedings related to the fact that the person is a victim of trafficking."²²⁰ Ensuring that repatriation does not disrupt the victim's ability to cooperate with law enforcement will increase the strength of prosecutions and the probability of trafficking convictions because it provides prosecutors with needed access to victims.²²¹

In addition to decreasing demand for victims through stronger criminal penalties and prosecutions, Article 9 of the Protocol seeks to decrease demand by reducing the potential revenue trafficking organizations can amass through the sexual exploitation of trafficking victims.²²² Trafficking organizations will only continue to traffic women and children into forced prostitution if they are making a profit.²²³ Generating a profit requires that a clientele base utilize the prostitution services of these trafficking victims.²²⁴ Article 9 mandates that states "adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of

²¹⁷ See *TRAFFICKING IN PERSONS REPORT JUNE 2008*, *supra* note 2, at 5.

²¹⁸ See Danailova-Trainor & Belser, *supra* note 7, at 17-19 (explaining the "demand-side" of human trafficking).

²¹⁹ See Protocol, *supra* note 5, at 4, art. 8, ¶ 2; see also *id.* at 3, art. 6, ¶ 2(b).

²²⁰ See *id.* at 4, art. 8, ¶ 2.

²²¹ See, e.g., Louise Ellison, *Prosecuting Domestic Violence without Victim Participation*, 65 MOD. L. REV. 834, 834-58 (2002) (discussing the difficulties of victim withdrawal in the context of domestic violence).

²²² See Protocol, *supra* note 5, at 5, art. 9.

²²³ See Danailova-Trainor & Belser, *supra* note 7, at 6 (emphasizing "that trafficking networks operate as businesses, trying to maximize benefits and minimize costs").

²²⁴ See *id.* at 21-22.

persons, especially women and children.”²²⁵ Thus, if states adopt legislative and other initiatives that create awareness among the public that trafficking victims are *victims* and not individuals who have willingly decided to engage in prostitution to earn a living, the number of clients using the prostitution services of victims may decrease, thus diminishing the profits of traffickers and leading to a decrease in demand for victims.²²⁶

Additionally, the Protocol includes several provisions that decrease demand by increasing operational costs for trafficking organizations by making it more difficult for traffickers to move victims across international borders.²²⁷ Article 11 requires states to strengthen border controls to “prevent and detect trafficking in persons.”²²⁸ Furthermore, it indicates states should adopt measures “establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.”²²⁹ This provision also increases the difficulty of transporting victims across borders and deters commercial transportation companies from becoming complicit in human trafficking.²³⁰ In partnership with increased border controls measures, Article 12 requires states “[t]o ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued.”²³¹ In addition, Article 13 mandates that states confirm in a reasonable amount of time the validity of trafficking documents if requested to do so because another state suspects the “travel or identity documents issued or purported to have been issued in its name . . . [are] being used for trafficking in persons.”²³² The expectation of higher quality travel and identity documents combined with cooperation between states in their verification will increase the

²²⁵ See Protocol, *supra* note 5, at 5, art. 9, ¶ 5.

²²⁶ See *id.*

²²⁷ See *id.* at 6-7, art. 10-13.

²²⁸ See *id.* at 6, art. 11, ¶ 1.

²²⁹ See *id.* ¶ 3.

²³⁰ See *id.*

²³¹ See Protocol, *supra* note 5, at 7, art. 12(a).

²³² See *id.* at 7, art. 13.

difficulty of traffickers attempting to use false or stolen travel or identity documents to transport victims across international borders.²³³ This increase in the cost of operation will decrease potential profits, thus decreasing traffickers' demand for victims.²³⁴

Domestic law enforcement, immigration, and other related authorities' efforts to combat trafficking will also be strengthened by the information exchange and training discussed in Article 10.²³⁵ The Protocol mandates that these agencies, as appropriate and in accordance with domestic law, cooperate and exchange information concerning the determination of:

- (a)[W]hether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
- (b)The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
- (c)The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.²³⁶

If implemented, these efforts will increase the effectiveness of law enforcement and other related agencies in preventing the recruitment, transportation, and exploitation of victims.²³⁷ Furthermore, Article 10 also requires that states provide training to "law enforcement, immigration and other relevant officials" that specifically addresses "methods used in preventing trafficking, prosecuting the traffickers and protecting the rights of victims."²³⁸ As prevention and enforcement efforts improve, it will increase the difficulty, and consequently the costs, of operation for

²³³ See *id.* art. 12-13.

²³⁴ See Danailova-Trainor & Belser, *supra* note 7, at 6.

²³⁵ See Protocol, *supra* note 5, at 6, art. 10.

²³⁶ See *id.* ¶ 1.

²³⁷ See *id.*

²³⁸ See *id.* ¶ 2.

traffickers.²³⁹ Thus, these efforts will also decrease the demand for victims because the profitability of trafficking women and children for prostitution will decrease.²⁴⁰

In summary, the Protocol contains many provisions that could deter both the supply and demand for trafficking in persons; however, to be effective, the provisions must be incorporated into states' domestic legislation. The following section will examine the effect of the trafficking legislation adopted by the United States on the supply and demand for trafficking in persons.

C. Trafficking Victims Protection Act

In 2000, the U.S. Congress adopted the Trafficking Victims Protection Act (TVPA).²⁴¹ Congress concluded that the TVPA was needed because:

[e]xisting legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. No comprehensive law exists in the United States that penalizes the range of offenses involved in the trafficking scheme. Instead, even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment.²⁴²

The TVPA recognized that current criminal law and penalties in the United States contributed to "weak penalties for convicted traffickers," and consequently were not an effective deterrent for demand.²⁴³ In addition, the legislation recognized that victims were being "repeatedly punished more harshly than the traffickers themselves" because most victims were illegal immigrants.²⁴⁴ This treatment of victims did not effectively address either the supply of potential victims or decreasing the supply of victims at risk of being re-trafficked.²⁴⁵

²³⁹ See *id.* art. 10.

²⁴⁰ See *id.*

²⁴¹ Trafficking Victims Protection Act of 2000, 22 U.S.C. 7101 (2008).

²⁴² *Id.* § 7101(b)(14).

²⁴³ *Id.* § 7101(15).

²⁴⁴ *Id.* § 7101(17).

²⁴⁵ See *id.* § 7101.

1. Supply

The TVPA includes several provisions that may aid in decreasing the supply of potential victims of trafficking and re-trafficking.²⁴⁶ The legislation puts forth very specific measures targeted at increasing economic opportunity for individuals at risk of trafficking in countries of origin, including:

- (1) Microcredit lending programs, training in business development, skills training, and job counseling;
- (2) Programs to promote women's participation in economic decision making;
- (3) Programs to keep children, especially girls, in elementary and secondary schools, and to educate persons who have been victims of trafficking;
- (4) Development of educational curricula regarding the dangers of trafficking; and
- (5) Grants to nongovernmental organizations to accelerate and advance the political, economic, social, and educational roles and capacities of women in their countries.²⁴⁷

A deficit in economic opportunities for females was cited by the ILO study as a significant contributor to the supply of women and children that are susceptible to being trafficked.²⁴⁸ If implemented, these initiatives would increase employment opportunities, access to education and job skills training, and the political influence of women in countries of origin, which would decrease the supply of potential victims.²⁴⁹ The TVPA also requires the United States to "establish and carry out programs to increase public awareness, particularly among potential victims of trafficking, of the dangers of trafficking and the protections that are available for victims of trafficking."²⁵⁰ If victims are more informed about the tactics used by traffickers and the risks of

²⁴⁶ See, e.g., *id.* §§ 7104-7105 (addressing prevention of trafficking, and protecting and assisting trafficking victims).

²⁴⁷ Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7104(a) (2008).

²⁴⁸ See Danailova-Trainor & Belser, *supra* note 7, at 21 (stating that "[a]s long as female youth unemployment remains high in a country, it is unlikely that prevention and information campaigns will have much of an effect in reducing trafficking").

²⁴⁹ See 22 U.S.C. § 7104(a).

²⁵⁰ *Id.* § 7104(b).

agreeing to be transported to another country for employment, women and children are less likely to be susceptible to the trickery and deceit of traffickers, thus decreasing the supply of potential victims.²⁵¹ In an effort to prevent further victimization and re-trafficking of victims, the TVPA contains measures to provide assistance to victims who remain in the United States and to those who return to their countries of origin.²⁵² If a “victim of a severe form of trafficking in persons” remains in the United States, that victim “shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency . . . to the same extent as an alien who is admitted to the United States as a refugee.”²⁵³ A victim of “a severe form of trafficking” is defined in this section to include only victims that have been forced to commit commercial sex acts and that are either (1) not yet eighteen years of age or (2) cooperating and believed to be necessary to the investigation and prosecution of traffickers.²⁵⁴ As a result of this narrow definition, the potential of this provision to decrease the supply of victims susceptible to being re-trafficked is limited. Eligibility for benefits and services is not extended to victims if they are older than eighteen years of age and are either unwilling to assist with investigation and prosecution of traffickers or deemed unhelpful to those efforts by law enforcement.²⁵⁵

There are no limitations on the assistance provisions targeted

²⁵¹ See *id.*

²⁵² See *id.* § 7105.

²⁵³ See 22 U.S.C. § 7105(b)(1)(a); see also *id.* § 7105(b)(1)(C) (“[T]he term ‘victim of a severe form of trafficking in persons’ means only a person—(i) who has been subjected to an act described in section 7102(8) of this title . . . ; and (ii)(I) who has not attained 18 years of age; or (II) who is the subject of a certification under subparagraph (E)” because the victim is willing to cooperate with the investigation and prosecution of traffickers and has filed a visa application or prosecutors believe that the victim remaining in the United States to cooperate is necessary in order to have a successful prosecution.); *id.* § 7102(8) (“The term ‘severe forms of trafficking in persons’ means—(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”).

²⁵⁴ See Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7105(b)(1)(C)(ii) (2008); see also *id.* § 7105(b)(1)(E)(i).

²⁵⁵ See *id.* § 7105(b)(1)(C)(ii); see also *id.* § 7105(b)(1)(E)(i).

towards victims that are repatriated to their countries of origins.²⁵⁶ The U.S. Secretary of State and the Administrator of the U.S. Agency for International Development, in partnership with non-governmental organizations, are expected to “assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking” upon the victims’ return to their home countries.²⁵⁷ These efforts can range from setting up shelters and establishing hotlines to providing legal and social services, implementing education and training for the victims, and “developing or increasing programs to assist families of victims in locating, repatriating, and treating their trafficked family members.”²⁵⁸ By increasing the likelihood of the victim’s successful integration in the United States or reintegration into his or her home country’s society, these measures are beneficial to decreasing the supply of victims for re-trafficking.²⁵⁹

Lastly, the TVPA commits U.S. resources to support research by federal agencies, international organizations, and nongovernmental organizations to develop a greater understanding of how to prevent and address trafficking in persons more effectively.²⁶⁰

2. Demand

The TVPA also includes several measures that address decreasing traffickers’ demand for victims.²⁶¹ The U.S. Sentencing Commission was given the authority to review the sentencing guidelines and policy statements applicable to individuals convicted of trafficking-related offenses.²⁶² Further,

²⁵⁶ See *id.* § 7105(a)(1).

²⁵⁷ See *id.*

²⁵⁸ See *id.*

²⁵⁹ See 22 U.S.C. § 7105.

²⁶⁰ See Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7109a(a) (2008) (“Such research initiatives shall, to the maximum extent practicable, include, but not be limited to, the following: (1) The economic causes and consequences of trafficking in persons. (2) The effectiveness of programs and initiatives funded or administered by Federal agencies to prevent trafficking in persons and to protect and assist victims of trafficking. (3) The interrelationship between trafficking in persons and global health risks, particularly HIV/AIDS.”).

²⁶¹ See, e.g., 22 U.S.C. §§ 7103, 7104(c), 7104(e), 7109, 7109a.

²⁶² See *id.* § 7109(b)(1); see also Dr. Mohammed Mattar, Executive Dir. of The Protection Project, Johns Hopkins Univ. Sch. of Advanced Int’l Studies, Trafficking in

the Sentencing Commission is authorized to:

(B) Consider conforming the sentencing guidelines applicable to offenses involving trafficking in persons to the guidelines applicable to peonage, involuntary servitude, and slave trade offenses; and

(C) Consider providing sentencing enhancements for those convicted of the offenses . . . that—

(i) involve a large number of victims;

(ii) involve a pattern of continued and flagrant violations;

(iii) involve the use or threatened use of a dangerous weapon; or

(iv) result in the death or bodily injury of any person.²⁶³

This increase in potential penalties for trafficking-related convictions will decrease demand for victims.²⁶⁴ First, harsher punishment for trafficking increases the risk of engaging in trafficking-related crime, which may decrease the number of individuals willing to work with trafficking organizations.²⁶⁵ Second, increased risk may lead to individuals demanding higher monetary compensation from trafficking organizations to engage in trafficking offenses.²⁶⁶ Thus, the cost of operating trafficking organizations will likely rise as a result and consequently profits will decline.²⁶⁷ The diminishing profits will decrease the number of criminals interested in trafficking, thus decreasing the overall demand for victims.²⁶⁸

In addition to strengthening sentencing guidelines, the TVPA includes several other provisions that enhance the ability of law enforcement to prosecute traffickers. The TVPA authorizes an

Persons: The European versus the U.S. Approach, Remarks in Brussels, Belgium (May 11, 2005), <http://www.protectionproject.org/sites/default/files/Trafficking%20in%20Persons-%20The%20European%20versus%20the%20U.S.%20Approach.pdf>. The United States does not consider trafficking a crime against the state. According to this approach, you need the victim's testimony in order to prosecute the trafficker. *Id.*

²⁶³ See 22 U.S.C. § 7109(b)(2).

²⁶⁴ See *id.*

²⁶⁵ See *id.*

²⁶⁶ See *id.*

²⁶⁷ See Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7109(b)(2) (2008); see also Danailova-Trainor & Belser, *supra* note 7, at 6.

²⁶⁸ See 22 U.S.C. § 7109(2); see also Danailova-Trainor & Belser, *supra* note 7, at 6.

Interagency Task Force to monitor and implement the actions prescribed in the legislation.²⁶⁹ The Interagency Task Force is required to “[m]easure and evaluate progress of the United States and other countries in the areas of trafficking prevention, protection, and assistance to victims of trafficking, and prosecution and enforcement against traffickers, including the role of public corruption in facilitating trafficking.”²⁷⁰ The Interagency Task Force will also “[e]ngage in efforts to facilitate cooperation among countries of origin, transit, and destination.”²⁷¹ As highlighted previously regarding provisions in the European Convention and the Protocol,²⁷² the greater the level of cooperation between a state’s domestic agencies and/or between law enforcement, immigration, and other related agencies of different states, the more difficult it is for traffickers to recruit, transport, and exploit victims. Further, it becomes more difficult to operate as the costs increase, making criminals less likely to engage in human trafficking.²⁷³

Under the TVPA’s border interdiction programs, former victims of trafficking play a role in making it more difficult for traffickers to transport victims across borders.²⁷⁴ These programs provide grants to foreign nongovernmental organizations to set up “transit shelters operating at key border crossings and that help train survivors of trafficking in persons to educate and train border guards and officials, and other local law enforcement officials, to identify traffickers and victims.”²⁷⁵ Further, as appropriate, these programs also include opportunities for survivors to help monitor border crossings and identify victims.²⁷⁶ These programs have the potential to increase the difficulty of transporting victims across national borders, thus increasing operational costs for trafficking organizations and acting as a deterrent to demand.²⁷⁷

²⁶⁹ See 22 U.S.C. § 7103.

²⁷⁰ See *id.* § 7103(d)(2).

²⁷¹ See *id.* § 7103(d)(4).

²⁷² See *supra* Sec. II.A-B.

²⁷³ See *id.* § 7103; see also Danailova-Trainor & Belser, *supra* note 7, at 6.

²⁷⁴ See Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7104(c) (2008).

²⁷⁵ See *id.*

²⁷⁶ See *id.*

²⁷⁷ See *id.*

Another mechanism for decreasing demand for victims, introduced by the TVPA, is its specific provision addressing international sex tourism.²⁷⁸ “The President . . . shall ensure that materials are developed and disseminated to alert travelers that sex tourism . . . is illegal, will be prosecuted, and presents dangers to those involved.”²⁷⁹ Further, “[s]uch materials shall be disseminated to individuals traveling to foreign destinations where the President determines that sex tourism is significant.”²⁸⁰ If international tourists to these destinations are informed of the dangers of trafficking in persons and that tourism for the purposes of utilizing these services of prostitutes is a criminal offense, it decreases the likelihood those persons will engage in sex tourism.²⁸¹ If fewer U.S. citizens are traveling abroad for the purposes of sex tourism, the profit margins of trafficking organizations will shrink, therefore decreasing the demand for victims.²⁸²

3. *Ensuring Global Accountability*

Beyond addressing the supply and demand factors supporting the market for trafficking in persons in the United States, the TVPA attempts to ensure that countries across the globe, whether countries of origin, transit, or destination, strive to end the practice of human trafficking.²⁸³ It does so by setting forth minimum standards that each country should meet:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes death, the government of the country should prescribe punishment commensurate

²⁷⁸ *Id.* § 7104(e).

²⁷⁹ Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7104(e)(1) (2008).

²⁸⁰ *Id.*

²⁸¹ *See id.*

²⁸² *See* Julie Marie Lopiccolo, *Where are the Victims? The New Trafficking Victims Protection Act's Triumphs and Failures in Identifying and Protecting Victims of Human Trafficking*, 30 WHITTIER L. REV. 851, 864 (2009).

²⁸³ *See* 22 U.S.C. § 7106(a).

with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of that offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.²⁸⁴

The U.S. Secretary of State is required to issue an annual report to the U.S. Congress detailing the compliance or non-compliance of all countries.²⁸⁵ Countries that have not met the minimum requirements will be ineligible to receive “nonhumanitarian, nontrade-related foreign assistance” until the country complies with the minimum requirements set forth above.²⁸⁶ Further, the President of the United States “[w]ill instruct the United States Executive Director of each multilateral development bank and of the International Monetary Fund to vote against, and to use the Executive Director’s best efforts to deny, any loan or other utilization of the funds of the respective institution to that country . . . for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance.”²⁸⁷ This effort by the United States has proved an effective mechanism for motivating other states to combat trafficking, leading countries to pass laws against trafficking in persons, to rescue victims, and to prosecute traffickers.²⁸⁸

III. How Can Domestic Legislation and International Agreements Better Address Supply and Demand for Human Trafficking?

To more effectively target factors affecting the supply and

²⁸⁴ *Id.* § 7106(a)(1)-(4).

²⁸⁵ *Id.* § 7107(b)(1).

²⁸⁶ Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7107(d)(1)(A)(i) (2008). If the country not in compliance received no aid, then the United States “will not provide funding for participation by officials or employees of such governments in educational and cultural exchange programs.” *Id.* § 7107(d)(1)(A)(ii).

²⁸⁷ *Id.* § 7107(d)(1)(B).

²⁸⁸ John R. Miller, Op-Ed., *Slavery in 2004*, WASH. POST, Jan. 1, 2004, at A25.

demand in the international market for trafficking in persons into sexual exploitation, both domestic legislation and international agreements are needed to ensure that victims are treated as "victims." Further, they must create awareness within the general public that trafficking in persons is not a victimless crime and that consent is irrelevant to determining whether a person is a victim of trafficking. Finally, they must also provide more opportunities for legal immigration and ensure that corporations and non-governmental organizations are better utilized to create economic opportunities for women in countries of origin.

A. Treat Victims of Trafficking as "Victims"

An essential component of effective anti-trafficking legislation that addresses both the supply and demand factors for trafficking in persons is to define trafficked persons as "victims."²⁸⁹ The Convention already does so.²⁹⁰ The Convention states that a "[v]ictim" shall mean any natural person who is subject to trafficking in human beings as defined" in the Convention.²⁹¹ However, while the Protocol and the TVPA use the term "victim," neither includes language defining who is a victim of trafficking.²⁹²

If legislation or international agreements do not define *who* constitutes a "victim" of trafficking it creates the danger that victims of trafficking in persons will not be identified as victims, but rather punished for being in the destination country illegally or for violating the laws of the destination country by engaging in prostitution.²⁹³ Dr. Mohammed Mattar, Executive Director of the Protection Project at Johns Hopkins University School of Advanced International Studies, observed that in the United States trafficking victims are simply not being identified.²⁹⁴ In 2005, the

²⁸⁹ Mattar, *supra* note 262.

²⁹⁰ See *Convention and its Explanatory Report*, *supra* note 56, at 8, art. 4(b).

²⁹¹ See *id.* art. 4(e); see also Protocol, *supra* note 5, at 2, art. 3(b) (clarifying that the Convention adopted the same definition for trafficking in persons that was adopted by the Protocol).

²⁹² See Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 (2008); Protocol, *supra* note 5.

²⁹³ See Mattar, *supra* note 262.

²⁹⁴ *Id.*

United States had only identified 700 victims of trafficking²⁹⁵ despite estimates by the government that 18,000–20,000 persons are trafficked into the United States each year.²⁹⁶

For example, in 2008, a North Carolina “[m]assage parlor [was] shut down after a three-month undercover investigation The owner of the [spa] . . . was charged with human trafficking and maintaining a place of prostitution. Employee Min Ye was charged with solicitation. Another employee, Dan Kim, was charged with two counts of indecent exposure.”²⁹⁷ Even though the owner was charged with human trafficking, those he had victimized were not treated as victims, but rather charged with the crimes of solicitation and indecent exposure.²⁹⁸ The market for human trafficking will not be shut down by charging the owner with human trafficking but failing to identify victims like Min Ye and Dan Kim as true victims of trafficking. As discussed in Section I, to close down the market for human trafficking requires efforts to address both the demand and supply for victims.²⁹⁹ In this case the trafficker was charged with human trafficking, thus increasing the cost of operation and deterring his future demand to utilized victims of trafficking in his business.³⁰⁰ However, the victims were not identified as victims; rather they were treated as criminals and not provided rehabilitation services. Thus, the supply of victims has not been decreased because their likelihood of being trafficked again for the purposes of sexual exploitation is increased.³⁰¹

As illustrated by this example, the failure to identify victims of trafficking as *victims* leads to several consequences influencing both supply and demand for human trafficking. First, if trafficked persons are not identified as victims, they may be precluded from accessing needed medical assistance, counseling, educational, financial, or other services provided to assist victims in the

²⁹⁵ See *id.*

²⁹⁶ U.S. DEP’T OF STATE, *supra* note 19.

²⁹⁷ Police Shut Down Spa, *supra* note 44.

²⁹⁸ See *id.*

²⁹⁹ See *supra* text accompanying notes 56–82.

³⁰⁰ See Police Shut Down Spa, *supra* note 44; see also Danailova-Trainor & Belser, *supra* note 7, at 6.

³⁰¹ See Chuang, *supra* note 3, at 72.

reintegration process.³⁰² If victims are treated as criminals and not provided access to rehabilitation services, the probability that they will not successfully reintegrate into society is increased. Thus, these non-identified victims will be more susceptible to being re-trafficked, increasing the supply of victims.³⁰³

Furthermore, if victims are not identified as such it increases the probability that traffickers will not be charged with human trafficking. This failure to increase the potential penalties for traffickers leads to no change in the cost of operation for traffickers, which in turn does make any impact on demand for victims.³⁰⁴

For these reasons, the inclusion of the definition of a victim of human trafficking in national legislation and international agreements is essential to influencing both the supply and demand for trafficking victims. In addition to including a victim definition, it is necessary to educate law enforcement personnel, individuals providing rehabilitation services, and other persons who may come in contact with trafficking victims on the definition and the rights of victims under the law. A beneficial aspect of the agreements and legislation discussed above is their inclusion of provisions regarding educational efforts for these professionals.³⁰⁵ Further, these agreements and legislation contain education and awareness campaigns targeted at informing potential victims of tactics used by traffickers and the dangers inherent in trafficking.³⁰⁶ However, there is a need to increase the awareness of the general public in both countries of origin and destination, and of the consumers of sexual services in countries of destination, that trafficking is not a victimless crime.

³⁰² See *supra* text accompanying notes 24-35.

³⁰³ See *supra* text accompanying note 120.

³⁰⁴ Danailova-Trainor & Belser, *supra* note 7, at 6. (“[T]rafficking thrives because it ‘remains a low risk – high reward enterprise[.]’”); see also *supra* text accompanying notes 253-58 (authorizing harsher sentencing for trafficking crimes under the TVPA and would not affect trafficker if not charged with trafficking).

³⁰⁵ See *Convention and its Explanatory Report*, *supra* note 56, at 9, art. 5, ¶2; *id.* at 42 (noting the importance of the Convention’s inclusion of “professionals concerned” such as police, social workers, and doctors).

³⁰⁶ See Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7104(b) (2008); *Convention and its Explanatory Report*, *supra* note 56, at 9, art. 5, ¶ 2.

B. Educating the Public that Trafficking in Persons is Not a Victimless Crime

National legislation and international agreements should also include provisions calling for efforts to increase the general public's awareness that trafficking is not a victimless crime. A greater understanding in both countries of origin and destination that trafficking victims are "victims" has the potential to decrease demand for victims and the supply of victims that are re-trafficked.³⁰⁷

The public perception of trafficking victims who escape from forced prostitution and return to their countries of origin affects their ability to successfully reintegrate into society.³⁰⁸ If the public stigmatizes these women and children as prostitutes, this perception "threatens to create a vicious cycle in which these women believe they have no alternative but to return to prostitution."³⁰⁹ Greater public education concerning the suffering, exploitation, and other obstacles faced by trafficked persons will increase the likelihood that the public would view trafficked persons that return to their communities as "victims" rather than ostracizing them based upon the prostitution activities traffickers forced them to do.³¹⁰ This appreciation of their status as victims would increase their acceptance back into society and make it less likely they would be re-trafficked themselves, thus decreasing the supply of re-trafficked victims.³¹¹

An additional benefit of this increased public awareness of the victim status of trafficked persons would be the potential decrease in the supply of new potential victims. At present, former victims, in order to support themselves, sometimes decide to help traffickers recruit new victims.³¹² If the public was more accepting

³⁰⁷ See generally Danailova-Trainor & Belser, *supra* note 7, at 17-21 ("[A]nti-trafficking initiatives should not only focus on demand in countries of destination but also on socio-economic conditions in the countries of origin.").

³⁰⁸ See Chuang, *supra* note 3, at 71-72.

³⁰⁹ *Id.* at 71.

³¹⁰ See generally *id.* at 71 (noting that the social stigma attached to prostitution leaves many women "shunned by their families and their native communities.").

³¹¹ See *id.* Cf. Danailova-Trainor & Belser, *supra* note 7, at 21 ("As long as female youth unemployment remains high in a country, it is unlikely that prevention and information campaigns will have much of an effect in reducing trafficking.").

³¹² See Chuang, *supra* note 3, at 72.

of former victims' reintegration into society, it is more likely that former victims would be able to find legal employment.³¹³ Former trafficking victims are "particularly well-positioned to identify potential trafficking victims due to their familiarity with the local girls and families" in their community.³¹⁴ Therefore, recruitment could become more difficult, and thus more costly, for traffickers without the assistance of former victims.³¹⁵ Beyond educating the general public, the increased awareness of the victimization suffered by trafficked persons will provide potential victims with more information regarding the risks of illegal migration to countries of destination, thus decreasing the supply of potential new victims.³¹⁶ To close down the market for human trafficking for the purposes of sexual exploitation requires not only addressing public perceptions in countries of origin, which impacts supply, but also necessitates changing the public's perception of prostitution in countries of destination in order to decrease demand.

It is essential that national legislation and international agreements encourage programs in countries of destination that educate the general public, and in particular potential users of the prostitution services of trafficking victims, about the reality faced by trafficking victims. The implementation of programs similar to San Francisco, California's First Offender Prostitution Program (FOPP) could be beneficial to distilling the notion that trafficking of persons into prostitution is a victimless crime.³¹⁷ FOPP includes testimonials from former prostitutes and lectures concerning "the ills of prostitution mixed with some . . . graphic sexual-health education."³¹⁸ By attending the eight-hour session, and paying a \$1,000 fee, these 'johns' can avoid being prosecuted

³¹³ See generally *id.* at 72 (stating that once shunned, many women return to a life of prostitution).

³¹⁴ See *id.*

³¹⁵ See generally Danailova-Trainor & Belser, *supra* note 7, at 6 (assuming that recruitment is a "cost of intermediate consumption or rents").

³¹⁶ See *id.* at 19.

³¹⁷ See Miyoko Ohtake, *A School for Johns*, NEWSWEEK, July 24, 2008, <http://www.newsweek.com/id/148531> (last visited Mar. 31, 2010). Norma Hotaling, "a 56-year-old ex-prostitute," founded FOPP in 1995. *Id.* ¶ 11.

³¹⁸ *Id.*

for solicitation.”³¹⁹ According to the San Francisco District Attorney, “programs like [FOPP] help sensitize those who buy sexual services to the true working conditions of sex workers—and refute the notion that many of them are in the business voluntarily. ‘It forces the john to deal with the reality of prostitution instead of their fantasy of what’s happening[.]’”³²⁰ FOPP was founded upon the belief that “tackl[ing] prostitution and trafficking [requires starting] with demand reduction.”³²¹ A sociologist’s study of FOPP “found that recidivism rates of those who completed ‘Johns school’ were thirty percent less . . . than for those men who did not opt for the program.”³²² A study of a similar program in Buffalo, New York found an 87.5% decrease in the recidivism rate of program participants when compared with men who did not participate in the program.³²³

The FOPP and similar programs are evidence that efforts to educate consumers of the sexual services of trafficking victims about the suffering of victims is a deterrent to consumers’ continued use of these sexual services.³²⁴ A decrease in the use of prostitution services will decrease the profits earned by trafficking organizations from trafficking victims to destination countries.³²⁵ This will lead to a decrease in demand for victims, thus helping end the market for human trafficking for sex.³²⁶

In addition to decreasing demand through programs like FOPP, countries may deter demand more proactively through introduction of human rights and gender equality into the curriculum of the nation’s schools. For example, the Convention instructs member states to incorporate “educational programmes [sic] . . . which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences[.]”³²⁷ This emphasis

319 *Id.* ¶ 2. More than 5,700 men [of diverse ages and ethnicities] have gone through the program since its inception in March 1995 Thirty-nine other U.S. cities have similar education programs in place. *Id.* ¶ 3.

320 *Id.* ¶ 6.

321 *Id.* ¶ 11.

322 *Id.* ¶ 12.

323 Ohtake, *supra* note 317, ¶ 12.

324 *See id.*

325 *See* Danailova-Trainor & Belser, *supra* note 7, at 21-23.

326 *See* Danailova-Trainor & Belser, *supra* note 7, at 17-29.

327 *Convention and its Explanatory Report*, *supra* note 56, at 9, art. 6(d).

on proactive education has the potential to deter youth in adulthood from utilizing prostitution services, thus decreasing demand for victims.³²⁸

C. *Consent as Irrelevant*

In addition to including a definition of a trafficking victim and incorporating provisions encouraging awareness within the general public and consumers of prostitution services that human trafficking is not a victimless crime, consent must be made irrelevant. This is accomplished in the Convention, which, in Article 26, mandates that member states "provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so."³²⁹

If consent to illegal acts, such as prostitution, is not viewed as irrelevant by national legislation, the possibility that victims of trafficking will be treated as criminals is increased.³³⁰ The failure to treat victims of trafficking as "victims," as discussed in the previous sections, increases the supply of victims by opening the door to re-victimization.³³¹ Furthermore, the determination that consent is irrelevant further strengthens the perception that trafficking is not a victimless crime because it recognizes that "victims" did not engage in prostitution by *choice*, but rather because they were *compelled* to do so by their traffickers.³³²

D. *Providing More Opportunities for Legal Immigration*

A key component of decreasing the supply of potential trafficking victims is an effort by countries of destination to create more opportunities for legal migration.³³³ The motivation of many victims to assume the risks inherent in migrating through illegal channels is the economic hardship they endure in countries of origin and the possibility of financial opportunity in countries of

³²⁸ See *id.*; see generally Danailova-Trainor & Belser, *supra* note 7, at 3 ("[T]here exists an illicit market for trafficking victims [G]lobal incidence of trafficking depends on the factors that motivate demand and supply.").

³²⁹ *Convention and its Explanatory Report*, *supra* note 56, at 15, art. 26.

³³⁰ See *supra* text accompanying notes 118-20.

³³¹ See *supra* text accompanying notes 289-306.

³³² See *Convention and its Explanatory Report*, *supra* note 56, at 15, art. 26.

³³³ See Danailova-Trainor & Belser, *supra* note 7, at 8.

destination.³³⁴

Analysis by the ILO has found that as the opportunities for legal regular migration increase, the volume of illegal entry activities, such as trafficking, declines.³³⁵ The inference that “liberalizing entry conditions enables potential victims to avoid” the risks associated with trafficking is derived from this finding.³³⁶ For example, an analysis of Romania, following the liberalization of EU visa requirements in 2001, demonstrated that the number of victims trafficked from Romania into the EU declined over time.³³⁷

Thus, the creation of more opportunity for legal migration from countries of origin to countries of destination would decrease the supply of potential victims. With more options available for legal migration, there would be fewer potential victims at risk of being taken advantage of by traffickers.³³⁸

E. Economic Opportunities in Countries of Origin: Role for Corporations

The poor socio-economic conditions that characterize countries of origin generate a constant supply of women and children at risk of being victims of human trafficking.³³⁹ As discussed previously, the typical victims of trafficking into forced prostitution are persons “who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities” in their home countries.³⁴⁰ According to the ILO, “[a]s long as female youth unemployment remains high in a country, it is unlikely that prevention and information campaigns will have much of an effect in reducing trafficking [and that] [o]pportunities for decent work in countries of origin should be part of sustainable anti-trafficking initiatives.”³⁴¹ This finding provides further support for the

³³⁴ See Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101(b)(4) (2008).

³³⁵ Danailova-Trainor & Belser, *supra* note 7, at 8.

³³⁶ *Id.*

³³⁷ *Id.* (Though “initially an apparent rise in the number of victims, [this was] followed by a clear decline over time.”).

³³⁸ See *id.*

³³⁹ See *id.* at 21.

³⁴⁰ Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101(b)(4) (2008).

³⁴¹ Danailova-Trainor & Belser, *supra* note 7, at 21.

premise that it is not sufficient for national legislation and international agreements to only address demand in countries of destination. They must also focus on improving the root socio-economic conditions that affect supply.³⁴²

In addition to government programs aimed at increasing economic opportunities for at-risk individuals in countries of origin,³⁴³ national legislation should encourage and incentivize efforts of corporations to enhance economic opportunities for those at risk of becoming victims of trafficking.

Corporate actors are already making an impact in the fight against human trafficking. This effort includes the creation of economic opportunity in countries of origin. The Microsoft Unlimited Potential program provides skills development to both victims of trafficking and individuals considered at risk of being trafficked in the Asia-Pacific region.³⁴⁴ Efforts such as Microsoft's job training programs increase the financial opportunities for individuals at risk of being trafficked and former victims at risk of being re-trafficked, thus decreasing the supply of victims.³⁴⁵ The inclusion in anti-trafficking legislation of incentives to encourage corporations to develop and implement programs similar to Microsoft's would assist in the effort to improve socioeconomic conditions in countries of origin.

IV. Conclusion

The international market for human trafficking is supported by the large supply of victims in countries of origin with poor socioeconomic conditions and the high demand for victims to be trafficked to countries of destination because traffickers have the ability to realize substantial profits while assuming low-risks of prosecution. Therefore, destroying human trafficking requires legislation and international agreements that address the dual

³⁴² *Id.*

³⁴³ See generally 22 U.S.C. § 7104(a) (2008) (establishing microcredit lending programs, job training and skills programs, programs to keep children, especially girls, in schools).

³⁴⁴ Human Rights Dilemmas Forum, Human Trafficking Case Studies, http://human-rights.unglobalcompact.org/case_studies/human-trafficking (last visited Mar. 31, 2010).

³⁴⁵ OFFICE OF THE UNDER SEC'Y FOR DEMOCRACY AND GLOBAL AFFAIRS, U.S. DEP'T OF STATE, PUBL'N NO. 11407, TRAFFICKING IN PERSONS REPORT 10 (June 2009).

components of supply and demand. The Protocol, Convention, and TVPA include examples of provisions with the potential to decrease both the supply and demand for victims.

To realize the goal of ending the market for human trafficking for the purposes of sexual exploitation will require efforts to ensure that victims of trafficking are treated as “victims.” This will require the incorporation of the definition of a “victim” into anti-trafficking legislation. There is also a need to include language stating that the consent of a person who has been trafficked to engage in trafficking is irrelevant because the consent was not given freely. In addition, efforts must be made to alter the public perception of trafficking victims forced to engage in prostitution. If the public does not understand that trafficked persons are victims, it will continue to be difficult for rescued victims to reintegrate into society due to the stigma attached to prostitution. Further, the demand of consumers for the sexual services of trafficking victims will not decrease unless governments seek to implement programs that educate consumers concerning the reality confronting women and children in the commercial sex industry.

Additionally, increased opportunities for legal migration from countries of origin to countries of destination will decrease the supply of victims at risk of being trafficked or re-trafficked. Lastly, governments should take steps to better leverage the resources and expertise of corporations to create economic opportunities for women in countries of origin to decrease the supply of potential victims.

MEREDITH FLOWE

