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WE PAY —
THE ECONOMIC MANIPULATION OF INTERNATIONAL AND
DOMESTIC LAWS TO SUSTAIN SEX TRAFFICKING

Hanh Diep[†]

I. Introduction

“Going to a prostitute is like going to McDonald’s; most people are looking for a quick, cheap meal. It’s satisfying, it’s greasy, and then you get the hell out of there.”¹ The illegal sex industry and McDonald’s[®] are both driven by consumer consumption, subject to the economic principles of supply and demand. The impact of the illegal sex industry on society is far more detrimental to mankind’s health than fast food.

McDonald’s[®] credits its success to the ability to sell hamburgers. The illegal sex industry’s success depends on selling bodies. The illegal sex industry is inherently a service industry contingent upon a traffickers’ ability to supply men, women, and children. The fall of communism in the 1990’s led McDonald’s[®] to quickly expand into the former Soviet Union in hopes of entering an untapped market. At the same time the free market’s expansion into former communist countries also opened a new market for the sex industry. Human traffickers discovered a new and ready supply of men, women, and children that not only satisfied the greasy and cheap expectations of the West, but also created a demand for new and “exotic” product. It just happens that these new products were people.

The intent of this article is not to draw judgments on the morality of the sex industry nor demean the people who voluntarily engage and benefit from it. Rather, this article attempts to explain how the economic nature of the illegal sex industry allows traffickers and international criminal organizations to exploit the same international and domestic laws created to destroy the industry, prosecute traffickers, and protect the victims of sex trafficking. Despite the intent of the international community, these laws facilitate the forced prostitution of trafficked men, women, and children across national borders, making the illegal sex industry the third fastest growing economic enterprise in the world.²

Some assert that Western countries, particularly the United States, must come to the forefront in the fight against sex trafficking by reducing the demand for

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¹ Julie Bindel and Liz Kelly, A CRITICAL EXAMINATION OF RESPONSES TO PROSTITUTION IN FOUR COUNTRIES: VICTORIA, AUSTRALIA; IRELAND; THE NETHERLANDS; AND SWEDEN, FOR the Routes Out Partnership Board, Child and Woman Abuse Studies Unit, London Metropolitan University, 2003, available at http://www.glasgow.gov.uk/NR/rdonlyres/C19E010B-1A4F-4918-97BD-F96AF7D7F150/0/main_resport.pdf (last checked 3/31/05), at 10.

² Kathryn E. Nelson, Comment, *Sex Trafficking and Forced Prostitution: Comprehensive New Legal Approaches*, 24 Hous. J. L. 551, 574 (Spring 2002).

illegal sex workers in their own country.³ The answer, however, is not a matter of unilateral action. Other countries, driven by a desire to bolster their Gross Domestic Product (“GDP”), will undoubtedly resist scrutinization of the industry, and instead encourage the illegal sex industry by giving it a safe haven to flourish. Disparate political, economic, and legal conditions provide the traffickers with both the ready supply of workers and demanding customers. It is through these disparities that sex traffickers are able to exploit trafficked victims to fulfill the demands of the market.

The illegal sex industry is an international, market-driven, economic problem that requires an international, economic solution. Part II discusses how the illegal sex industry is like any other international business looking to minimize costs and maximize profits. Part III reviews the past and continual development of the illegal sex industry. Part IV discusses the international legal framework in handling forced prostitution and trafficking. Part V examines approaches taken by different nation-states to regulate the sex industry. Part VI analyzes how the economic market drives the illegal sex industry by allowing the traffickers and international criminal organizations the opportunities to exploit discrepancies in international and domestic laws. Finally, Part VII suggests a remedy, emphasizing that whether a nation-state decides to regulate prostitution or prohibit it, there needs to be a consistent and uniform agreement on the international level to stop the economic profitability and demand for illegal sex. Such an agreement will effectively stop sex trafficking. If the illegal sex industry is a business that exploits the discrepancies in national laws and ambiguities in international law, then the international community can inhibit the illegal sex trade by placing uniform impediments to international trafficking irrespective of a nation’s domestic laws.

One of the problems in addressing sexual exploitation is definitional, blurring the line between what is exploitative (illegal) and what is not. While world leaders have not yet come to a consensus on the meaning of terms, such as “trafficking in persons,”⁴ a problem within itself,⁵ this article will refer to the term

³ See generally Michelle R. Adelman, *International Sex Trafficking: Dismantling the Demand*, 13 S. CAL. REV. L. & WOMEN’S STUD. 387 (Spring 2004).

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Annex II, U.N. Doc. A/55/25 (2000) [hereinafter Trafficking Protocol]

Article 3 defines “trafficking in persons” to “mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat of use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse 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.

Integration of the Human Rights of Women and the Gender Perspective Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, U.N. Economic and Social Council, E/CN.4/2005/71, 5, December 22, 2004 available at <http://daccessdds.un.org/doc/undoc/gen/g04/169/28/pdf/g0416928.pdf?openelement>. [hereinafter Report of Special Rapporteur] (Although this definition of “trafficking in persons” is accepted by member states of the Trafficking Protocol, it is still hotly debated in anti-trafficking movement.).

“forced prostitution” as a condition where people “cannot change the immediate conditions of their existence; where regardless of how they got into those conditions they cannot get out; and where they are subject to sexual violence and exploitation.”⁶ Moreover, the term “traffickers” is used below to refer to those who traffic and the international criminal organizations that are involved in this illicit business.

II. Illegal Sex Industry: A Wealth Maximizing Business

The illegal sex industry⁷ is a rapidly growing international business and a lucrative source of income for three major reasons:

- (a) the growing demand for international migration, mostly in sending countries but to some extent also in receiving countries;
- (b) the restrictions on legal immigration imposed by industrialized countries, which have created the demand for alternative, illegal avenues of migration, and
- (c) the relatively low risks of detection, prosecution and arrest attached to trafficking compared to other activities of organized crime.⁸

This illegal business is estimated to generate profits upwards of \$7 billion annually⁹ at the cost of thousands of human lives. In some countries, the revenues from the illegal industry constitute a large part of their Gross Domestic Product (“GDP”).¹⁰ This market is sustained by the commodity of violence¹¹ against men, women and children forced into prostitution. Unlike the one-time sale of drugs, sex trafficked workers are reusable commodities, that can be sold over and over again.¹² Only when the trafficked person is considered no longer profitable because of disease or otherwise, do they become disposable “prod-

⁵ See Report of Special Rapporteur, *supra* note 4.

⁶ Nora V. Demleitner, *Forced Prostitution: Naming an International Offence*, 18 FORDHAM INT’L L. J. 163, 185 (Nov. 1994).

⁷ Illegal sex industry is defined as business of forced prostitution for the purposes herein.

⁸ Andreas Schloenhardt, *Organised Crime and the Business of Migrant Trafficking An Economic Analysis*, AUSTRALIAN INST. OF CRIMINOLOGY, NOV. 10, 1999, available at <http://www.aic.gov.au/conferences/occasional/Schloenhardt.pdf>, at 11.

⁹ Vanessa von Struensee, *Globalized, Wired, Sex Trafficking in Women and Children*, MURDOCH U. ELECTRONIC J. L., Vol. 7 No. 2 (2000), at www.murdoch.edu.au/elaw/issues/v7n2/struensee72nf.html, at 2.

¹⁰ *Id.* at 2

¹¹ Alex Y. Seita, *The Role of the Market Forces in Transnational Violence*, 60 ALB. L. REV. 635, 638-39 (1997).

Violence. . . arise from the commodity itself, because the commodity is often used to commit violence or because the consumption of the commodity inherently involves violence. . . For instance, when the “commodity” of child prostitution is consumed, children are raped. . . [M]arket driven violence have harmful externalities – third party effects of a market transaction that do not affect market participants. The costs to third-parties are not incorporated in the prices of market commodities and thus are not borne by buyers and sellers. . . the social cost. . . is not reflected in the price. . . *Id.*

¹² Michelle R. Adelman, *International Sex Trafficking: Dismantling the Demand*, 13 S. CAL. REV. L. & WOMEN’S STUD. 387, 404 (Spring 2004).

ucts.” In fact it is the violence of forced prostitution against men, women, and children that drives this multi-billion dollar industry.

“Human cargo”¹³ is trafficked across international borders daily, clearly identifying sex trafficking as a transnational problem. The United States State Department estimates that “80 percent of the victims trafficked across international borders are female and 70 percent of those females are trafficked for sexual exploitation.”¹⁴ The problem of sex trafficking not only involves the countries of origin, transit, and destination, but also the buyers, the traffickers, and the sex trafficked workers, all of whom may be, and most likely, are from different countries. It is an economic problem that violates human rights laws and international treaties.¹⁵

Trafficked persons are distinguishable from smuggled persons in both the type of economic profits generated and the rights of such persons. While the smuggled persons may have paid a great deal of money to a third party to gain access to another country, they have consented to the methods¹⁶ and hence have exercised their migration rights. Whereas:

[i]n the case of trafficking for the sex industry; (i) the trafficked victim, unlike the smuggled person does not buy a criminal organisation’s services to assist her entry into a country; and (ii) the criminal organization exploits the trafficked victim, against her will to satisfy demands of the sex market.¹⁷

¹³ U.S. DEPARTMENT OF STATE, *TRAFFICKING IN PERSONS REPORT 9* (2003), available at <http://www.state.gov/documents/organization/21555.pdf> [hereinafter 2003 TIP REPORT]

Human cargo can often be moved across borders and past immigration officials easier than narcotics or weapons caches, which are often seized when found. Trafficking victims, even if caught [sic], can be re-trafficked. Traffickers can make additional money off victims by reselling them to another employer after their often-inflated debt is paid. Traffickers may earn a few hundred to thousands of dollars for a trafficked child labourer and brothel owners may make a few thousand to tens of thousands of dollars for each women forced into prostitution. *Id.*

¹⁴ U.S. DEPARTMENT OF STATE, *TRAFFICKING IN PERSONS REPORT 23* (2004), available at <http://www.state.gov/documents/organization/34158.pdf> [hereinafter 2004 TIP REPORT].

¹⁵ International Agreement for the Suppression of the White Slave Traffic, Mar. 18, 1904, art.1, 11 L.N.T.S. 83, 85-86 [hereinafter 1904 Agreement]; International Convention for the Suppression of White Slave Traffic, May 4, 1910, 3 L.N.T.S. 278 [hereinafter 1910 Convention] International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921, 53 U.N.T.S. 39, 42 [hereinafter 1921 Convention]; International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 53 U.N.T.S. 49, 50 [hereinafter 1933 Convention]; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 29, 1949, 96 U.N.T.S. 271 [hereinafter 1949 Convention], Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., U.N. Doc. A/RES/34/180, 1249 U.N.T.S. 13 (1979) [hereinafter CEDAW]; Trafficking Protocol, *supra* note 4.

¹⁶ United Nations Office on Drugs and Crime/Terrorism, Corruption and Human Trafficking/Trafficking in Human Beings/FAQ/How is “trafficking in persons” different from the smuggling in migrants? at http://www.unodc.org/unodc/en/trafficking_victims_convention.html?Print=yes.

¹⁷ Jo Goodey, *Recognising Organised Crime Victim’s: The Case of Sex Trafficking in the EU*, in *TRANSNATIONAL ORGANISED CRIME PERSPECTIVES ON GLOBAL SECURITY*, 158 (Adam Edwards and Peter Gill eds., Routledge Taylor & Francis Group) (2003).

Sex traffickers not only take away their victims' documentation, making them stateless and unacceptable by governments, but also their international right to migrate.

The illegal sex industry is the third most profitable illicit business, behind drugs and arms dealings.¹⁸ The risk of getting caught is small and the punishment for trafficking is significantly weaker than that of drugs or weapons trafficking, making it an attractive business venture. In Australia, a male defendant operated an illegal brothel for approximately ten years.¹⁹ He purchased Thai women from \$18,000 to \$20,000 dollars each.²⁰ These Thai women were forced to work off their "debt" to him by having sex with men.²¹ The defendant made approximately \$1.2 million in profit.²² The jury found him guilty of all seven counts under the Prostitution Control Act of 1994.²³ The offences carried maximum sentences of four and five years, but he was sentenced by the jury to eighteen months and fined \$31,000.²⁴ The court, however, disagreed, suspending his sentence and only ordered him to pay the \$31,000 fine²⁵ – approximately the purchasing price of two Thai women. In the United States "[t]he statutory maximum for sale into involuntary servitude is only ten years per count, whereas the statutory maximum for dealing in ten grams of LSD or distributing a kilo of heroin is life."²⁶ These examples illustrate that the cost of trafficking people and forcing them to prostitute is minimal compared to the extraordinary potential profit.

The illegal sex industry is not simply a political, social, moral, immigration or human rights problem. It is an economic problem. The anticipation of dollar profits drives the sex trafficking of men, women, and children alike. The traffickers steal the migration rights of the victims and sell their bodies to service the demand of those who want to consume them. "Prostitution. . . depend[s] on a massive subterranean economy controlled by pimps connected to organized

¹⁸ Nelson, *supra* note 2.

¹⁹ See *Dir. of Pub. Prosecution v. Glazner*, 2002 WL 77762, (Ct of Appeal S. Ct. Victoria) (2001).

²⁰ *Id.*

²¹ *Id.*; See also LAURA FERGUS, AUSTRALIAN INSTITUTE OF FAMILY STUDIES, BRIEFING NO. 5 TRAFFICKING OF WOMEN FOR SEXUAL EXPLOITATION, 18-19 (2005) available at http://www.aifs.gov.au/acssa/pubs/briefing/acssa_briefing5.pdf.

[The women do] 500 "free jobs," each job being a half hour of sex for which the buyers paid \$100-\$110. This equaled approximately \$32,000 in profit for Glazner from each woman, after deduction of their "purchase costs." At least 40 women were proven to be connected to Glazner. . . meaning Glazner made at least \$1.2 million from these women alone. Investigators suspected four to five times this many women were involved. These women were generally prostituted for 12-hour shifts, seven days a week. . . .*Id.*

²² Fergus, *supra* note 21.

²³ See *Glazner*, 2002 WL 77762.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Amy O'Neill Richard, DCI EXCEPTIONAL INTELLIGENCE ANALYST PROGRAM AN INTELLIGENCE MONOGRAPH, INT'L TRAFFICKING IN WOMEN TO THE U.S.: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME, 33, (November 1999), available at <http://www.cia.gov/csi/monograph/women/trafficking.pdf>.

crime. At the same time, businesses such as international hotel chains, airline companies, and the tourist industry benefit greatly from the sex industry.”²⁷

Some nation-states have realized that the sex industry is an incredible source of revenue representing a significant part of their government’s budget. Selling sex has become a development strategy for some countries to repay foreign debt obligations²⁸ and bring in foreign capital. These alleged side-benefits encourage government officials to be complicit and turn a blind eye to the grave negative consequences to those forced into prostitution. A government may even take a proactive approach in recruiting foreigners, especially women, to migrate to their country by granting them special visas to work in the “entertainment” industry.²⁹

Governments approach the sex industry in a variety of ways in order to tap into the wealth it generates. The choices to regulate, legalize, and criminalize buyers or decriminalize prostitutes provide governments the means to exploit this new source of revenue, turning an illegal market into a taxable market. The illegal sex industry, like any other business, adapts its methods to whatever legal regime is established, in order to keep the costs low and profits high. The illegal sex trade depends upon similar enterprises and market structures of any legitimate business. Hence, it is critical to realize that the illegal sex market will not only respond, but also exploit the legislation pertaining to the legal sex industry and the disparities it creates. “Trafficking is a dynamic concept, the parameters of which are constantly changing to respond to changing economic, social and political conditions.”³⁰

A cooperative international solution must be made to close down this illicit industry. On February 24, 2003, delegates from 120 nations gathered in Washington, D.C. to continue tackling the problem of sex trafficking.³¹ International treaties have been drafted in an attempt to establish an effective framework to combat sex trafficking. Despite these efforts, many challenges still remain. Eliminating this profitable business, however, takes more than resolve. Foremost, the nation-state’s ability to enact and enforce legislation to prosecute and prevent sex trafficking is inherently limited by its own domestic jurisdiction.³² It is these domestic limitations and choices that allow the traffickers to exploit the weaknesses and inconsistencies in international agreements.

²⁷ Richard Poulin, *Globalization and the Sex Trade: Trafficking and the Commodification of Women and Children*, (Feb. 12, 2004), at http://sisyphe.org/article.php3?id_article=965.

²⁸ *Id.*

²⁹ Éline Audet, *Canada Contributes to the Sexual Trafficking of Women for Purposes of Prostitution*, (Nov. 2004), at http://sisyphe.org/article.php3?id_article=1380.

³⁰ Tala Hartsough, *Asylum for Trafficked Women: Escape Strategies Beyond the T Visa*, 13 HASTINGS WOMEN’S L.J. 77, 85 (Winter 2002).

³¹ Steve Schifferes, *US Drive To Tackle Sex Trafficking*, BBC NEWS, (2003) at <http://news.bbc.co.uk/2/hi/americas/2795101.stm>

³² Dr. Kery Currington and Jan Hearn, *Trafficking and the Sex Industry: from Impunity to Protection*, (2003) at www.aph.gov.au/library/pubs/CIB/2002-03/03cib28.htm.

III. Sex Trafficked Workers, Origins and Current Trends

Wherever there is a demand for a commodity, there will be someone willing to supply it. Prostitution dates back to Ancient Greek and Roman societies.³³ For most of the 19th century, many countries had regulated brothels and made attempts to control street prostitution.³⁴ In the early 20th century, there was a shift to the international trafficking of women for sexual exploitation.³⁵ The World Wars stationed millions of soldiers all over the globe. Militaries relied upon the sex industry to ensure a steady supply of prostitutes to the soldiers.³⁶ As conflict subsided and soldiers returned home, they brought with them tales of “exotic” women, resulting in a new form of tourism—sex tourism.³⁷ In the post-war world, globalization has created an environment that allows the illegal sex industry to flourish. Sex trafficking can be done easily, by avoiding, exploiting, or just accepting the low risks under domestic laws. The traffickers have a perfect market of high benefits and low costs within in which to operate.

War brought about the “need” for women to be prostitutes. Before and after World War II, thousands of women and children from Korea, China, Indonesia, the Philippines, and other nations, were forced into prostitution by the Japanese military to be “comfort women” to soldiers.³⁸ Near any military base in any country, one will typically find a “red-light” district filled with illegal sex workers.³⁹ International agreements were even signed, such as the 1967 “Rest and Recreation” agreement between Thailand and the United States which promoted the use of Thailand and its services to attend to the needs of the American soldiers.⁴⁰ In Bosnia and Herzegovina, illegal sex workers were not a prominent part of the landscape until the arrival of 50,000 United Nations peacekeepers.⁴¹ In Cambodia, prior to 1991, there were approximately 1,000 prostitutes in the capital.⁴² With the arrival of 15,000 U. N. troops, the illegal sex trade there exploded.⁴³ Now Cambodia sees no less than 55,000 women and children in

³³ Susan E. Thompson, *Prostitution – A Choice Ignored*, 21 WOMEN’S RTS. L. REP. 217, 219-220 (Summer, 2000).

³⁴ Bindel, *supra* note 1, at 4.

³⁵ *Id.*

³⁶ Isabella Talleyrand, Note, *Military Prostitution: How the Authorities Worldwide Aid and Abet International Trafficking in Women*, 27 SYRACUSE J. INT’L L. & COM. 151, 153 (Winter 2000).

³⁷ Hartsough, *supra* note 30, at 80.

³⁸ *Id.* at 154-155.

³⁹ *Id.* at 155-157.

⁴⁰ Sara K. Andrews, Comments, *U.S. Domestic Prosecution of the American International Sex Tourist: Efforts to Protect Children from Sexual Exploitation*, 94 J. CRIM. L. CRIMINOLOGY 415, 429 (Winter 2004).

⁴¹ Linda Smith & Mohamed Mattar, *Creating International Consensus on Combatting Trafficking in Persons: U.S. Policy, The Role of the U.N. and Global Responses and Challenges*, 28 WTR FLETCHER F. WORLD AFF. 155, 171 (Winter 2004).

⁴² SEX TRAFFICKING: FACTS AND FIGURES, THE PROTECTION PROJECT THE WORLD REVOLUTION, available at <http://www.worldrevolution.org/Projects/Webguide/GuideArticle.asp?ID=1430> [hereinafter Sex Trafficking: Facts and Figures].

⁴³ *Id.* at 20.

forced prostitution.⁴⁴ To this day, military presence and the servicemen patronizing brothels and sex clubs contribute not only to the demand for prostitution, but also to the demand for trafficked persons.⁴⁵

When these conflicts subsided, a resultant sex-tourism industry was created and a market-demand for trafficking to industrialized countries developed.⁴⁶ The option of sex tourism increased the demand for sex trafficking, a demand that the traffickers are more than willing to satisfy.⁴⁷ For the most part, the sex industry is illegal in both the origin and destination countries, and yet sex tourism still remains a lucrative industry.⁴⁸ “Although the foreign demand for commercial sex in developing countries is significantly outweighed by local demand, the presence of international consumers and the financial resources that accompany them are significant factors in the perpetuation of the sex industry worldwide.”⁴⁹ Some countries like Thailand and the Philippines were encouraged to promote the “entertainment” sector of their tourist industries by the World Bank and the Internal Monetary Fund in the late 1980’s.⁵⁰ Sixty percent⁵¹ of tourists, roughly 5.1 million a year,⁵² visit Thailand for the sole purpose of exploiting women and children through the Thai sex industry. Trafficking brings in approximately \$124 million dollars annually, making up almost sixty percent of Thailand’s GDP.⁵³ Realizing this industry’s profitability, the Thai government promoted sex tourism, claiming that its young women were “[t]he one fruit of Thailand more delicious than durian [a local fruit].”⁵⁴

Human trafficking, a crucial part of the illegal sex industry, is one of the fastest growing criminal enterprises in the world.⁵⁵ The opening of borders, increased movement of people and the globalization of the world economy, have allowed international criminal organizations to prosper while remaining relatively free from detection and prosecution.⁵⁶ Nearly every country is involved

⁴⁴ *Id.*

⁴⁵ United Nations Economic and Social Council, Commission on Human Rights *Integration of the Human Rights of Women and the Gender Perspective*, written statement submitted by the Human Rights Advocates, U.N. Doc. E/CN.4/2004/NGO/95, Mar. 3, 2004.

⁴⁶ Hartsough, *supra* note 30, at 80.

⁴⁷ *Id.*

⁴⁸ Andrews, *supra* note 40, at 418.

⁴⁹ *Id.*

⁵⁰ Bindel, *supra* note 1, at 10.

⁵¹ Von Struensee, *supra* note 9.

⁵² Poulin, *supra* note 27.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Elizabeth F. Defeis, *Protocol to Prevent, Suppress, and Punish Trafficking in Persons – A New Approach*, 10 ILSA J. INT’L & COMP. L. 485, 487 (Spring 2004); Dr. Karry Carrington and Jane Hearn *Trafficking and the Sex Industry: From Impunity to Protection*, 3, at <http://www.aph.gov.au/library/pubs/CIB/2002-03/03cib28.htm> (Oct. 19, 2005).

⁵⁶ Katrin Corrigan, Note, *Putting the Brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulating Schemes to Stop the Flow of Traffic*, 25 FORDHAM INT’L. L. J. 151, 154-62. (2001).

either as a country of origin, transit, or destination.⁵⁷ Postwar conditions, coupled with political and economic changes, provide an incentive for people to go somewhere else to make a better living, thus increasing the supply of potential victims who seek a better life. The United Nations estimates that traffickers move somewhere from 700,000 to 4 million people each year across international borders.⁵⁸ In the European Union, two-thirds of the 200,000 to 500,000 illegal sex workers come from Eastern Europe.⁵⁹ The United States receives approximately 45,000 to 50,000 illegal sex workers a year.⁶⁰ In Asia, 500,000 women and children are trafficked across international borders.⁶¹

Trafficking comes in many forms. "The traffickers destroy all concepts of borders by bringing victims under false pretenses. . . ."⁶² Despite the method of procurement, men, women and children are trafficked to an unknown place, like foreign countries or unfamiliar domestic regions. As "traders in human beings,"⁶³ traffickers normally do not work alone. A network of people, including corrupt government officials and international crime organizations, are involved in facilitating sex trafficking. Law enforcement officials often turn a blind eye.⁶⁴ Government officials issue "legitimate" visas or even block legislation that would hinder the profitability of this industry.⁶⁵

Traffickers will often target women in poor or war-torn countries.⁶⁶ They appear to be "angels"⁶⁷ ready to bring them to a better life with promises of em-

⁵⁷ SEX TRAFFICKING: FACTS AND FIGURES, *supra* note 42.

⁵⁸ Schifferes, *supra* note 31.

⁵⁹ Defeis, *supra* note 55, at 487.

⁶⁰ Richard, *supra* note 26, at 3.

⁶¹ U.N. Warns on South Asia Child Sex, BBC NEWS, Sept. 29, 2004, at http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia/3700110.stm.

⁶² Mary Ann Becker and Kathleen Barry, *The Prostitution of Sexuality, the Global Exploitation of Women*, 52 DEPAUL L. REV. 1043, 1045 (Spring 2003).

⁶³ Hartsough, *supra* note 30, at 84.

⁶⁴ Richard, *supra* note 26, at 8.

In Russia, the press reports that local authorities are aware of hundreds of phony agencies yet none have been prosecuted. In Thailand, one trafficker claims that another trafficker paid police approximately \$12,000 to "turn a blind eye" when the trafficker was found with some 300 passports. Local Thai police have also been known to extort money from potential U.S. visa applicants who are found with counterfeit or photo-altered Thai passports. *Id.*

⁶⁵ Donna M. Hughes, *The "Natasha" Trade: Transnational Sex Trafficking*, NAT'L INST. OF JUST. J., January 2001, at <http://www.uri.edu/artsci/wms/hughes/natasha.nij.pdf>, at 13.

⁶⁶ Corrigan, *supra* note 56, at 157.

⁶⁷ Laura J. Lederer, Senior Advisor on Trafficking, Office of Global Affairs, Remarks at Massachusetts State House Regarding Legislation Proposed by Senator Mark Montigny, (May 4, 2005).

So this is the story of Rosa, who was trafficked from Mexico to the United States. She was 13 and waiting tables in a restaurant in a small village near Vera Cruz, Mexico when she was approached by an acquaintance of the family who told her, "You know you can make ten times more money in the U.S. doing what you're doing here. I know someone who can find you a job in Texas—you can send money home to your family, you can have your own life. If you don't like the job we'll get you a new one. If you're homesick, we'll bring you back across the border. You can't lose."

Rosa was young and hopeful. . . . But she wanted a better life than what she had, and so, against her parents and friends' warnings, she accepted the offer. . . . They were dropped off in a rural town called Avon Park, in front a series of trailers. They were ordered out and the van drove

ployment as a nanny, restaurant worker, or member of a dance troupe in a wealthy country. This manipulative practice deprives these women of true consent, and therefore they are still considered trafficked. “[T]he consent given must be a full and informed consent as to both the movement and the end-conditions”⁶⁸ to be considered a smuggled person exercising a migration right.

The issue of consent rears its head in a variety of forms. The traffickers may purchase the women from loved ones or family. They may advertise and have fronts as legitimate businesses. Some women may even be informed that they will be working classy strip clubs or even as high-end prostitutes.⁶⁹ Traffickers may even have the women sign a fraudulent contract for their services or simply resort to kidnapping their victims.

Traffickers steal the victim’s migration rights and then force the victims to “pay” to get their rights back. “Traffickers take a personal, private choice - sex - and commodify it.”⁷⁰ Isolated and alone in a foreign country, the trafficked workers are forced to endure violence, intimidation, and gang rape as an “initiation” into the world of forced prostitution.⁷¹ The traffickers retain their passports or even burn them and claim that the workers are now “owned.”⁷² In order to be freed, trafficked workers must work off their “debt” of purchase and travel costs, in addition to room and board, which can amount to upwards of \$40,000.⁷³ To pay off such indebtedness, these women “work” ten to eighteen hours a day, for at least twenty-five days each month and service about ten customers per day.⁷⁴

away. A big, burly looking man came out and told them, “I’ve just purchased you. Now you work for me.” . . .

She would have to buy her freedom by sexually servicing men. Rosa was young. She was a virgin. She was Catholic. She knew what the woman was telling her was bad—a sin. . . . When she refused to do what they said, the burly man brought out three other men who took her into one of the trailers and gang-raped her to induct her into the “business.” Then they locked her in the trailer without food and water until she succumbed. For the next six months she was a prisoner. She was forced to service 10 or more men a day. On the weekends it was as many as 20-30 men. The men bought a ticket, which was a condom, for \$20. But they often didn’t use it. Twice Rosa was impregnated and twice forced to have an abortion. And twice forced back into the brothel the next day. She was beaten if she refused a customer’s demands. She was guarded twenty-four hours a day, even when she went to the bathroom. She was passed around at private parties that the trafficking ring held in the evenings and on weekends.

Once she and several others tried to escape. They were caught and pistol-whipped around the head and face in front of the other girls—to deter them all from trying that. Shortly after the second abortion and this beating, Rosa became sick and felt crazy. In order to keep her functioning in the brothel, the traffickers gave her drugs and alcohol to numb her pain. She was only “rescued” when one of the young women jumped out of a second story window at one of the private parties and ran to a neighbor’s house. The neighbor called the local police. The police called the INS and FBI. . . . To make matters worse, when Rosa was discovered, the U.S. didn’t have a trafficking law. Instead of really rescuing Rosa, the police arrested her and the other young women and children, and locked them up in jail along with the traffickers.

⁶⁸ Hartsough, *supra* note 30, at 96.

⁶⁹ *Id.* at 86.

⁷⁰ Becker, *supra* note 62, at 1048.

⁷¹ Lederer, *supra* note 67.

⁷² Nelson, *supra* note 2, at 556.

⁷³ Bindel, *supra* note 1, at 38.

⁷⁴ Nelson, *supra* note 2, at 556.

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As an example, in 1999, a Russian-American recruited foreign Latvian women to the United States under the pretense that they would dance in bikinis in respectable and sophisticated Chicago nightclubs and earn \$60,000 a year.⁷⁵ Instead they were forced to dance topless and nude in order to get their passports back at a cost of \$60,000.⁷⁶ Once they paid their debt, he sold them their passports back for \$4,000.⁷⁷

Often, once a sex trafficked person has nearly paid her debt, she is merely sold again and placed back into debt. As an example, a woman can be sold for \$18,000 to \$20,000.⁷⁸ Even if the woman keeps track of her debt, the traffickers, or those who have bought her, may tack on additional charges to keep her in servitude. If the woman manages to escape, she quickly discovers that law enforcement officials are corrupt, complicit, or unsympathetic to the plight of the trafficked person.⁷⁹ Instead of being protected, she will be arrested for engaging in prostitution or for being an illegal immigrant.⁸⁰ She is likely jailed or deported back to her country where she may be sold and bought again. So continues a vicious cycle of organized crime, government corruption, trafficking of persons, buyers and sellers, all of whom are able to exploit the international and domestic laws to their advantage. This cycle allows the illegal sex industry to flourish, making it the third most profitable, illicit enterprise in the world.

IV. International Treaties and Conventions

The framework of international mechanisms to address the issues of human trafficking and forced prostitution was laid in 1904 with the International Agreement for the Suppression of White Slave Traffic ("1904 Agreement").⁸¹ The first four treaties focused on the trafficking of women and forced prostitution because it was widely believed that prostitution fell within a nation-state's own domestic jurisdiction. The 1904 Agreement was adopted in an effort to collect information regarding the international procurement of women and to assist the women in returning to their home country.⁸² Trafficking of women, particularly the sale of white European women, into forced prostitution, caught the attention of the international community in the early 20th century⁸³ when adverse economic conditions led to women being sold into prostitution.⁸⁴

⁷⁵ Richard, *supra* note 26, at 47 ("U.S. v. Mishulovich 1999").

⁷⁶ *Id.*

⁷⁷ *Id.* at 47; *Prison for Forcing Women to be Exotic Dancers*, CHI. TRIB., Feb. 14, 2002. (The court sentenced him to 9 years and 4 months for forcing the women into involuntary servitude.).

⁷⁸ See *Director of Public Prosecution v. Glazner*, *supra* note 19.

⁷⁹ See *Lederer*, *supra* note 67.

⁸⁰ Trafficking Victims Protection Act 22 USCA §7101(b)(20).

⁸¹ 1904 Agreement, *supra* note 15; Corrigan, *supra* note 56, at 162.

⁸² 1904 Agreement, *supra* note 15, at 86.

⁸³ Corrigan, *supra* note 56, at 163.

⁸⁴ Stephanie Fariior, *The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to its Potential*, 10 HARV. HUM. RTS. J. 213, 216 (Spring 1997).

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Realizing that the 1904 Agreement was not effective, the International Convention for the Suppression of White Slave Traffic (“1910 Convention”)⁸⁵ took steps to criminalize the procurement of women for forced prostitution.⁸⁶ The parties were bound to punish those who “hired, abducted, or enticed for immoral purposes any woman under the age of twenty-one, or used violence, threats, fraud, or any compulsion on a woman over the age of twenty-one, notwithstanding that the acts constituting the offence were committed in different countries.”⁸⁷ Women who were kept in brothels against their will, however, were outside the scope of the 1910 Convention because it was believed that brothels were a domestic issue and hence within the jurisdiction of the State.⁸⁸ The International Convention for the Suppression of Traffic in Women and Children (“1921 Convention”)⁸⁹ expanded the trafficker’s victims to include children⁹⁰ and non-white women.⁹¹ The International Convention on the Suppression of the Traffic in Women of Full Age (“1933 Convention”)⁹² removed consent as a defense for trafficking.⁹³ These treaties built the foundation for additional international instruments addressing the problems of trafficking for purposes of forced prostitution.

The U.N. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (“1949 Convention”),⁹⁴ and the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), which was entered into force in 1979,⁹⁵ made significant strides in the area of trafficking of women for forced prostitution. First, the 1949 Convention no longer limited trafficking as the movement of human commodities across international borders.⁹⁶ One could be trafficked within the nation-state’s borders. Second, the focus of the 1949 Convention shifted from trafficking to prostitution.⁹⁷ “Ratifying States. . .agree[d] to punish anyone who engages another person in prostitution or exploits the prostitution of another person, regardless of whether consent has been given.”⁹⁸ Third, the 1949 Convention used race and gender neutral language, recognizing that the problem included more than women.⁹⁹ Fourth, the 1949 Convention acknowledged that prostitution was no

⁸⁵ 1910 Convention, *supra* note 15.

⁸⁶ Nelson, *supra* note 2, at 559.

⁸⁷ *Id.*

⁸⁸ Corrigan, *supra* note 56, at 164.

⁸⁹ 1921 Convention, *supra* note 15.

⁹⁰ *Id.*

⁹¹ Corrigan, *supra* note 56, at 164.

⁹² 1933 Convention, *supra* note 15.

⁹³ *Id.*

⁹⁴ 1949 Convention, *supra* note 15.

⁹⁵ Corrigan, *supra* note 56, at 162-63; CEDAW, *supra* note 15.

⁹⁶ 1949 Convention, *supra* note 15.

⁹⁷ Corrigan, *supra* note 56, at 166.

⁹⁸ 1949 Convention, *supra* note 15, art. 6.

⁹⁹ 1949 Convention, *supra* note 15.

longer exclusively within a state's domestic jurisdiction. Now international law could govern prostitution requiring cooperation between nations regarding anti-trafficking efforts.¹⁰⁰ Finally, CEDAW was the first agreement to recognize women's rights as human rights.¹⁰¹ Art. 6 of CEDAW focused on targeting those who profit from the sexual exploitation of women and children.¹⁰²

Approximately fifty years later, aware that these international treaties were not sufficient in suppressing the trafficking of persons, another international mechanism was created. In 2003, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention against Transnational Organized Crime ("Trafficking Protocol") was entered into force.¹⁰³

The Trafficking Protocol is the first international agreement to provide a comprehensive approach to the trafficking problem by punishing the traffickers and helping the victims.¹⁰⁴ Even though this was the first agreement to address both the problem of trafficking and forced prostitution, nation-states were reluctant to define "trafficking in persons" so broadly that it included those who had consented to be trafficked.¹⁰⁵ The issue of consent remains a point of contention among many nation-states. Nonetheless, the Trafficking Protocol includes the most expansive definition of trafficking in persons and recognizes that trafficked persons are not criminals, but victims [regardless of consent].¹⁰⁶

The Trafficking Protocol also establishes obligations for countries to work with one another to prevent, combat, and criminalize trafficking.¹⁰⁷ It is important to note, however, that these obligations "govern *international cooperation* between parties, but *not domestic law* adopted pursuant to the Convention and its Protocols."¹⁰⁸ (emphasis added). The nation-state must enact its own domestic legislation regarding prostitution within its jurisdiction. However in practice, domestic laws, not international obligations, provide the default environment for trade. Without more than obligations for cooperation as an international regime, the international market for humans is governed by domestic laws.

¹⁰⁰ Corrigan, *supra* note 56, at 170.

¹⁰¹ Nelson, *supra* note 2, at 565.

¹⁰² Division for the Advancement of Women, Dept. of Economic and Social Affairs (DESA) U.N. The United Nations response to trafficking in women and girls, EGM/TRAF/2002/WP.2 Nov. 8, 2002 available at <http://www/un.org/womenwatch/dawlegm/trafficking2002/reports/wp.daw.pdf>; See generally CEDAW, *supra* note 15.

¹⁰³ Nelson, *supra* note 2, at 569; Trafficking Protocol, *supra* note 15, at http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html. (The Treaty was entered into force on December 23, 2003. It currently has 117 signatories and 79 parties. Australia, Netherlands, and the United States are signatories. Canada and Sweden are both parties.)

¹⁰⁴ Nelson, *supra* note 2 at 571.

¹⁰⁵ Kara Abramson, Note, *Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Protocol*, 44 HARV. INT'L L.J. 473, 476 (Summer 2003); Report of Special Rapporteur, *supra* note 4, at 5.

¹⁰⁶ Beverly Balos, *The Wrong Way to Equality: Privileging Consent in the Trafficking of Women for Sexual Exploitation*, 27 HARV. WOMEN'S L.J. 137, 148-49 (Spring 2004).

¹⁰⁷ *Id.* at 149.

¹⁰⁸ Trafficking Protocol, *supra* note 4.

V. Domestic Legislation – Criminalization, Legalization, Decriminalization

Even though international mechanisms exist to address the transnational problem of sex trafficking, the impetus is still on each individual nation-state to create and enforce legislation for the sex industry. A variety of factors play a role in the decisions of each nation-state: morality, economics, immigration, enforcement, court systems, and culture. Despite the variety of factors, most nation-states have addressed the problem through three typical approaches: (1) criminalize both the sale and purchase of sex; (2) legalize both the sale and purchase of sex; and (3) criminalize only the purchase of sex.¹⁰⁹ The following section will look at a selection of legal regimes adopted by various countries to counter the sex industry.

A. Criminalizing Both the Sale and Purchase of Sex

No regime completely legalizes all aspects of prostitution.¹¹⁰ The domestic laws within the United States demonstrate the complexities that arise. Having sex for money is illegal in the United States except for a handful of counties in Nevada. Nonetheless, the illegal sex industry is prominent in the United States, especially around major cities. The United States is not immune to the problems arising from the trafficking of women and children into its boundaries for forced prostitution. It is estimated that 45,000 to 50,000 women are trafficked into the United States yearly.¹¹¹

Prior to 2000, the only way to prosecute traffickers in the United States was through a patchwork of criminal statutes.¹¹² The system was inefficient and ineffective in dealing with sex trafficking in the United States. “Ironically, it is the trafficked women who are the ones who end up being arrested in brothel raids and subsequently locked up, and then deported as illegal immigrants, while their perpetrators rarely suffer repercussions for their actions.”¹¹³ Although the number of traffickers brought before the court system is slowly mounting, there are still many more trafficked women seen before the courts.

The Victims of Trafficking and Violence Protection Act of 2000 (“TVPA”) recognizes trafficking as an international human rights problem and aims to prosecute the traffickers under one comprehensive statute.¹¹⁴ The TVPA seeks to

¹⁰⁹ See generally Susan Pinto, Anita Scandia, Paul Wilson, *Prostitution Laws in Australia No. 22*, in AUSTRALIAN INSTITUTE OF CRIMINOLOGY TRENDS AND ISSUES, 2, (May 1990) available at <http://www.aic.gov.au/publications/tandi/ti22.pdf>.

¹¹⁰ Bindel, *supra* note 1, at 12.

¹¹¹ Hartsough, *supra* note 30, at 79.

¹¹² Nelson, *supra* note 2, at 572.

¹¹³ Hartsough, *supra* note 30, at 98.

¹¹⁴ Trafficking Victims Protection Act, 22 USCA §7101(b)(14):

Existing 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

prevent trafficking and protect the victims of trafficking regardless of their immigration status.¹¹⁵ In addition, the trafficked individual will be provided a “T” Visa if they assist the prosecutors in the investigation of the traffickers.¹¹⁶ This immigration status incentive encourages the trafficking victims to testify against their traffickers. Further, the TVPA makes the receipt of aid by a foreign country contingent on meeting a set of minimum standards for the elimination of trafficking.¹¹⁷

Although there has been an increase in the number of traffickers caught since the international recognition of trafficked persons, the sentences are relatively light since the requisite legal facts in cases involving involuntary servitude are hard to prove and prosecutors may settle for a plea bargain in order to save the trafficked persons the trauma of testifying.¹¹⁸ Recognizing the role that American demand for sexual services plays in the illegal sex industry, Congress passed the PROTECT Act in 2003 which prohibits United States citizens or aliens from engaging in the illegal sex industry both domestically and abroad.¹¹⁹

Nonetheless, sex tours are advertised for places like Indonesia and Thailand offering “young children virgins.”¹²⁰ Under the current laws, the ability to eradicate the sex tour business is a difficult process and not one willingly embarked upon.¹²¹ Moreover, “[a]lthough current laws punish sex traffickers, exploiters,

sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment.

¹¹⁵ Nelson, *supra* note 2, at 573.

¹¹⁶ Immigration Law & Family §4:71 Protections for Victims of Trafficking and Certain Crimes – T Visa For Trafficking Victims :

In October 2000, Congress created a new nonimmigrant visa, the “T” visa for certain victims of sex trafficking or other severe forms of trafficking. To qualify for a T visa, the noncitizen must be in the United States, must have been subjected to one of the practices referenced above, must have complied with reasonable requests for assistance in the investigation or prosecution of human traffickers or be under age 15, and must be a person who would suffer extreme hardship, if removed from the United States.

See generally also Hartsough, *supra* note 30, at 98.

¹¹⁷ Trafficking Victims Protection Act, 22 USCA, §7107(a) (“It is the policy of the United States not to provide nonhumanitarian, nontrade-related foreign assistances to any government that (1) does not comply with minimum standards for the elimination of trafficking; and is not making significant efforts to bring itself into compliance with such standards.”); Nelson, *supra* note 2, at 575.

¹¹⁸ Richard, *supra* note 26, at 47-50. *See* Lisa Yuroiko Thomas, *Japan Criticized Over Poor Effort To Prevent Human Trafficking*, JAPAN TIMES, March 20, 2004, at <http://202.221.217.59/print/news/nn03-2004/nn20040320> (where in Japan, Koichi “Sony” Hagiwara was arrested in 2003 and admitted to trafficking hundreds of girls received a 22 month sentence).

¹¹⁹ Transportation of Minors PROTECT ACT, 18 USCA §2423 (b):

A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years or both.

See generally Press Release, Representative Carolyn Maloney, Rep. Maloney Calls Legal Action to Stop Sleazy Sex Tours a Victory for NYC & Women Around the World (Mar. 22, 2004) at <http://www.house.gov/maloney/press/108th/20040322SexTours.htm>; *See generally United States v. Michael Lewis Clark*, 315 Supp. 2d 1127 (W. D. Wash.).

¹²⁰ *See* Combating Trafficking in Persons; Hearing Before the Subcomm. on Domestic & Int’l Monetary Policy, Trade and Tech. the Comm. on Fin. Serv., 109th Cong. 5 (2005) [hereinafter Hearings] (statement of Rep. Carolyn Maloney).

¹²¹ *Id.*

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and purchasers of commercial sexual activities, these laws are typically enforced disproportionately against women and children, instead of against the sex traffickers, exploiters, and purchasers.”¹²² The End Demand for Sex Trafficking Act of 2005 was introduced to the House on April 28, 2005 to reduce the demand for illegal sex services by punishing the consumer.¹²³ This marks another effort by the United States to reduce sex trafficking. Only time will tell whether this piece of legislation will effectively reduce the demand for sex trafficking or will continue to punish the sex trafficked victims.

B. Selective Legalization and Tolerance Zones

In response to the insatiable demand for the services of sex workers and potential economic revenue that results, several countries, such as Australia and the Netherlands,¹²⁴ have moved away from criminalizing the selling and purchase of sex. Instead, these countries see legalization as a means to combat the trafficking of women and children.¹²⁵ Many countries have adopted “tolerance zones” for sex workers to market their services. The governments argue that legalized brothels would provide safe working conditions.¹²⁶ Furthermore, mandated health checks protect all parties involved.¹²⁷ An underlying rationale of such a policy is that legalization would break the links between prostitution and organized crime.¹²⁸ Moreover, law enforcement would be less burdened and could concentrate on other sectors such as trafficking and child prostitution.¹²⁹

Victoria, Australia began legalizing and decriminalizing prostitution in 1984.¹³⁰ Other Australian states have followed suit in varying degrees.¹³¹ This policy was adopted to address the problems associated with prostitution by alleviating public health concerns, increasing the safety of the women, and reducing

¹²² End Demand for Sex Trafficking Act of 2005, H.R. 2012, 109th Cong. §2(6) (2005).

Section 2(6) According to recent studies:

(A) 11 females used in commercial sexual acts were arrested in Boston for every arrest of a male purchaser;

(B) 9 females used in commercial sexual acts were arrested in Chicago for every arrest of a male purchaser; and

(C) 6 females used in commercial sexual acts were arrested in New York City for every arrest of a male purchaser.

¹²³ *Id.*

The purpose of this bill is [t]o combat commercial sexual activities by targeting demand, to protect children from being exploited by such activities, to prohibit the operation of sex tours, to assist State and local governments to enforce laws dealing with commercial sexual activities, to reduce trafficking in persons, and for other purposes. *Id.*

¹²⁴ Bindel, *supra* note 1, at 12-16.

¹²⁵ Smith, *supra* note 41, at 170-71.

¹²⁶ Dominic Casciani, *Prostitution: International Answers*, BBC NEWS, July 16, 2004, at http://news.bbc.co.uk/1/hi/uk_news/3900361.stm.

¹²⁷ *Id.*

¹²⁸ Bindel, *supra* note 1, at 12.

¹²⁹ *Id.* at 13.

¹³⁰ Sheila Jefferys, *The Legalization of Prostitution: A Failed Social Experiment*, Oct. 3, 2003, at http://sisyphe.org/article.php?id_article=697.

¹³¹ *Id.*

the presence of organized crime.¹³² The Brothels Planning Act 1984 was the first piece of legislation legalizing prostitution by allowing “massage parlors.”¹³³ Legalized prostitution was further expanded under the Prostitution Control Act 1994, which aimed to “tackle the growth of criminal activity in brothels and the illegal sex industry.”¹³⁴

The Netherlands is known for its prostitution and it has become a major tourist attraction. In 2000, the Netherlands legalized brothels under Criminal Code 250a.¹³⁵ Under Article 250a local governments are allowed to develop a system to regulate brothels within their jurisdictions. Forced prostitution and trafficking are still illegal.¹³⁶ It is estimated, however, that 80% of the women who work in the legalized brothels are trafficked from other countries.¹³⁷

C. Criminalize Buying & Decriminalize Selling

In 1999, Sweden criminalized the buying of sex and decriminalized the selling of sex. Under the Act on Prohibiting the Purchase of Sexual Services,

[a] person who obtains casual sexual relations in exchange for payment shall be sentenced – unless the act is punishable under the Swedish Penal Code – for the purchase of sexual services to a fine or imprisonment for at most six months. Attempt to purchase sexual services is punishable under Chapter 23 of the Swedish Penal Code.¹³⁸

The rationale behind criminalizing consumption rests on the belief that prostitution consists of violence against women and children and is a barrier against equality.¹³⁹ The women and children in prostitution are not criminalized, but are viewed as victims. This changes their legal status and perception in the eyes of the public.¹⁴⁰ Another fairly unique feature of Sweden’s law is that it reaches the conduct of their nationals even when they are overseas. In other words, Swedish people who buy or attempt to buy sex in other countries can, not only be charged under Sweden’s law, but are also subject to the laws of the country where they bought the sex act.¹⁴¹

¹³² *Id.*

¹³³ Bindel, *supra* note 1, at 38.

¹³⁴ *Id.* at 46; *See generally* Prostitution Control Act, 1994, (Austl.).

¹³⁵ *Id.* at 60.

¹³⁶ *Id.* at 60-61.

¹³⁷ Janice G. Raymond, *Ten Reasons for Not Legalizing Prostitution*, Oct. 2 2003, at http://sisyphe.org/article.php3?id_article=691.

¹³⁸ Swedish Prostitution Laws, at http://www.bayswan.org/swed/sed_law.html.

¹³⁹ Bindel, *supra* note 1, at 24.

¹⁴⁰ *Id.* at 25.

¹⁴¹ *Id.* at 25.

VI. Manipulation of International and Domestic Laws to Further the Illegal Sex Industry

“Organised crime depends not on the victims, but on customers.”¹⁴² Traffickers, organized criminals, and nation-states have seized upon the opportunity to make billions in profits from the sale of these violence commodities. Profiteers maximize their wealth by fulfilling the public demand for illicit goods and services.¹⁴³ “Illegal or not, the demand for (and the supply of) particular market commodities can often be a contributing factor in the cause of violence.”¹⁴⁴ Like any other business, the sex industry adapts to the constantly changing environment. Unlike any other business, however, the commodities are human beings.

“All aspects of a nation’s economy—its industries, service sectors, levels of income and employment, and living standard(s)—are linked to the economies of its trading partners.”¹⁴⁵ The free market has been a driving factor in breaking down barriers between countries, making the world a smaller place. Today, as sellers and buyers are frequently found in different countries, market commodities can be easily transported across national borders, and the consumers have access to a variety of products and services.¹⁴⁶

The same economic principles apply to the sex industry, but the commodities are men, women, and children. The buyers are those who purchase the sexual services. The sellers are the traffickers, organized criminal organizations, and sometimes even the government. In a world where no country is in economic isolation, “a single government. . . even one as powerful as that of the United States, may be ineffective in controlling the market forces of violence commodities [such as forced prostitution] given their transnational nature.”¹⁴⁷ Nonetheless, governments need to be aware that the decisions they make regarding the sex industry will have an exponential impact on the illegal sex industry, potentially furthering an already disparate problem. “The determination of which goods and services are available in the illegal market strictly depends on the relevant laws.”¹⁴⁸ Criminal organizations seek economic opportunities in providing illegal goods and services.

In the case of forced prostitution, one country’s tolerance of prostitution, including child prostitution, creates a ready market for sex by both foreign and local buyers, thus increasing the demand.¹⁴⁹ Larger markets create larger incentives.¹⁵⁰ The disparity in legal conditions creates disparate markets, which traffickers exploit for their gain. “The fact that legal and illegal economies are often

¹⁴² Schloenhardt, *supra* note 8, at 5.

¹⁴³ *Id.* at 4-5.

¹⁴⁴ Seita, *supra* note 11, at 637.

¹⁴⁵ Robert J. Carbaugh, *INTERNATIONAL ECONOMICS* 3 (7th ed. 2000).

¹⁴⁶ Seita, *supra* note 11, at 635-636.

¹⁴⁷ *Id.* at 647.

¹⁴⁸ Schloenhardt, *supra* note 8, at 7.

¹⁴⁹ Seita, *supra* note 11, at 640.

¹⁵⁰ Schloenhardt, *supra* note 8, at 7.

intertwined complicates matters enormously; attempting to promote legal, cross-border, economic flows while simultaneously enforcing laws against illegal flows is an increasingly awkward and delicate political task.”¹⁵¹ Attempts by individual governments to put criminal organizations out of business have made such organizations more innovative in manipulating their business circumstances.¹⁵² This battle of encouraging a more open economy while discouraging the flow of illicit goods and services creates an economic environment in which the traffickers are able to take advantage of the ambiguities and cloak their dealings in the lawful exercise of free trade.

The supply and demand for goods and services is dependent upon the relative position of the laws. Legal regimes created by governments determine the economic opportunities for organized crime. Weak law enforcement undermines the international and domestic instruments created to protect those forced into prostitution. Traffickers and criminal organizations are businesses who deal in the illegal market. They are like all businesses, weighing the costs and benefits in engaging in a particular market.

[The trafficker] calculates (1) all his practical opportunities of earning legitimate income, (2) the amounts of income offered by these opportunities, (3) the amounts of income offered by the various illegal methods, (4) the probability of being arrested if he acts illegally and (5) the probable punishment should he be caught. After making these calculations, he chooses the act or occupation with the highest discounted return.¹⁵³

Trafficking of persons into the illegal sex industry and exploitation of weak or tolerant laws on prostitution has allowed this illicit business to flourish “\$1 at a time”¹⁵⁴ at the cost of millions of lives.

The international legal mechanisms that form the framework for the international effort against forced prostitution and trafficking have made great strides in acknowledging the problems of trafficking of women and children into forced prostitution over the last century. The elements of sex slavery as a crime against humanity were even set forth in the Rome Statute of the International Criminal Court¹⁵⁵ which reflects customary international law.¹⁵⁶ Nation-states continue to

¹⁵¹ Peter Andreas, *Transnational Crime and Economic Globalization*, in *TRANSNATIONAL ORGANIZED CRIME & INTERNATIONAL SECURITY BUSINESS AS USUAL?* 39 (Mats Berdal and Monica Serrano eds. 2002).

¹⁵² Phil Williams, *Cooperation Among Criminal Organizations in TRANSNATIONAL ORGANIZED CRIME & INTERNATIONAL SECURITY BUSINESS AS USUAL?* 71-72 (Mats Berdal and Monica Serrano eds. 2002).

¹⁵³ *Id.* at 2.

¹⁵⁴ *Hearings*, *supra* note 120, at 22 (statement of Norma Hotaling, Executive Director, SAGE).

¹⁵⁵ Valerie Oosterveld, *Sexual Slavery and the International Criminal Court: Advancing International Law*, 25 *MICH. J. INT'L L.* 605, 641 (Spring 2004).

[E]lements of crime for sexual slavery listed under the crime against humanity and war crimes sections read: 1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending, or bartering such a person or persons, or by imposing on them a similar deprivation of liberty. . . . 2. The perpetrator caused such person or persons to engage in one or more acts of sexual nature.

¹⁵⁶ *Id.* at 608.

debate over the terms used within the international instruments. Forced prostitution is not a matter of *jus cogens*.¹⁵⁷ “Only when all nations consistently adhere to and enforce the anti-trafficking provisions of the international trafficking conventions will there be a worldwide force strong enough to effectively combat the illegal traffic of women for the purposes of exploitation.”¹⁵⁸

The issue is not whether prostitution is immoral, but whether countries will tolerate forced prostitution as a by-product of their legal sex industry. Although many of the treaties encourage coordinated international efforts against sex trafficking, the legislation to adhere to the treaties is piecemeal at best. Perhaps more harmful is the lack of enforcement of these laws in the countries of origin, transit, and destination, allowing traffickers to exploit the treaties’ dissonance.

Actions speak louder than words. A nation-state’s ability to effectively and consistently implement and enforce the current language against trafficking and forced prostitution would signal to the organized crime networks that trafficking is no longer acceptable. Organized criminal networks would no longer be able to disguise sex trafficking behind the “entertainment” industry. The international economic market would no longer tolerate sex trafficking as a profitable business venture.

“[T]hese networks are financed \$1 at a time by men, who we call “the demand,” who we have allowed to buy human beings and use them [as] though they are nothing more than receptacles, like toilets and sewers.”¹⁵⁹ The men who go to prostitutes are not aware of the legal status; whether the women have been trafficked. Nonetheless, their purchase of sexual services creates a demand for illegal migration that the traffickers are all too happy to supply.

Governments recruit foreign women to fulfill this demand. Entertainment visas have become a euphemism for prostitution and a loophole for sexual exploitation of trafficked persons.¹⁶⁰ The Canadian government, for example, issues special visas in search of foreign women to fill a need in the entertainment industry. A spokesperson for the Canadian Ministry of Immigration stated, “Canadian women do not want to work any more in this profession.”¹⁶¹ They argue that the scarcity of performers such as lap dancers could only be filled by recruit-

¹⁵⁷ “*Jus cogens* norms are norms of international law are laws that are binding on states or nations, even if they do not agree to them.” 48 C.J.S. INTERNATIONAL LAW §2 (1981).

¹⁵⁸ Corrigan, *supra* note 56, at 209.

¹⁵⁹ *Hearings*, *supra* note 120, at 22 (statement of Norma Hotaling, Executive Director, SAGE).

We have normalized their behavior while criminalizing the real victim. I can tell you story after story where there were no bribes of officials. These are the stories that involve “the demand,” the men. They are always free to go. They are released without ever paying a bribe, without an arrest, to enjoy their dinners, their families, their jobs while continuing to pretend that their hands are clean, and the millions of wounded, missing, dead women and children a result of other very bad, very organized people doing very bad deeds. Today, with your efforts, and the introduction of the End Demand For Sex Trafficking Act of 2005, this protection and collusion with the real perpetrator is ending. Dollar by dollar paid by “the demand,” the line between the state and criminal networks starts to blur, making it seem impossible to intervene in the succession of corruption, collaboration, crime and profit.

¹⁶⁰ Thomas, *supra* note 118.

¹⁶¹ Audet, *supra* note 29.

ing women from abroad and by granting them special visas.¹⁶² According to Hon. Judy Sgro, Minister of Immigration, “there are needs in the exotic dance industry” and the government has the “obligation to answer them.”¹⁶³ The Netherlands are also looking to expand the supply and variety of women to engage in prostitution by “offer[ing] [to the market] prostitutes from non-EU/EEA [European Union/European Economic Area] countries.”¹⁶⁴

The actions of these governments legitimize the trafficker’s activities, giving credence to their methods by providing an alleged legal façade for their illegal operation. Further, if trafficked victims legally obtain a legitimate visa, they are bound not only by the traffickers, but by the laws of the country. They are trapped to work in the industry in which their visa was issued and they do not even have access to their identification papers. Although these countries do have anti-trafficking laws, the discrepancies between those laws and legalized prostitution laws allow the traffickers to exploit the ambiguities.

Contrary to the hopes that legalizing prostitution and creating “tolerance zones” would contain the organized criminal element of the sex industry and provide regulatory mechanisms to assist the sex workers, the opposite has occurred. “Legalisation is a ‘pull factor’ for traffickers.”¹⁶⁵ Countries adopting such mechanisms have now become safe havens for traffickers. The industry operates under a façade of legitimacy and compliance with domestic laws, while still trafficking men, women and children into forced prostitution.¹⁶⁶ Since it is essential for traffickers to promote their services, countries with legalized prostitution support the deception that the traffickers weave in recruiting men, women, and children from economically poor countries to serve the wealthier countries.

Legalized prostitution may appear to be a progressive embracing of allowing women the choice to market their bodies. A negative by-product, however, is the creation of a safe haven for traffickers to further violate the migration rights of men, women, and children and force them into prostitution. In Australia in 1983, there were 149 known brothels in Victoria, after legalization there are currently 94 legal brothels and 400 illegal establishments.¹⁶⁷ At least seven licensed brothels used trafficked women in 2002.¹⁶⁸ These trafficked women were each forced

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Janice G. Raymond, *Prostitution on Demand Legalizing the Buyers as Sexual Consumers*, in *VIOLENCE AGAINST WOMEN*, Vol. 10 No. 10, 1164, Oct. 2004.

¹⁶⁵ Bindel, *supra* note 1, at 15 (“Legalisation was intended to eliminate organized crime from the sex industry. In fact the reverse has happened. Legalisation has brought with it an explosion in the trafficking of women into prostitution by organized crime. Convicted criminals, fronted supposedly more reputable people, remain in the business.”); *See also Hearings*, *supra* note 120 at 11 (statement of Hon. John Miller, Dir., Office to Monitor and Combat Trafficking in Persons, U.S. Dept. of State (“What happens and we have seen numerous examples of this-it is legalized, but the illegal sector does not go away. Organized crime is so involved in it. The illegal sector just expands. . . you create a magnet which draw more trafficking victims.”)).

¹⁶⁶ *Id.*

¹⁶⁷ Joan McAlpine, *Tolerate Red-light Zones and You License Male Parasite*, *THE HERALD*, Dec. 16, 2003, available at http://global.factiva.com/en/arch/print_results.asp.

¹⁶⁸ Bindel, *supra* note 1, at 38.

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to service 700 customers to pay off a \$40,000 trafficking debt.¹⁶⁹ It is also estimated that Australian brothels earn \$1 million a week from illegal prostitution.¹⁷⁰ The Netherlands has also seen an expansion of the illegal sex industry after lifting the ban on brothels.¹⁷¹ Even though trafficking is prohibited in the Netherlands, the traffickers have little fear of punishment. In 1993 only nine trafficking cases were brought to court.¹⁷² Four cases were dismissed for lack of evidence. One trafficker received nine months in prison and another received four years.¹⁷³ In one case where five men were charged with trafficking Thai women, the highest sentence was suspended and they only had to pay a fine of 35,000 florins - equivalent to approximately U.S. \$18,845¹⁷⁴ - approximately the cost of purchasing 1 woman.

On the other hand, Sweden has seen a reduction of their illegal sex industry after passing legislation that criminalizes the buying of sexual services. Two years after the new policy, there was a 50% decrease in women prostituting and 75% decrease in men purchasing sex.¹⁷⁵ It is estimated that since the law passed, only 200 to 500 women and children have been trafficked into Sweden compared to the 17,000 to Finland.¹⁷⁶ In addition, there has been an increased number of people charged with sex trafficking under this new legislation.¹⁷⁷ The numbers show that the law deters traffickers. Sweden is no longer an attractive market because of the potential negative impact on the profits of traffickers; to prevent detection and prosecution the brothels have to constantly move away from areas with stringent laws.¹⁷⁸

Trafficking of women and children into forced prostitution is not simply an international problem that requires an international solution. In order to have an international economic market that is not susceptible to the abuses of traffickers, each individual nation-state must take the proper steps within their own domestic jurisdiction to implement and enforce the treaties to which they are a party. There are two ways that a country can handle the issue of prostitution and forced prostitution. Countries can regulate the sex industry or prohibit it all together. Each nation-state's domestic legislation contributes or stunts the growth of the illegal sex industry. The cost of sex trafficking must outweigh the benefits for the traffickers. Nation-states must be cognizant of their actions and be prepared

¹⁶⁹ *Id.* at 49.

¹⁷⁰ *Id.* at 15.

¹⁷¹ Raymond, *supra* note 137.

¹⁷² Marie-Victoire Louis, *Legalizing Pimping Dutch Style*, at <http://www.uri.edu/artsci/wms/hughes/mhvpim.htm>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*; Welcome to Netherlands at <http://www.middleeastnews.com/Netherlands.html> (In 1993, the exchange rate was 1.8573 florins to a dollar).

¹⁷⁵ U.S. Department of State, THE LINK BETWEEN PROSTITUTION AND SEX TRAFFICKING, Bureau of Public Affairs, Nov. 24, 2004.

¹⁷⁶ Bindel, *supra* note 1, at 25.

¹⁷⁷ *Id.*

¹⁷⁸ Gunilla Ekberg, *The Swedish Law that Prohibits the Purchase of Sexual Services*, in VIOLENCE AGAINST WOMEN, VOL. 10 NO. 10, 1200-01, Oct. 2004.

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to deal with consequences that their legal regimes may, in fact, be inviting the traffickers' business.

VII. Conclusion

The growth of the illegal sex industry, and hence international sex trafficking, is a matter of international economics and local politics. People and governments demand an industry for sex and are willing to pay for it. Traffickers are more than willing to supply that demand by preying on men, women, and children who seek a better life.¹⁷⁹ Although the international community has recognized trafficking of persons for forced prostitution as a crime against humanity on both an international and domestic level, it is still a pervasive phenomenon around the world that is tied to the acceptance of the legal sex industry.

It is not sufficient to capture the individual traffickers. Nation-states must dismantle the international economic conditions which sustain the illegal sex industry. Currently, both international and domestic legislation support the international economic market for sex trafficking. Treaties and domestic laws are simply words on paper. Rather than helping those who are trafficked, they function as a cage around the men, women, and children forced into prostitution, trapping them by the very laws that were created to protect them.

Traffickers' sole objective is to exploit and manipulate legal regimes to increase their profits. Traffickers use domestic laws as weapons against the trafficked victims. Furthermore, this illicit business thrives on the laws that tolerate and encourage prostitution. Where laws against sex trafficking exist, like weeds that grow in any available crack, traffickers find ways to market their business through the patchwork of domestic and international laws.

Consistency and uniformity must not only be achieved on the international level, but domestically as well. Only then will the profitable market conditions for the illegal sex industry no longer exist. Only then will the traffickers be unable to exploit the legal discrepancies to their advantage. Only when we stop paying, will the traffickers stop supplying.

¹⁷⁹ Corrigan, *supra* note 81, at 208.