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## Putting the Brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to Stop the Flow of Traffic

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# Putting the Brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to Stop the Flow of Traffic

Katrin Corrigan

## **Abstract**

This Note addresses international trafficking of women for the sex trade. Part I describes the existing laws that prohibit trafficking of women for the sex trade internationally, within the European Union ("EU"), and in the United States. Part I also explains how these laws can be used to combat global trafficking of women. Part II analyzes existing anti-trafficking laws in the relevant international treaties, the EU, and in the United States. Part II explores experts' opinions on the shortcomings of the existing laws for effective prevention of trafficking. Part III advocates that a comprehensive approach is necessary to eradicate international trafficking of women for the sex trade.

## NOTE

### PUTTING THE BRAKES ON THE GLOBAL TRAFFICKING OF WOMEN FOR THE SEX TRADE: AN ANALYSIS OF EXISTING REGULATORY SCHEMES TO STOP THE FLOW OF TRAFFIC

*Katrin Corrigan\**

#### INTRODUCTION

Yelena left her life of poverty in her hometown of Dniprodzerzhynsk, Ukraine,<sup>1</sup> for a waitressing job in Yugoslavia.<sup>2</sup> Instead, she was trafficked across Europe, forced into sexual slavery, and held captive in various brothels and hotel rooms.<sup>3</sup> Yelena traveled from Yugoslavia through Albania to Italy, and was bought and sold numerous times for up to U.S.\$2,000.<sup>4</sup>

According to the United Nations<sup>5</sup> ("U.N."), four million

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\* Fordham Int'l L.J., Writing & Research Editor, J.D. Candidate, 2002, Fordham University School of Law. This Note is dedicated to my family and friends for their endless love and support. I would like to thank the editors and staff of the *Fordham International Law Journal* who assisted in the publication of this Note.

1. See Dave Montgomery, *Dreams of Better Life End in a Nightmare of Sexual Slavery*, CHI. TRIB., Jan. 3, 2001, at 8 (describing Yelena's hometown of Dniprodzerzhynsk, Ukraine, as mill town of 284,000 on Dnieper River). Dniprodzerzhynsk is a depressed industrial city in eastern Ukraine, where hundreds of thousands of men and women are unemployed. *Id.*; see also Michael Specter, *Contraband Women—A Special Report; Traffickers' New Cargo: Naïve Slavic Women*, N.Y. TIMES, Jan. 11, 1998, at 1 (reporting that according to Ukrainian employment statistics, over two thirds of all unemployed Ukrainians are women).

2. See Montgomery, *supra* note 1, at 8 (reporting that Yelena left Ukraine in search of job in Yugoslavia).

3. See *id.* (explaining that Yelena's attempt to obtain profitable employment failed). Rather than receiving a job at a popular restaurant as she was promised, traffickers sold Yelena and several others and forced them to work as prostitutes. *Id.* Yelena was imprisoned in rooms without a telephone. *Id.*; see also Julie Mertus, *Human Rights of Women in Central and Eastern Europe*, 6 AM. U. J. GENDER SOC. POL'Y & L. 369, 428 (arguing that trafficking of women and girls for forced prostitution within Ukraine and abroad is growing problem). Traffickers frequently place advertisements in newspapers for jobs abroad as dancers, nannies, waitresses, and entertainers in order to recruit young women for the sex trade. *Id.*

4. See Montgomery, *supra* note 1, at 8 (reporting that Yelena's final owner was Albanian man who purchased her for US\$2,000 and forced her into prostitution to repay him). Yelena eventually escaped and returned to the Ukraine with the help of a priest. *Id.*

5. See GEOFF SIMONS, *THE UNITED NATIONS: A CHRONOLOGY OF CONFLICT* 51 (St.

people are trafficked<sup>6</sup> around the world every year as part of a global business that produces profits of up to U.S.\$7,000,000,000 each year.<sup>7</sup> This industry is a profitable international enterprise

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Martin's Press, 1994) (explaining purpose of United Nations ("U.N."), established in 1945). Article I of the U.N. Charter states:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

*Id.*

6. See *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, U.N. ESCOR, Commission on Human Rights, 53d Sess., Provisional Agenda Item 9(a), at IV, U.N. Doc. E/CN.4/1997/47 (1997) (defining trafficking). The U.N. General Assembly defines trafficking as:

the illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers, and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment, and false adoption.

*Id.*; see also AMY O'NEILL RICHARD, U.S. DEP'T. OF STATE, CENTER FOR THE STUDY OF INTELLIGENCE, *INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME* v (1999) available at <http://www.odci.gov/csi/monograph/women/trafficking.pdf> (offering definition of trafficking). The U.S. Department of State defines trafficking as:

all acts involved in the recruitment, abduction, transport, harboring, transfer, sale, or receipt of persons; within national or across international borders; through force, coercion, fraud, or deception; to place persons in situations of slavery or slavery-like conditions, forced labor or services, such as forced prostitution or sexual services, domestic servitude, bonded sweatshop labor or other debt bondage.

*Id.*

7. See GILLIAN CALDWELL ET AL., *GLOBAL SURVIVOR NETWORK, CRIME & SERVITUDE: AN EXPOSE OF THE TRAFFIC IN WOMEN FOR PROSTITUTION FROM THE NEWLY INDEPENDENT STATES* 3 (1997) available at <http://www.globalsurvival.net/femaletrade/9711russia.html> (recognizing that international sex trafficking produces billions of dollars in profits for traffickers); see also Roger Cohen, *The Oldest Profession Seeks New Market in West Europe*, N.Y. TIMES, Sept. 19, 2000, at A1 (asserting that trafficking of women for sex

that encompasses numerous methods of sexually exploiting women, including pornography, sex tourism, mail order brides, and forced prostitution.<sup>8</sup> Experts agree that trafficking of women for the sex trade is prevalent throughout the world.<sup>9</sup>

This Note addresses international trafficking of women for the sex trade. Part I describes the existing laws that prohibit trafficking of women for the sex trade internationally, within the European Union ("EU"), and in the United States. Part I also explains how these laws can be used to combat global trafficking of women. Part II analyzes existing anti-trafficking laws in the relevant international treaties, the EU, and in the United States. Part II explores experts' opinions on the shortcomings of the existing laws for effective prevention of trafficking. Part III advocates that a comprehensive approach is necessary to eradicate international trafficking of women for the sex trade.

### I. TRAFFICKING: A CRASH COURSE

Commentators maintain that international sex trafficking is a means of sexually enslaving women; women are sold, ab-

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trade is very profitable industry worth several billion dollars annually); Specter, *supra* note 1, at 1 (reporting that International Organization for Migration estimated that 500,000 women are trafficked into Western Europe each year); Penny Venetis, *Violence Against Women: International Solutions Symposium, International Sexual Slavery*, 18 WOMEN'S RTS. L. REP. 263, 270 (1997) (revealing that trafficking of women for sex trade is growing multi-billion dollar business).

8. See Maya Raghu, *Sex Trafficking of Thai Women and the United States Asylum Law Response*, 12 GEO. IMMIGR. L.J. 145, 145 (1997) (stating that international sex trafficking is substantial division of sexual enslavement business); see also Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT'L L. 303, 305 (1999) (finding that trafficking of women for forced prostitution is common all over world); Jennifer L. Ulrich, *Confronting Gender-Based Violence With International Instruments: Is a Solution to the Pandemic Within Reach?*, 7 IND. J. GLOBAL LEGAL STUD. 629, 634 (2000) (explaining that sex trafficking includes forced prostitution, military gang rapes, mail order brides, and international sex tourism).

9. See RICHARD, *supra* note 6, at 1 (declaring that traffickers of women frequently operate across national borders); see also Specter, *supra* note 1, at 1 (arguing that selling women into sexual slavery occurs across globe as part of burgeoning criminal enterprise); Susan Jeanne Toepfer & Bryan Stuart Wells, *The Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women*, 2 MICH. J. GENDER & L. 83, 87 (1994) (asserting that women are bought and sold everywhere in world); Ulrich, *supra* note 8, at 633 (maintaining that sex trafficking is global problem that pervades almost all cultures); Joyce M. Davis & Nomi Morris, *Growth of Slave Trade Sounds Alarm*, TIMES UNION, Jan. 7, 2001, at A10 (claiming that globalization of sex trade creates difficulties for law enforcement officials attempting to eradicate trafficking).

ducted, or raped, and then forced to engage in sexual activity for other people's profit.<sup>10</sup> The United Nations recognizes trafficking as a form of slavery and condemns slavery as a violation of fundamental human rights.<sup>11</sup> There are numerous international, EU, and U.S. laws that proscribe trafficking of women for the sex trade.<sup>12</sup>

#### A. *An Overview of Trafficking of Women for the Sex Trade*

Experts discuss that every day women are trafficked around the world as a part of the international sex trade.<sup>13</sup> Currently, Central and Eastern Europe are the primary sources from which women are drawn into global sex trafficking.<sup>14</sup> Commentators

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10. See Raghu, *supra* note 8, at 145 (noting that trafficked women are victims of sexual violence and exploitation); see also Davis & Morris, *supra* note 9, at A10 (explaining that when women reach their destination country, traffickers often seize their travel documents and sell them into sex industry); RICHARD, *supra* note 6, at v (declaring that trafficking of women involves deceit and coercion to force women into sexually exploitative situations). Traffickers treat women as valuable and expendable commodities. *Id.* at 1. See Venetis, *supra* note 7, at 269 (maintaining that business of selling women into forced prostitution is prosperous industry in which victims are regarded as property).

11. See *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. GAOR, 3d. Sess Pt. 1, art. 4, U.N. Doc A/810 (1948) (stating that "[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms"); see also CALDWELL ET AL., *supra* note 7, at 59-60 (noting that slavery is condemned by numerous international human rights documents); Rassam, *supra* note 8, at 308 (contending that sex trafficking and forced prostitution are modern day forms of slavery under international law); Davis & Morris, *supra* note 9, at A10 (reporting that when discussing global sex trafficking, former Secretary of State Madeleine Albright stated, "[i]n many ways . . . this is a slave trade"). Albright went on to proclaim, "[i]f you are buying and selling people, however it's done, it is horrendous and it's criminal and it needs to be stopped." *Id.*

12. See HUMAN RIGHTS WATCH, WOMEN'S RIGHTS PROJECT, *THE HUMAN RIGHTS WATCH GLOBAL REPORT ON WOMEN'S HUMAN RIGHTS 199* (1995) (stating that international human rights instruments outlaw trafficking and forced prostitution); see also Toepfer & Wells, *supra* note 9, at 111 (discussing existence of regional European anti-trafficking laws); RICHARD, *supra* note 6, at 35 (reporting that U.S. law prohibits trafficking and associated abuses).

13. See Janie Chuang, *Redirecting the Debate Over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 68 (1998) (maintaining that thousands of women are coerced into forced prostitution and treated as slaves as part of prosperous international sex trafficking industry); see also Specter, *supra* note 1, at 1 (asserting that trafficking of women for sex trade is prosperous international business); Cohen, *supra* note 7, at 1 (reporting that trafficking of women for forced prostitution is thriving business between Eastern and Western Europe); Raghu, *supra* note 8, at 171 (claiming that international sex trafficking is prosperous and growing business).

14. See RICHARD, *supra* note 6, at iii (explaining that Central and Eastern Europe and Newly Independent States replaced Southeast Asia and Latin America as predomi-

also note that many trafficking victims are procured through international networks of organized crime, who use technological and communication advancements to enhance the scope of their business.<sup>15</sup> Scholars agree that the success of traffickers is attributable to several factors including global social and economic trends, widespread conditions of poverty, especially for women, the high profitability of the business, government inaction regarding trafficking schemes, and in some situations, government complicity.<sup>16</sup>

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nant source countries of women for traffickers); *see also* *Trafficking in Women—In the Shadows*, *ECONOMIST*, Aug. 26, 2000, at 38 (contending that many Eastern and Central European women are involved in sex trade); Joel Brinkley, *Vast Trade in Labor Portrayed in CIA Report*, *N.Y. TIMES*, Apr. 2, 2000, at 22 (commenting that sex trafficking business is augmented by increased involvement of traffickers from Russia and former Soviet republics who prey upon women from those countries seeking employment opportunities in Western countries); Cohen, *supra* note 7, at 1 (discussing that each year, approximately 500,000 women from Eastern Europe and former Soviet Union become involved in international sex trade).

15. *See* Lan Cao, *Illegal Traffic In Women: A Civil RICO Proposal*, 96 *YALE L.J.* 1297, 1298 (1987) (claiming that sex trafficking business is controlled by organized criminal networks); *ECONOMIST*, *supra* note 14, at 38 (concluding that traffickers are highly organized criminal gangs); *see also* RICHARD, *supra* note 6, at 13-15 (explaining that both large and small organized criminal groups are involved in trafficking of women for sex trade). Traffickers take advantage of technological advancements, such as the Internet, to draw women into the sex trade. *Id.* at 5.

16. *See* Stephanie Farrior, *The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to its Potential*, 10 *HARV. HUM. RTS. J.* 213, 214 (1997) (surmising that prevailing social and economic hardships for women, combined with lack of political resolve to eliminate sex trafficking undermines successful enforcement of anti-trafficking measures). Women are often marginalized within society. *Id.* *See* Sabrina Feve & Christina Finzel, *Trafficking of People*, 38 *HARV. J. LEG.* 279, 279 (2000) (explaining that sex trafficking is growing business because of large profits, minimal risk of punishment, and pervasive social and economic problems in source countries); *see also* Chuang, *supra* note 13, at 71 (contending that local governments around world regularly participate in trafficking process); Specter, *supra* note 1, at 1 (reporting that local police forces often do little to prevent trafficking); RICHARD, *supra* note 6, at 1 (alleging that widespread corruption in countries involved in sex trafficking industry weakens law enforcement efforts to abolish sex trafficking); Raghu, *supra* note 8, at 160 (postulating that government corruption exacerbates problem of sex trafficking by allowing criminal trafficking syndicates to avoid detection and punishment); HUMAN RIGHTS WATCH, *supra* note 12, at 199 (asserting that governments allow trafficking and forced prostitution to persist, in spite of specific State obligations to eliminate such practices). Human Rights Watch reports that law enforcement officials are complicit in trafficking schemes. *Id.* at 196. Sometimes officials are paid to ignore trafficking in their regions, protect those involved in trafficking operations from arrest, and engage in the procurement of women. *Id.* Occasionally, immigration officials transport women across borders for traffickers. *Id.*

## 1. Traffic Patterns

Commentators document how each day, thousands of women become involved in the global sex trade through various coercive methods employed by traffickers, including abduction and false promises of profitable jobs in other countries.<sup>17</sup> Traditionally, trafficking victims came from Southeast Asia and Latin America, recently however, they originate in Central and Eastern Europe.<sup>18</sup> Commentators note that in recent years, Eastern European countries, particularly Russia, Ukraine, and the Czech Republic, became the predominant source countries from which traffickers procure women.<sup>19</sup>

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17. See CALDWELL ET AL., *supra* note 7, at 3 (commenting that deceptive promises of lucrative employment abroad are particularly alluring to unemployed women in areas of poverty). Traffickers often operate under the guise of legitimate employment or entertainment agencies and recruit women for the sex trade through false promises of employment. *Id.* at 6. See Chuang, *supra* note 13, at 69 (asserting that traffickers frequently procure women for sex trade through lies regarding legitimate job opportunities); see also Becki Young, *Trafficking of Humans Across United States Borders: How United States Laws Can Be Used to Punish Traffickers and Protect Victims*, 13 GEO. IMMIGR. L.J. 73, 79 (1998) (discussing that traffickers sometimes procure women for sex trade through kidnapping); Feve & Finzel, *supra* note 16, at 279 (explaining that traffickers entice unemployed, impoverished women to United States with deceitful promises of non-existent or illegitimate employment); Specter, *supra* note 1, at 1 (noting that women desiring improved living conditions are ensnared into sex trade by local advertisements for lucrative employment abroad). An advertisement used by traffickers in Kiev read: "Girls: Must be single and very pretty. Young and tall. We invite you for work as models, secretaries, dancers, choreographers, gymnasts. Housing is supplied. Foreign posts available. Must apply in person." *Id.* See Isabelle Talleyrand, *Military Prostitution: How the Authorities Worldwide Aid and Abet International Trafficking in Women*, 27 SYRACUSE J. INT'L L. & COM. 151, 172 (2000) (theorizing that women are exploited by traffickers' deceptive practices because they are ignorant of associated dangers).

18. See Laurie Hauber, *The Trafficking of Women for Prostitution: A Growing Problem Within the European Union*, 21 B.C. INT'L & COMP. L. REV. 183, 184-85 (1998) (explaining recent trend putting Eastern European women at forefront of international sex trade). The growth of a market economy in Eastern and Central Europe resulted in widespread poverty and unemployment. *Id.* Moreover, travel restrictions between Eastern and Western Europe were removed, enabling Eastern European women to look for employment in Western Europe. *Id.* Limited employment opportunities in Western Europe compel Eastern European women to seek jobs through traffickers. *Id.* Many jobs in the entertainment industry, such as dancers and artists, are part of the sex industry and dominated by traffickers. *Id.* Furthermore, it is easier to traffic Eastern and Central European women than Asian and African women because of the shorter travel distance. *Id.* See RICHARD, *supra* note 6, at iii (discussing shift in source countries for trafficked women to Eastern and Central Europe).

19. See Specter, *supra* note 1, at 1 (reporting that Ukrainian and Russian women are now most valuable in international sex trade). Ukraine and neighboring countries replaced Thailand and the Philippines as the primary source of women for international sex trafficking. *Id.* There is a high demand for young European women. *Id.* See



Experts agree that while trafficking patterns fluctuate in accordance with the global supply of and demand for trafficked women, trafficking generally originates in impoverished areas that lack viable economic opportunities for women.<sup>20</sup> Experts opine that traffickers often focus on soliciting women in developing countries.<sup>21</sup> Experts also note that in developing countries or countries transitioning to a market economy, conditions of extreme poverty for women can compel women to involve themselves in sex trafficking.<sup>22</sup> Commentators agree that in ad-

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ECONOMIST, *supra* note 14, at 38 (explaining that discernible pattern of trafficking materialized after collapse of communism). Women are typically trafficked from east to west. *Id.* Currently, Slav women are the most common ethnicity in European brothels. *Id.* See Marco A. Gramenga, STATEMENT AT THE EU CONFERENCE ON TRAFFICKING IN WOMEN FOR SEXUAL EXPLOITATION, at 3 (June 10-11, 1996) available at <http://www.iom.int/IOM/Statements.trafficking.html> [hereinafter IOM Speech] (reporting that in recent years, increasing numbers of trafficked women come from Central and Eastern European countries). Mr. Gramenga went on to report that statistics indicate that in the last decade the number of trafficked women from Central and Eastern European has dramatically increased in both Belgium and the Netherlands. *Id.* See CALDWELL ET AL., *supra* note 7, at 5-6 (noting that after collapse of Soviet Union, rising number of trafficked women originate in Russia and Newly Independent States).

20. See ECONOMIST, *supra* note 14, at 39 (noting that high levels of unemployment for women and economic hardship at home tempt Eastern European women to take risks regarding job opportunities, despite dangers of trafficking); see also HUMAN RIGHTS WATCH, *supra* note 12, at 196 (explaining that escalation of sex trade is directly related to unequal status of women around world). Adverse socioeconomic conditions for women all over the globe exacerbate the problem by increasing the likelihood that women will fall prey to traffickers and consequently become victims of forced prostitution. *Id.* See Raghu, *supra* note 8, at 146-47 (declaring that international sex trafficking schemes prosper through exploitation of economic, racial, and gender inequalities within countries and between developing and industrial nations); see also FARRIOR, *supra* note 16, at 214 (alleging that relationship between impoverished conditions and sexual exploitation for income explicates lack of enforcement of international law regarding trafficking of women). Several officials contend that desperate economic situations prevent government intervention to stop sex trafficking. *Id.* at 214-15. Certain countries rely on trafficking as a significant source of income. *Id.* at 214.

21. See Raghu, *supra* note 8, at 145-46 (explaining that sex traffickers frequently target oppressed women in developing countries and take advantage of imbalances in power with respect to gender, ethnicity, and poverty). In developing countries transitioning to a market economy, poverty is especially severe for women. *Id.* at 146. Economic hardship and oppression make these women more vulnerable to trafficker's false promises of lucrative jobs in Western cities. *Id.* See Rassam, *supra* note 8, at 323-24 (arguing that poverty and unemployment enable sex traffickers to draw women from developing countries into prostitution).

22. See Mertus, *supra* note 3, at 377 (theorizing that several aspects of transition to market economy significantly affect women). Capitalization adversely affects women in some of the following ways: the elimination of the welfare state; increased unemployment, especially for women; decreasing levels of income and increasing levels of poverty, which is particularly severe for women; intensification of job discrimination against

dition to economic forces, certain freedoms conferred upon young women in recent years, as a result of the collapse of communism, renders them particularly susceptible to sexual exploitation.<sup>23</sup>

Commentators report that trafficking victims travel to Europe, Asia, the Middle East, and North America, where they are sexually exploited.<sup>24</sup> Trafficked women's passports and other identification or travel documents are routinely confiscated and their earnings and freedom are withheld until the debt incurred to the traffickers is repaid.<sup>25</sup> Commentators note that traffickers

women combined with occupational segregation; and the resurgence of traditional attitudes regarding gender roles and stereotypes that subordinate women. *Id.* at 377-87. See Chuang, *supra* note 13, at 69 (noting that poverty may induce parents to sell their daughters into sex trade); RICHARD, *supra* note 6, at 1 (establishing that traffickers further their business by exploiting economic crises, such as those in Russia and Asia).

23. See Montgomery, *supra* note 1, at 8 (asserting that many women are more vulnerable with respect to international sex trade since collapse of Soviet Union). The growth of the sex trade is directly related to the collapse of Soviet society. *Id.* Women from the former Soviet Union now have increased freedom, after the fall of the Iron Curtain. *Id.* As a result of their new freedom to travel and the lack of employment opportunities at home, these women are more susceptible to false advertisements of traffickers and promises of jobs elsewhere. *Id.* See Mertus, *supra* note 3, at 376 (indicating that collapse of socialist societies resulted in immediate gains for women including rights to free association, travel, speech, and press); ECONOMIST, *supra* note 14, at 38 (reporting that Ukrainian officials opine that many of 400,000 Ukrainian women who left country after Ukrainian independence are part of international sex trade); see also Specter, *supra* note 1, at 1 (reporting that young women in Ukraine and Russia now have freedom and desire to leave home in search of better opportunities).

24. See CALDWELL ET AL., *supra* note 7, at 3 (stating that women are often forced to work as prostitutes without income); see also Rassam, *supra* note 8, at 324 (recognizing that after arriving in destination countries, trafficking victims are often imprisoned in brothels and forced to work as prostitutes). The women are physically and mentally abused. *Id.* See IOM Speech, *supra* note 19, at 5 (alleging that trafficked women are regularly abused by both traffickers and clients and denied numerous fundamental human rights); Specter, *supra* note 1, at 1 (asserting that traffickers typically rob victims of their passports and money, and imprison them). Women are confined to apartments, bars, and brothels. *Id.* Often, they are forced to have sex up to fifteen times a day. *Id.* See Donna M. Hughes, *Would Legalizing Prostitution Curb the Trafficking of Women? No: Legalization Would Legitimize Abuse*, 5 TRANSITIONS—CHANGES IN POST-COMMUNIST SOCIETIES 96, 96 (1998) (estimating that three-fourths of trafficked women do not realize that they will be forced into prostitution through violence and coercion).

25. See Specter, *supra* note 1, at 1 (reporting that traffickers routinely steal victims' passports); see also *Slave Trade Endures in the 21st Century*, SAN FRAN. CHRON., July 2, 2000, at 8 (commenting that after being sold to brothels, trafficked women are held captive in foreign lands without money or official identification); Venetis, *supra* note 7, at 269 (declaring that trafficking victims are routinely confined to their brothels, and occasionally, their rooms). Frequently, women who have been forced into prostitution are chained to their beds. *Id.* See RICHARD, *supra* note 6, at 5 (claiming that traffickers restrict personal freedoms of their victims); CALDWELL ET AL., *supra* note 7, at 40 (ex-

may re-sell a trafficking victim's debts to other procurers or pimps, thereby forcing her into continuous debt bondage.<sup>26</sup>

## 2. Current Trends

Experts note that international sex trafficking is often controlled by organized crime operations.<sup>27</sup> Many cases of trafficking of women for forced prostitution on the international level

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plaining that in addition to economic and sexual exploitation, traffickers and brothel operators use isolation and physical intimidation to imprison women).

26. See RICHARD, *supra* note 6, at 5 (asserting that women are often held captive through debt bondage to traffickers); see also Christopher M. Pilkerton, *Traffic Jam: Recommendations for Civil and Criminal Penalties to Curb the Recent Trafficking of Women From Post-Cold War Russia*, 6 MICH. J. GENDER & L. 221, 228-29 (1999) (explaining that traffickers often force victims to repay substantial debts incurred by purchase of passports and other documents). Numerous treaties and conventions outlaw debt bondage. *Id.* See Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Apr. 30, 1957, 226 U.N.T.S. 3, art. 1(a) [hereinafter Slavery Convention] (defining debt bondage). Debt bondage is defined as:

[the] status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

*Id.* See HUMAN RIGHTS WATCH, *supra* note 12, at 197 (claiming that majority of women coerced into forced prostitution are dominated through debt bondage). Trafficked women often cannot escape until their debts are paid, without risking reprisal by the traffickers or brothel owners and employees, arrest by local law enforcement, as well as retaliation against the women's families for failure to repay their debts. *Id.* See Cohen, *supra* note 7, at 1 (noting that many women are coerced into debt they will never be able to pay); Cao, *supra* note 15, at 1306 (arguing that in countries such as United States, criminalization of prostitution ensnares trafficked women into system of debt bondage). Repeated arrests and fines imposed upon trafficking victims being forced to work as prostitutes perpetuate debt bondage schemes by necessitating that the traffickers and pimps pay the fines and bail for the women, who are then required to pay off accrued debt through further acts of prostitution. *Id.*

27. See Young, *supra* note 17, at 79 (commenting that organized crime is involved in global trafficking of women for sex trade to United States); see also RICHARD, *supra* note 6, at vii-viii (noting that organized crime groups are engaged in sex trafficking of women in United States). The large organized crime enterprises of Asia, Russia, and Eastern Europe frequently participate in sex trafficking operations. *Id.* at 13. See Maggie Gallagher, *Pirates and Slavers, Circa 2000*, WASH. TIMES, June 30, 2000, at A20 (reporting that Pino Arlacchi, director of U.N. Office for Drug Control and Crime Prevention, announced that trafficking of people is currently most rapidly developing business for international organized crime groups). There are millions of victims involved in this extremely lucrative business. *Id.* See Cao, *supra* note 15, at 1299 (stating that women are procured by organized groups of traffickers); Cohen, *supra* note 7, at 1 (commenting that sex trafficking of women throughout Europe is perpetrated by well organized mafias, including Russian-German and Ukrainian-German mafias).

are linked with large-scale criminal networks.<sup>28</sup> Organized criminal syndicates are able to amass substantial earnings from the international sex trafficking business.<sup>29</sup> Experts agree that trafficking of women is an attractive business because the enormous profits are relatively risk-free.<sup>30</sup>

To coordinate their global operations, traffickers take advantage of modern advancements in technology and communications to expand their business operations.<sup>31</sup> Commentators note that technological advances, such as computers and the Internet, increase the scope of traffickers' activities by extending their reach beyond physical borders.<sup>32</sup> These same technologi-

28. See RICHARD, *supra* note 6, at vii-viii (noting that large organized criminal networks are engaged in trafficking of women in Europe and Asia, and it is probable that same groups will increase their business in United States); see also Davis & Morris, *supra* note 9, at A10 (indicating that U.S. federal authorities acknowledge that international sex traffickers are simultaneously engaged in various other criminal activities, including drug and gun smuggling, racketeering, and money laundering); Specter, *supra* note 1, at 1 (reporting that many trafficking routes are managed by Russian organized crime networks from Moscow). The Russian gangs often control all stages of the trafficking process. *Id.* See Rassam, *supra* note 8, at 305 (maintaining that in Asia and former Soviet Union, trafficking of women for sex trade is highly organized criminal industry); Barbara Crossette, *U.N. Warns That Trafficking in Human Beings is Growing*, N.Y. TIMES, June 25, 2000, at 10 (asserting that Albanians and other Balkan criminal organizations, who are known to be especially violent, control sex trade).

29. See Davis & Morris, *supra* note 9, at A10 (asserting that international criminal organizations obtain enormous profits from trafficking business); see also RICHARD, *supra* note 6, at 1 (stating that traffickers of women generally make money from fees charged for trafficking as well as trafficked women's earnings); Pilkerton, *supra* note 26, at 229 (indicating that trafficking of women for forced prostitution is highly lucrative business for organized crime); Raghu, *supra* note 8, at 160 (contending that sex trafficking is extremely profitable international industry).

30. See Brinkley, *supra* note 14, at 22 (asserting that convictions for sex traffickers generally involve insignificant prison sentences); see also Davis & Morris, *supra* note 9, at A10 (asserting that international trafficking networks enjoy minimal risk of being arrested or punished); Hauber, *supra* note 18, at 185-86 (noting that as compared to severe penalties imposed for drug trafficking, trafficking of women for sex trade is insignificant crime in many countries); Raghu, *supra* note 8, at 160 (alleging that international sex traffickers enjoy lower risks of being prosecuted than drug smugglers or illegal arms dealers); Specter, *supra* note 1, at 1 (noting that sex traffickers incur minimal risk during course of their illegal business because of nebulous laws and infrequent punishment of offenders).

31. See RICHARD, *supra* note 6, at 5 (indicating that Coalition Against Trafficking in Women ("CATW") reports that sex traffickers use Internet to conduct their illicit business); see also Stuart Millar, *Sex Gangs Sell Prostitutes Over the Internet*, OBSERVER, July 16, 2000, at 13 (recognizing that certain trafficking operations advertise and sell Eastern European women over Internet). Traffickers use websites to sell women to buyers all around Europe. *Id.*

32. See Millar, *supra* note 31, at 13 (specifying that trafficking operations from for-

cal advances simultaneously facilitate effective response to the needs of the market.<sup>33</sup>

### B. Existing Framework Targeting Trafficking of Women

International, EU, and U.S. lawmakers recognize trafficking as a serious problem.<sup>34</sup> Numerous international instruments condemn trafficking of women as a violation of human rights.<sup>35</sup> In addition to international treaties, there are also European

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mer Soviet Union and Balkan States offer trafficked women over Internet, which allows them to increase profits by catering to specific needs of market); *see also* Pilkerton, *supra* note 26, at 224 (surmising that technological advancements allow traffickers to conduct their business across international borders). Technological advancements increase international business opportunities for traffickers, while simultaneously increasing the pool of potential victims by allowing them to target women they might not have been able to reach otherwise. *Id.*

33. *See* Davis & Morris, *supra* note 9, at A10 (remarking that advent of computers and Internet allows international sex traffickers to maximize profits through increased supply of women, while avoiding detection by law enforcement officials).

34. *See* Raghu, *supra* note 8, at 163 (asserting that numerous international agreements proscribe trafficking of women for sex trade); Ulrich, *supra* note 8, at 648 (explaining that U.N. world conferences addressing women's issues seek international unity in fostering gender equality and eliminating discrimination against women). *See, e.g.,* Vienna Declaration and Programme of Action, 1993 World Conference on Human Rights, U.N. Doc. A/Conf. 157/24 (1993), 32 I.L.M. 1661 (1993) [hereinafter Vienna Declaration] (making recommendations to combat violence against women); *see also* Dietz, *Violence Against Women in the United States: An International Solution*, 13 ARIZ. J. INT'L & COMP. L. 551, 556 (1996) (stating that Vienna Declaration advocated that universal human rights equally apply to women and issued several recommendations, including state responsibility for violence against women); Venetis, *supra* note 7, at 268-69 (indicating that as well as numerous international conventions that seek to eliminate sex trafficking, Sweden, Australia, and United States have domestic laws to combat trafficking); IOM Speech, *supra* note 19, at 1 (declaring that trafficking of women is currently recognized as significant problem by many governments); HUMAN RIGHTS WATCH, *supra* note 12, at 199 (declaring that trafficking of women and forced prostitution are outlawed by international human rights law).

35. *See, e.g.,* Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, *opened for signature* Mar. 21, 1950, 96 U.N.T.S. 272 (entered into force July 25, 1951) [hereinafter 1949 Convention]; Convention on the Elimination of All Forms of Discrimination Against Women, Mar. 1, 1980, 1249 U.N.T.S. 14 (entered into force Sept. 3, 1981) [hereinafter CEDAW]; *see also* United Nations, Report of the Fourth World Conference on Women, U.N. Doc. A/Conf. 177/20 (1995) [hereinafter Beijing Conference Report]. Paragraph 14 of the Beijing Declaration promulgated at the Fourth World Conference on Women in Beijing declared that "[w]omen's rights are human rights." *Id.* at 14. *See* Raghu, *supra* note 8, at 164 (asserting that trafficking of women and related abuses are violations of international human rights); Chuang, *supra* note 13, at 74 (maintaining that trafficking of women for sex trade became international offense over one hundred years ago); Farrior, *supra* note 16, at 213 (concluding that numerous international treaties apply to trafficking of women for forced prostitution).

charters and human rights documents that proscribe trafficking.<sup>36</sup> In the United States, certain criminal, labor, and immigration laws can be used to combat trafficking of women for the sex trade.<sup>37</sup>

### 1. International Treaty Law

Scholars state that four early treaties—the International Agreement for the Suppression of White Slave Traffic<sup>38</sup> (“1904 Agreement”); the International Convention for the Suppression of White Slave Traffic<sup>39</sup> (“1910 Convention”); the International Convention for the Suppression of the Traffic in Women and Children<sup>40</sup> (“1921 Convention”); and the International Convention on the Suppression of the Traffic in Women of Full Age<sup>41</sup>

36. *See, e.g.*, European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 (entered into force Sept. 3, 1953) [hereinafter European Convention]; European Parliament Resolution on the Exploitation of Prostitution and the Traffic in Human Beings, O.J. C 120/352 (1989) (A2-52/89) [hereinafter 1989 Resolution]; European Parliament Resolution on Trafficking in Human Beings, O.J. C 32/88 (1996) [hereinafter 1996 Resolution]; 1997 Council Joint Action 04/03/1997 on Trafficking in Human Beings and Sexual Exploitation of Children, O.J. L 63 (1997) 1 [hereinafter 1997 Joint Action]; European Parliament Resolution on the Communication to the Council and the European Parliament For Further Actions in the Fight Against Trafficking in Women, O.J. C 59/307 (2000) [hereinafter 2000 Resolution]; *see* Hauber, *supra* note 18, at 184 (asserting that European Union (“EU”) implemented numerous legal instruments to combat sex trafficking and exploitation of prostitution); *see also* Laurence R. Helfer, *Consensus, Coherence and the European Convention on Human Rights*, 26 CORNELL INT’L L. J. 133, 161-62 (1993) (explaining that European unity in conforming to conventions and aspirational instruments prohibiting trafficking of women is evidence of developing regional perspective on individual rights).

37. *See, e.g.*, Law prohibiting involuntary servitude, 18 U.S.C. § 1583 (1994); Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-19 (1994); Immigration and Nationality Act, 8 U.S.C. 1324 (1952); Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961-68 (1994 & Supp. 1998). The United States does not have a comprehensive law against trafficking, therefore, law enforcement prosecute traffickers using a variety of criminal, labor, and immigration laws. *See* Young, *supra* note 17, at 82 (arguing that combination of U.S. laws can be invoked in sex trafficking context); *see also* Pilkerton, *supra* note 26, at 223 (contending that existing U.S. laws may be used to combat trafficking).

38. International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 35 Stat. 426, 1 L.N.T.S. 83 [hereinafter 1904 Agreement].

39. International Convention for the Suppression of the White Slave Traffic, May 4, 1910, 3 L.N.T.S. 278 [hereinafter 1910 Convention].

40. International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921, 9 L.N.T.S. 415 [hereinafter 1921 Convention].

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

("1933 Convention")—establish the framework for the current international instruments that prohibit trafficking of women.<sup>42</sup> In 1949, the U.N. executed the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others<sup>43</sup> ("1949 Convention").<sup>44</sup> The next international treaty to expressly forbid trafficking of women was the 1979 U.N. Convention on the Elimination of All Forms of Discrimination Against Women<sup>45</sup> ("CEDAW").<sup>46</sup>

#### a. The Development of International Law

Many nations are signatories to international legal instruments recognizing that sex trafficking is a violation of the individual human rights of women.<sup>47</sup> Global trafficking of women was first acknowledged as an international offense in the early twentieth century in response to concern regarding the sale of European women into forced prostitution.<sup>48</sup> This concern

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42. See Fariior, *supra* note 16, at 216-17 (concluding that early treaties are basis for 1949 Convention); see also Chuang, *supra* note 13, at 74-75 (explaining importance of four early anti-trafficking treaties as foundation for later treaties banning trafficking).

43. 1949 Convention, *supra* note 35.

44. See Chuang, *supra* note 13, at 75 (claiming that 1949 Convention was product of U.N. efforts to consolidate previous treaties); see also Rassam, *supra* note 8, at 338 (explaining that U.N. advocated abolitionist attitude regarding international sex trafficking and exploitation of prostitution by combining all previous anti-trafficking treaties and creating 1949 Convention).

45. CEDAW, *supra* note 35.

46. See Toepfer & Wells, *supra* note 9, at 100 (discussing that CEDAW followed 1949 Convention); see also Fariior, *supra* note 16, at 227 (explaining that Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") specifically addresses trafficking for forced prostitution).

47. See Toepfer & Wells, *supra* note 9, at 93 (noting that more than 20 international instruments addressed status of women since 1945 and majority of these legal documents consider trafficking for forced prostitution to be violation of human rights); see also Rassam, *supra* note 8, at 305-06 (declaring that international legal rules, principles of law, conventions, and judicial precedents prohibit slavery and related practices); Raghuram, *supra* note 8, at 163-64 (discussing existing international treaties that prohibit trafficking for sex trade). The Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights indirectly ban international sex trafficking through prohibitions regarding slavery and inhumane treatment of individuals. *Id.* More recent treaties, the 1949 Convention and Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), expressly outlaw sex trafficking and exploitation of prostitution. *Id.* at 164.

48. See Fariior, *supra* note 16, at 216 (proposing that trafficking and exploitation of prostitution of white women prompted treaty protection).

prompted the adoption of the 1904 Agreement.<sup>49</sup> The 1904 Agreement required that States Parties collect information regarding the procurement of women abroad for “immoral purposes.”<sup>50</sup>

The act of procuring women for sex trafficking was criminalized in the 1910 Convention.<sup>51</sup> Under the 1910 Convention, States Parties were required to punish any person who hired, abducted, or enticed for immoral purposes any woman under the age of twenty-one, or used violence, fraud, threats, or any compulsion on a woman for the same purpose.<sup>52</sup> Commentators note that the problem of holding women in brothels against their will for purposes of forced prostitution was beyond the scope of the 1910 Convention because the Member States

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49. See Chuang, *supra* note 13, at 74 (declaring that prevalence of white slave traffic throughout Europe inspired 1904 Convention); see also *Multilateral Treaties Deposited with the Secretary General*, at <http://untreaty.un.org/English/sample/EnglishInternetBible/partI/chapterVII/treaty8.asp> (listing States that ratified 1904 Agreement) [hereinafter *Multilateral Treaties I*]. The Ratifiers were Belgium, Denmark, France, Germany, Italy, the Netherlands, Norway, Portugal, Russia, Spain, Sweden, Switzerland, and the United Kingdom. *Id.*

50. 1904 Agreement, *supra* note 38, art. 1; see Rassam, *supra* note 8, at 337 (explaining that 1904 Agreement established procedures by which States Parties were required to gather information regarding procurement of women for sex trafficking); see also Fariior, *supra* note 16, at 216 (discussing States' obligations under 1904 Agreement to protect women from being trafficked and forced into prostitution); Nora V. Demleitner, *Forced Prostitution: Naming an International Offense*, 18 *FORDHAM INT'L L.J.* 163, 167 (1994) (explaining that 1904 Agreement focused only on protecting victims of trafficking and did not address punishment of procurers).

51. 1910 Convention, *supra* note 39; see Fariior, *supra* note 16, at 216 (noting that signatories of 1910 Convention pledged to punish procurers of women for forced prostitution); see also *Multilateral Treaties Deposited with the Secretary General*, at <http://untreaty.un.org/English/bible/EnglishInternetBible/partI/chapterVII/treaty10.asp> (indicating 13 States that ratified 1910 Convention) [hereinafter *Multilateral Treaties II*]. States Parties to the 1910 Convention were Austria-Hungary, Belgium, Brazil, Denmark, France, Germany, Great Britain and Northern Ireland, Italy, the Netherlands, Portugal, Russia, Spain, and Sweden. *Id.* See Demleitner, *supra* note 50, at 168 (asserting that ineffectiveness of 1904 Agreement in eliminating trafficking of women impelled many States Parties to 1904 Agreement to sign 1910 Convention).

52. 1910 Convention, *supra* note 39, arts. 1, 2. The 1910 Convention bound its signatories to severely punish “[a]ny person who, to gratify the passions of others, has hired, abducted or enticed, even with her consent, a woman or a girl who is a minor, for immoral purposes.” *Id.* art. 1. Article 2 of the 1910 Convention states that “[a]ny person who, to gratify the passions of others, has by fraud or by the use of violence, threats, abuse of authority, or any other means of constraint, hired, abducted or enticed a woman or girl of full age for immoral purposes . . . shall also be punished.” *Id.* art. 2; see Demleitner, *supra* note 50, at 169 (noting that 1910 Convention was characterized as anti-trafficking agreement, and did not address forced prostitution).



considered such matters to be within a country's exclusive domestic jurisdiction.<sup>53</sup> Both the 1904 Agreement and the 1910 Convention contained prohibitions regarding only the procurement or physical trafficking process and were silent regarding the resulting forced prostitution.<sup>54</sup>

Similarly, both the 1921 Convention and the 1933 Convention regarded the forced prostitution element of international sex trafficking as an issue controlled by States' domestic regulations.<sup>55</sup> In furtherance of its goals to eliminate trafficking, the 1921 Convention extended the reach of the protections contained in the earlier conventions to include non-white women.<sup>56</sup> The 1933 Convention established that consent was not a permissible defense to the crime of trafficking.<sup>57</sup>

#### b. The 1949 Convention and CEDAW

The 1949 Convention and CEDAW specifically outlaw traf-

53. See Pilkerton, *supra* note 26, at 230 (asserting that 1910 Convention outlawed trafficking while ignoring forced prostitution, because prostitution was issue within domestic jurisdiction for individual States and not part of international law); see also Demleitner, *supra* note 50, at 169 (noting that 1910 Convention outlawed only procurement element of trafficking because retention of women in brothels was classified as purely domestic prostitution issue).

54. See Chuang, *supra* note 13, at 74-75 (discussing that both 1904 Agreement and 1910 Convention focused only on transportation element of trafficking); see also Pilkerton, *supra* note 26, at 230 (emphasizing that 1910 Convention lacked specific reference to exploitation of prostitution associated with international sex trafficking).

55. Chuang, *supra* note 13, at 75; see Demleitner, *supra* note 50, at 170 (discussing that 1921 Convention and 1933 Convention did not outlaw brothels because business of prostitution was part of nation's domestic jurisdiction, and as such, beyond reach of international regulations).

56. See 1921 Convention, *supra* note 40, art. 7 (mandating that States Parties "undertake in connection with immigration and emigration to adopt such administrative and legislative measures as are required to check the traffic in women and children"); see also Chuang, *supra* note 13, at 75 (commenting that unlike earlier anti-trafficking treaties, 1921 Convention protected non-white women and children of either sex); Rasmussen, *supra* note 8, at 337-38 (noting that 1921 Convention contained broader protective measures against trafficking than earlier anti-trafficking treaties because it included children of either sex and increased age parameter to 21 years of age). The 1921 Convention states that "the words 'twenty completed years of age' shall be replaced by the words 'twenty-one completed years of age.'" 1921 Convention, *supra* note 40, art. 5.

57. See 1933 Convention, *supra* note 41, art. 1 (declaring that "[w]hoever, in order to gratify the passions of another person, has procured, enticed or led away even with her consent, a woman or girl of full age for immoral purposes to be carried out in another country, shall be punished"); see also Chuang, *supra* note 13, at 75 (reporting that 1933 Convention provided that woman's consent to being trafficked is not defense for traffickers); Farrior, *supra* note 16, at 217 (asserting that 1933 Convention mandated prosecution of traffickers and established that consent was not valid defense).

ficking of women for purposes of prostitution.<sup>58</sup> The 1949 Convention was the first international instrument to address sex trafficking in gender-neutral terms and regard forced prostitution as an issue of international law.<sup>59</sup> Under the 1949 Convention, States are obligated to take measures to punish those involved in the trafficking of women.<sup>60</sup> CEDAW, the next treaty to prohibit the trafficking of women, seeks to eradicate trafficking by outlawing discrimination against women and promoting equality between men and women.<sup>61</sup> CEDAW calls for the elimination of trafficking and sexual exploitation of women.<sup>62</sup>

### i. The 1949 Convention

In 1946, the United Nations Economic and Social Council established the Commission on the Status of Women (“Commission”) as a body committed to raising the status of women to equality with men.<sup>63</sup> The Commission created the 1949 Conven-

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58. See Hauber, *supra* note 18, at 191-93 (declaring that both 1949 Convention and CEDAW prohibit trafficking of women and forced prostitution).

59. See Chuang, *supra* note 13, at 75 (asserting that 1949 Convention included forced prostitution within purview of international law); see also Demleitner, *supra* note 50, at 172 (noting that 1949 Convention focused on exploitation of prostitution aspect of sex trafficking, which had previously been strictly domestic concern).

60. 1949 Convention, *supra* note 35, arts. 1, 2; see Farris, *supra* note 16, at 217 (explaining that 1949 Convention calls for punishment of international sex traffickers and exploiters of prostitution, including brothel owners); see also Hauber, *supra* note 18, at 191 (asserting that 1949 Convention requires States Parties to punish sex traffickers).

61. CEDAW, *supra* note 35, art. 6; see Ulrich, *supra* note 8, at 642 (noting that CEDAW establishes general prohibitions regarding discrimination against women and obligates signatories to eliminate domestic practices that obstruct gender equality); see also Toepfer & Wells, *supra* note 9, at 100 (discussing that CEDAW uses non-discriminatory language to proscribe trafficking).

62. See Toepfer & Wells, *supra* note 9, at 101 (asserting that CEDAW requires States Parties to eradicate trafficking and exploitation of prostitution).

63. See Report of the Sub-Commission on the Status of Women to the Commission on Human Rights, U.N. ESCOR, 2d Sess., Annex 4, at 237-38, U.N. Doc. E/HR/18/Rev. 1 (1946) (stating that “[f]reedom and equality are essential to human development and women is as much a human being as man, and therefore, entitled to share them with him; in order to achieve this goal, the purpose of the Sub-Commission is to raise the status of women to equality with men in all fields of human enterprise”); see also Pilkerton, *supra* note 26, at 232 (reporting that U.N. Economic and Social Council established Commission on Status of Women (“Commission”)); Toepfer & Wells, *supra* note 9, at 94-95 (providing that Commission held its first session in 1946 and determined to work towards elevating status of women); Farris, *supra* note 16, at 248 (explaining that Commission is authorized to review communications regarding discrimination against women). The Commission on the Status of Women (“Commission”)

tion in an effort to consolidate the earlier treaties that addressed trafficking of women.<sup>64</sup> The 1949 Convention addressed sex trafficking in neutral terms with respect to gender, and obligated States to punish procurement for purposes of trafficking, regardless of whether consent had been given to the traffickers, in domestic as well as international trafficking.<sup>65</sup> The Commission replaced the racially discriminatory language of the earlier anti-trafficking treaties with race-neutral language in the 1949 Convention.<sup>66</sup> Commentators note that the 1949 Convention made prostitution governable by international law, whereas it had previously been exclusively within a State's domestic jurisdiction.<sup>67</sup>

The 1949 Convention does not specifically define trafficking or forced prostitution.<sup>68</sup> It does, however, delineate actions asso-

may only issue recommendations based on those communications to the U.N. Economic and Social Council, and not to individual governments. *Id.*

64. See Hauber, *supra* note 18, at 191 & n.67 (remarking that 1949 Convention was merger of four prior anti-trafficking treaties: 1904 Agreement, 1910 Convention, 1921 Convention, and 1933 Convention); see also Rassam, *supra* note 8, at 338 (reporting that U.N. supplanted early agreements outlawing sex trafficking with 1949 Convention).

65. 1949 Convention, *supra* note 35, art. 1. The 1949 Convention states that States Parties to the Convention agree to punish any person who "[p]rocures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person." *Id.* art. 1; see Demleitner, *supra* note 50, at 172 (reporting that 1949 Convention was first international anti-trafficking agreement to prohibit trafficking of either gender, and include within its scope both domestic and international trafficking).

66. See Toepfer & Wells, *supra* note 9, at 97-98 (recognizing that previous anti-trafficking agreements established prohibitions regarding only white women); see also Demleitner, *supra* note 50, at 173 (maintaining that prohibited acts under 1949 Convention are outlawed regardless of victim's gender, age, or race).

67. See 1949 Convention, *supra* note 35, art. 6. The 1949 Convention requires parties to:

[T]ake all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.

*Id.* See Rassam, *supra* note 8, at 338 (commenting that 1949 Convention elevated prostitution to matter of international governance, removing it from exclusive jurisdiction individual States). States are no longer permitted to control legalized prostitution. *Id.* See Chuang, *supra* note 13, at 75 (noting that 1949 Convention prohibitions regarding domestic prostitution brothels resulted in refusal by many signatories to earlier conventions to participate in this convention).

68. See Chuang, *supra* note 13, at 75 (explaining that while certain terms, such as trafficking and forced prostitution, are not explicitly defined in 1949 Convention, general prohibitions encompass those offenses); see also Demleitner, *supra* note 50, at 172 (noting that 1949 Convention does not prohibit forced prostitution as such, but rather, criminalizes exploitation of prostitution).

ciated with the trafficking of women that are outlawed by the 1949 Convention.<sup>69</sup> Ratifying States of the 1949 Convention agree to punish anyone who engages another person in prostitution or exploits the prostitution of another person, regardless of whether consent has been given.<sup>70</sup> The 1949 Convention outlaws procurement of women for prostitution and exploitation of prostitution, including all activities associated with pimping and brothel management.<sup>71</sup>

In accordance with these ideas regarding international sex trafficking and forced prostitution and in furtherance of the professed abolitionist approach, the 1949 Convention establishes three categories of State Party obligations.<sup>72</sup> Initially, the 1949 Convention commits signatories to a general anti-trafficking

69. See Chuang, *supra* note 13, at 75-76 (concluding that 1949 Convention forbids trafficking and forced prostitution through provisions specifically criminalizing transporting individuals for purposes of exploiting them through prostitution); see also Pilkerton, *supra* note 26, at 232 (declaring that 1949 Convention seeks to protect women from trafficking for forced prostitution by interdiction of both procurement for prostitution and exploitation of prostitution).

70. 1949 Convention, *supra* note 35, art. 1. The 1949 Convention states that Ratifying States of the Convention:

agree to punish any person who, to gratify the passions of another:

- (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
- (2) Exploits the prostitution of another person, even with the consent of that person.

*Id.*; see Demleitner, *supra* note 50, at 173 (explaining that Article 1 criminalizes trafficking and exploitation of prostitution regardless of whether victim passed through international borders).

71. 1949 Convention, *supra* note 35, art. 2. Article 2 of the 1949 Convention states: The Parties to the present Convention further agree to punish any person who:

- (1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel;
- (2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

*Id.*; see Toepfer & Wells, *supra* note 9, at 96 (describing manner in which 1949 Convention obliges its signatories to abolish trafficking for sex trade). In order to protect trafficking victims, the 1949 Convention does not outlaw prostitution, but rather, proscribes certain associated activities, such as pimping, procuring, and brothel management, which effect the exploitation women for prostitution. *Id.* The 1949 Convention protects trafficked women as victims of traffickers, pimps, and consumers of prostitution. *Id.*; see also Farrior, *supra* note 16, at 218 (maintaining that 1949 Convention advocates abolition of brothels). U.N. studies demonstrating that State control of legalized brothels and prostitution indicated domestic acceptance regarding forced prostitution led to the total abolition approach of the 1949 Convention. *Id.*

72. See Chuang, *supra* note 13, at 76 (explaining that 1949 Convention binds signatories to abolish sex trafficking and forced prostitution); see also Raghu, *supra* note 8, at

principle and requires them to eradicate sex trafficking.<sup>73</sup> The 1949 Convention obliges signatories to punish procurers and those who exploit prostitution, while refraining from subjecting women who engage in prostitution to special supervision or registration.<sup>74</sup> Second, in accordance with Articles 8 through 15, States Parties to the 1949 Convention pledge participation in collaborative enforcement measures.<sup>75</sup> The 1949 Convention creates a third level of obligations under Article 16, which requires States to rehabilitate and socially assist trafficking victims.<sup>76</sup>

Experts express the view that the substantive terms of the 1949 Convention are more clearly defined than the terms contained in other international agreements.<sup>77</sup> The 1949 Convention provides substantive prohibitions against international sex trafficking by mandating punishment for traffickers,<sup>78</sup> suggests programs to assist victims of forced prostitution and prevent fur-

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165 (noting that 1949 Convention creates three levels of commitments for States Parties in order to eliminate trafficking).

73. See Toepfer & Wells, *supra* note 9, at 96 (commenting that 1949 Convention requires signatories to eliminate sex trafficking); see also Farrior, *supra* note 16, at 218 (reporting that U.N. studies indicated that success of brothels was due to volume of women obtained for prostitution through international sex trafficking, and therefore, brothels must be abolished in order to eliminate trafficking).

74. 1949 Convention, *supra* note 35, art. 6. See Toepfer & Wells, *supra* note 9, at 96 (explaining that furtherance of 1949 Convention's goal of eradication of trafficking and forced prostitution specifically excludes penalties for prostituted women where prostitution is legal).

75. See 1949 Convention, *supra* note 35, arts. 8-15 (mandating cooperation regarding extradition of traffickers, investigations, and information, as well as upholding foreign trafficking convictions); see Toepfer & Wells, *supra* note 9, at 97 (noting that signatories must cooperate with other nations regarding implementation of 1949 Convention).

76. 1949 Convention, *supra* note 35, art. 16. Article 16 of the 1949 Convention states:

The Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the of-fen[s]es referred to in the present Convention.

*Id.*; see Toepfer & Wells, *supra* note 9, at 97 (explaining that signatories must implement social measures to prevent trafficking); see also Farrior, *supra* note 16, at 219 (noting that States Parties are obligated to offer various remedial social services to victims of trafficking and forced prostitution).

77. Hauber, *supra* note 18, at 192; see Toepfer & Wells, *supra* note 9, at 98 (reporting that 1949 Convention explicitly delineates punishable offenses and possible ambiguities contained within treaty).

78. 1949 Convention, *supra* note 35, arts. 1, 2.

ther victimization of others by trafficking networks,<sup>79</sup> and advocates increased collaboration regarding anti-trafficking efforts between nations.<sup>80</sup> Under the terms of the 1949 Convention, prostitution and trafficking contravene human dignity and endanger not only the individual, but also the family and the community.<sup>81</sup>

## ii. CEDAW

CEDAW seeks to eradicate international sex trafficking and sexual exploitation of women through eliminating all discrimination against women.<sup>82</sup> A broad, non-discriminatory treaty, CEDAW requires States Parties to advance equality between men and women and remove any obstacles to achieving this goal.<sup>83</sup> CEDAW proclaims that all human beings are entitled to freedom and equality.<sup>84</sup> Article 6 of CEDAW requires States Parties to take all appropriate action to eliminate both trafficking of women and the exploitation of women for prostitution, whether the violations are the result of governmental or private action.<sup>85</sup>

79. *Id.* art. 16.

80. *Id.* arts. 13-15.

81. 1949 Convention, *supra* note 35, pmbl. The 1949 Convention states that prostitution and trafficking are "incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community." *Id.*

82. *See* Toepfer & Wells, *supra* note 9, at 100 (recognizing that CEDAW focuses on numerous issues directly associated with sexual exploitation of women, including discrimination concerning employment, education, and marriage); *see also* Ulrich, *supra* note 8, at 640 (alleging that U.N. promulgated CEDAW to establish international standards for evaluating discrimination against women).

83. CEDAW, *supra* note 35. Article 5 of CEDAW requires States to "modify social and cultural patterns of conduct of men and women, with the view of achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles." *Id.* art. 5. Article 7 provides that "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country." *Id.* art. 7; *see* Ulrich, *supra* note 8, at 642 (remarking that CEDAW obligates all signatories to eliminate discrimination against women and advance equality between men and women).

84. CEDAW, *supra* note 35, pmbl. The CEDAW preamble states that "[a]ll human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex." *Id.*; *see* Jo Lynn Southard, *Protection of Women's Human Rights Under the Convention on the Elimination of All Forms of Discrimination Against Women*, 8 *PACE INT'L L. REV.* 1, 26 (1996) (asserting that Article 1 of CEDAW establishes that men and women have equal rights).

85. CEDAW, *supra* note 35, art. 6. Article 6 states that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women

The Preamble of the treaty indicates that CEDAW's drafters regarded trafficking of women as a form of sex discrimination.<sup>86</sup> The Preamble also recognizes that, despite earlier anti-trafficking treaties, widespread discrimination against women persists.<sup>87</sup> CEDAW furthers the principles of equality adopted by the Commission on the Status of Women.<sup>88</sup> The creators of CEDAW as-

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and exploitation of prostitution of women." *Id.*; see Fariior, *supra* note 16, at 228 (recognizing that under CEDAW, trafficking prohibitions apply to governments and private entities). While CEDAW does not define "appropriate measures" under Article 6, Article 2 promulgates guidelines for States in eliminating trafficking. *Id.* Article 2 requires States Parties to further equality of men and women through undertaking:

- (a) [t]o embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) [t]o adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) [t]o establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) [t]o refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) [t]o take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) [t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) [t]o repeal all national penal provisions which constitute discrimination against women.

CEDAW art. 2.

86. See Billie Heller, *International Convention on Women's Rights: Bringing About Ratification in the United States*, 9 WHITTIER L. REV. 431, 431 (1987) (surmising that CEDAW set forth international principles to eliminate discriminatory practices towards women worldwide).

87. See CEDAW, *supra* note 35, pmbl. (stating that "despite these various instruments extensive discrimination against women continues to exist"); see also Southard, *supra* note 84, at 17 (alleging that women's status is still below status of men around world).

88. CEDAW, *supra* note 35, art. 1. Article 1 of CEDAW states:

[for] the purposes of the present Convention, the term discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

*Id.* See Southard, *supra* note 84, at 6 (explaining that CEDAW advances equality between men and women by discussing discrimination against women in terms of fundamental rights enjoyed by men and corresponding absence of those rights for women).

pired to build upon and consolidate the preceding anti-trafficking treaties.<sup>89</sup> CEDAW aims to outlaw all sexually discriminating activities, including trafficking and exploitation of prostitution, because such activities violate women's fundamental equality rights.<sup>90</sup>

In 1993, the Committee on the Elimination of Discrimination Against Women ("CEDAW Committee")<sup>91</sup> adopted General Recommendation 19, which explicitly states that CEDAW prohibits gender-based violence.<sup>92</sup> General Recommendation 19 states that violence against women is included within the ambit of discrimination addressed in Article 1 of CEDAW and consequently, gender-based violence may violate CEDAW, regardless of whether provisions explicitly denote violence against women.<sup>93</sup> Specifically, the CEDAW Committee described violence against women as significantly interfering with women's enjoyment of

89. Toepfer & Wells, *supra* note 9, at 102.

90. *See id.* (noting that CEDAW seeks to eradicate discrimination against women, including sex trafficking, because it violates rights regarding equality); *see also* Elizabeth M. Misiaveg, *Important Steps and Instructive Models in the Fight to Eliminate Violence Against Women*, 52 WASH. & LEE L. REV. 1109, 1119 (1995) (commenting that CEDAW depicts violence against women as having practical effect of obstructing women's enjoyment of same fundamental human rights and freedoms as men).

91. *See* CEDAW, *supra* note 35, art. 17 (establishing Committee on the Elimination of Discrimination against Women ("CEDAW Committee") to evaluate "the progress made in the implementation of the present Convention."). Article 17 states that "[f]or the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women." *Id.* *See* Ulrich, *supra* note 8, at 644 (explaining that CEDAW Committee supervises Member States in furtherance of their united goal to end discrimination).

92. *See* General Recommendation 19, U.N. GAOR, Committee on the Elimination of Discrimination Against Women, 11th Sess., U.N. Doc. A/47/38 (1992). General Recommendation 19 states that "[g]ender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of [A]rticle 1 of [CEDAW]." *Id.* para. 7. *See* Misiaveg, *supra* note 90, at 1126 (asserting that General Recommendation 19 is considered to be authoritative interpretation of CEDAW).

93. *See* General Recommendation 19, *supra* note 92, para. 6 (stating that CEDAW defines discrimination against women in Article 1). Paragraph 6 goes on to state that: [t]he definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence may breach specific provisions of [CEDAW], regardless of whether those provisions expressly mention violence.

*Id.*



fundamental human rights and freedoms on an equal level with men.<sup>94</sup> Some of these rights include the liberty and security of person, fair working conditions, and freedom from torture or cruel and degrading treatment.<sup>95</sup> The CEDAW Committee also recognized that discrimination against women perpetuates violence against women.<sup>96</sup>

General Recommendation 19 emphasizes that CEDAW forbids violence perpetrated by a State as well as violence carried out by private entities.<sup>97</sup> Article 2(e) of CEDAW declares that States Parties must take all appropriate actions to eradicate all forms of gender-based discrimination, regardless of the source.<sup>98</sup> In accordance with principles of international law and human rights agreements, States may be held responsible for private acts of violence if they fail to act with due diligence to sanction such violations.<sup>99</sup>

## 2. Efforts to Combat Trafficking in the EU

Commentators note that the EU acknowledges trafficking of

94. See General Recommendation 19, *supra* note 92, para. 1 (stating that “[g]ender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”); see also Farrior, *supra* note 16, at 230 (asserting that trafficking of women and exploitation of prostitution are discordant with women’s fundamental rights of equality).

95. See General Recommendation 19, *supra* note 92, para. 7 (stating that these rights and freedoms include “[t]he right to life; [t]he right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; [t]he right to liberty and security of person; [t]he right to equal protection under the law; . . . [t]he right to just and favourable conditions of work”).

96. See *id.* para. 6 (stating that “discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately”); see also Farrior, *supra* note 16, at 230 (describing how discrimination against women can lead to higher levels of poverty and unemployment for women, which in turn makes women more vulnerable to violence associated with trafficking and sexual exploitation).

97. See General Recommendation 19, *supra* note 92, para. 9 (stating that discrimination under CEDAW “is not restricted to action by on or on behalf of Governments”).

98. CEDAW, *supra* note 35, art. 2(e). Article 2(e) of CEDAW states that States Parties are obligated to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.” *Id.*

99. See General Recommendation 19, *supra* note 92, para. 9 (stating that “[u]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”); see also Ulrich, *supra* note 8, at 646-47 (noting that General Recommendation 19 holds States accountable for private acts of violence in conjunction with principles of international law that permit regulation of private human rights abuses).

women and exploitation of prostitution as a serious problem within Europe.<sup>100</sup> In addition to involvement in U.N. conventions prohibiting trafficking, the EU addressed the problem of international sex trafficking through the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>101</sup> ("European Convention") and numerous aspirational instruments.<sup>102</sup> Various existing EU declarations are aimed at controlling and eradicating trafficking and sexual exploitation of women.<sup>103</sup>

#### a. European Convention

In 1950, the Member States of the Council of Europe adopted the European Convention as a tool to safeguard human rights.<sup>104</sup> All twenty-three EU Member States ratified the European Convention.<sup>105</sup> The European Convention is executed through three bodies: the European Commission on Human Rights ("European Commission"),<sup>106</sup> the European Court of

100. See Hauber, *supra* note 18, at 184 (explaining that EU nations are parties to international and regional anti-trafficking agreements). The EU is attempting to eradicate sex trafficking. *Id.* at 190-91; see IOM Speech, *supra* note 19, at 1 (discussing that sex trafficking is growing problem in EU).

101. European Convention, *supra* note 36.

102. See Hauber, *supra* note 18, at 186 (reporting promulgation of numerous EU legal measures regarding international sex trafficking of women for forced prostitution); see also Pilkerton, *supra* note 26, at 233 (indicating that there are regional concordats designed to effect elimination of trafficking of women); Toepfer & Wells, *supra* note 9, at 111 (reporting EU attempt to combat sex trafficking through European Convention for Protection of Human Rights and Fundamental Freedoms ("European Convention")).

103. See, e.g., 1997 Joint Action, *supra* note 36; 1996 Resolution, *supra* note 36.

104. European Convention, *supra* note 36. See Helfer, *supra* note 36, at 133 (declaring that many consider European Convention to be most successful system of protection for individual rights); Toepfer & Wells, *supra* note 9, at 113 (arguing that European Convention is commonly regarded as most useful of all existing anti-trafficking agreements based on potential for protecting trafficking victims).

105. See Hauber, *supra* note 18, at 186 (explaining that all EU Member States are legally bound by European Convention); see also Gates Garrity-Rokous & Raymond H. Brescia, *Procedural Justice and International Human Rights: Towards a Procedural Jurisprudence for Human Rights Tribunals*, 18 *YALE J. INT'L L.* 559, 572 (recognizing that every European nation belonging to Council of Europe accepted European Convention).

106. See A. H. ROBERTSON, *HUMAN RIGHTS IN EUROPE* 139 (Manchester Univ. Press, 1977) (1963) (stating that European Commission on Human Rights ("European Commission") receives complaints concerning failure of Member States to protect rights under European Convention). The European Commission on Human Rights ("European Commission") investigates alleged violations, facilitates settlements, and issues reports regarding violations. *Id.*

Human Rights (“European Court”),<sup>107</sup> and the Committee of Ministers of the European Council (“Committee of Ministers”).<sup>108</sup> These organizations are authorized to receive and evaluate complaints, facilitate settlements, and issue judgments regarding alleged human rights violations under the European Convention.<sup>109</sup>

One of the most important features of the European Convention is that it allows individual victims to bring claims against States for alleged human rights violations.<sup>110</sup> The European Commission may receive petitions from individuals and non-governmental organizations alleging violations of any of the rights protected by the European Convention.<sup>111</sup> Accordingly, individual victims of human rights violations can hold States responsible for failure to uphold treaty provisions.<sup>112</sup>

While claims of treaty violations must be invoked against governments, a trafficking victim may successfully bring a claim against an individual trafficker or pimp, if the violation is presented as a State’s failure to execute legislation essential to protecting victims’ rights under the European Convention.<sup>113</sup>

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107. *See id.* at 203 (discussing that European Court of Human Rights (“European Court”) hears all European Convention cases). States Parties or the European Commission are to refer cases to the European Court of Human Rights (“European Court”) in accordance with Article 48 of the European Convention. *Id.*

108. European Convention, *supra* note 36, arts. 19, 21; *see* ROBERTSON, *supra* note 106, at 237 (explaining that Committee of Ministers of European Council (“Committee of Ministers”) is decision-making body of Council of Europe).

109. *See* Toepfer & Wells, *supra* note 9, at 113 (explaining enforcement structures of European Convention); *see* Garrity-Rokous & Brescia, *supra* note 105, at 572-75 (discussing method of review for alleged violations of European Convention).

110. European Convention, *supra* note 36, art. 25. Pursuant to Article 25: “[t]he Commission may receive petitions . . . from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention.” *Id.*; *see* Garrity-Rokous & Brescia, *supra* note 105, at 580 (noting that European Convention authorizes individuals to instigate legal actions against States). All Member States consented to this provision and presently recognize individual petitions against governments. *Id.*

111. European Convention, *supra* note 36, art. 25.

112. *See* Toepfer & Wells, *supra* note 9, at 114 (explaining that Article 25 mandates that individual complaints be brought by victim of alleged violation). The European Court of Human Rights declared that petitioner victims must be at risk of being directly affected by the alleged breach of the treaty, but Article 25 does not require actual harm. *Id.* (citing *Johnston v. Ireland*, 9 Eur. Ct. H.R. (ser. A) 203, 216 (1986)); *see also* Garrity-Rokous & Brescia, *supra* note 105, at 580 (theorizing that European Convention is especially valuable for victims of human rights violations because it allows individuals to bring private actions against States).

113. Hauber, *supra* note 18, at 187.

Currently, all States Parties to the European Convention accept the European Commission's jurisdiction to receive individual complaints.<sup>114</sup> An individual complaint, therefore, is effective against every Member State of the Council of Europe.<sup>115</sup>

The European Convention does not explicitly address trafficking of women for forced prostitution.<sup>116</sup> Scholars note, however, that Articles 3 and 4 establish protection for trafficking victims.<sup>117</sup> Article 3 provides protection against torture and inhumane treatment or punishment.<sup>118</sup> Article 4 declares that no one shall be held in slavery or servitude, nor shall anyone be subject to forced labor.<sup>119</sup> Additionally, Article 14 secures the enjoyment of the rights and freedoms contained within the European Convention for everyone, without discrimination based on sex or race.<sup>120</sup>

There are several European cases that support the proposition that the European Convention prohibits trafficking of women.<sup>121</sup> For example, in *Cyprus v. Turkey*,<sup>122</sup> the European Commission held the rape of Greek women by Turkish soldiers and officers during the Turkish occupation of Greece to be inhumane treatment under Article 3 of the European Convention.<sup>123</sup>

114. See Toepfer & Wells, *supra* note 9, at 114-15 (remarking that European Commission's ability to receive individual petitions depends on State recognition of European Commission's authority to receive such complaints).

115. See Garrity-Rokous & Brescia, *supra* note 105, at 572 (acknowledging that all 23 signatories to European Convention approved European Commission's jurisdiction to hear complaints from individual or group against States).

116. See Hauber, *supra* note 18, at 187 (arguing that plain language of European Convention does not directly address trafficking of women).

117. See *id.* (explaining that certain provisions may apply in trafficking context); see also Toepfer & Wells, *supra* note 9, at 118-19 (noting that Articles 3 and 4 of European Convention contain relevant language that can be used to protect women from trafficking).

118. European Convention, *supra* note 36, art. 3. Article 3 states: "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment." *Id.*

119. *Id.* art. 4. Article 4 states: "[n]o one shall be held in slavery or servitude . . . [n]o one shall be required to perform forced or compulsory labour." *Id.*

120. *Id.* art. 14. Article 14 provides that "[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." *Id.*

121. See Toepfer & Wells, *supra* note 9, at 119 (indicating that there is limited European case law directly addressing trafficking).

122. App. Nos. 6780/74, 6950/75, 4 Eur. H.R. Rep. 482 (1982) (Commission Report).

123. *Id.* at 537.

The Greek government alleged that these mass rapes were forced prostitution.<sup>124</sup> The European Commission concluded that Turkey violated Article 3 by failing to prevent such actions by its soldiers.<sup>125</sup> One commentator stated that this case is useful in the trafficking context because it demonstrates that pimping, which is similar to the forced prostitution perpetrated by the Turkish soldiers, qualifies as inhumane and degrading treatment under Article 3 of the European Convention.<sup>126</sup>

### b. Aspirational Instruments

The EU nations occasionally sponsor conferences and issue reports and recommendations concerning trafficking of women for prostitution.<sup>127</sup> Commentators note that in response to recent conferences and reports, EU countries created joint plans of action and agreed upon specific measures to eliminate international sex trafficking.<sup>128</sup> Numerous resolutions and joint actions and recommendations are already in place.<sup>129</sup>

#### i. 1989 Resolution

In 1989, the European Parliament issued a Resolution which advocated numerous legal and non-legal measures de-

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124. *Id.* at 536.

125. *See id.* (holding that Turkey violated European Convention by sanctioning rapes by Turkish soldiers and officers); *see also* Toepfer & Wells, *supra* note 9, at 119 (explaining that European Court recognized mass rape as inhumane and degrading, and considered it to be type of sex trafficking).

126. *See* Toepfer & Wells, *supra* note 9, at 119 (arguing that under *Cyprus v. Turkey*, pimping and forced prostitution are prohibited by Article 3 of European Convention); *see also* ROBERTSON, *supra* note 106, at 33 (asserting that actions may be brought by persons who feel they have been injured by agents of State beyond State territory). Examples of this include cases involving actions of States Parties' officials in the territory of a non-member State. *Id.*; *see generally* *Cyprus*, 4 Eur. H.R. Rep. at 555 (noting that European Commission held that States Parties to European Convention are obligated to uphold treaty's protections within their own territory or abroad).

127. *See* Hauber, *supra* note 18, at 189 (discussing EU efforts to combat problem of trafficking of women for prostitution in ways other than existing conventions).

128. *See id.* at 189-90 (reporting that in 1996, EU officials met in Dublin, Ireland and adopted several joint actions addressing trafficking of women). Additionally, the European Conference on Trafficking in Women, held in Vienna in June 1996, established anti-trafficking measures. *Id.* at 190. The recommendations from the 1996 Vienna Conference include migration policies, cooperation between governments and law enforcement officials, and social measures to ensure the protection of women who have been trafficked. *Id.*

129. *See, e.g.*, 1997 Joint Action, *supra* note 36; 2000 Resolution, *supra* note 36.

signed to combat trafficking of women for forced prostitution.<sup>130</sup> The 1989 Resolution advised all EU Member States who had not already ratified the 1949 Convention to do so.<sup>131</sup> This resolution also recommended that Member States create or strengthen existing legal penalties for traffickers and those involved in exploiting prostitution.<sup>132</sup> The 1989 Resolution advised the EU to advance programs in nations where trafficking originates, informing women about the risks associated with trafficking, and recommended various rehabilitation programs for victims.<sup>133</sup>

## ii. 1996 Resolution

Several years later, the European Parliament adopted the 1996 Resolution on the Trafficking of Human Beings,<sup>134</sup> recommending further EU actions to prevent trafficking of women and exploitation of prostitution, and assist and protect victims.<sup>135</sup> The 1996 Resolution stressed the need for increased cooperation in anti-trafficking efforts within the EU as well as between the EU and countries where sex trafficking originates.<sup>136</sup> This resolution expanded upon the 1989 Resolution by including more specific legal and non-legal recommendations and by placing greater emphasis on the need for a common EU policy, as well as increased cooperation among Member States.<sup>137</sup>

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130. 1989 Resolution, *supra* note 36, O.J. C 120/352 (1989).

131. *Id.* O.J. C 120/352, at 354 (1989).

132. *Id.* Article 8.2(a) calls for Member States to:

introduce legal penalties (or strengthen the existing penalties[]) for the offences of incitement to prostitution, exploitation of prostitution, corruption and prostitution of minors and traffic in persons for the purpose of prostitution, to widen the definition of the categories of person responsible for the above offences so as to cover both natural and legal persons, and to adopt such provisions of Community legislation as are most favourable to victims.

*Id.*

133. *Id.*; see Hauber, *supra* note 18, at 188 (listing shelters, employment training, and free health care as examples of recommended rehabilitation measures).

134. 1996 Resolution, *supra* note 36, O.J. C 32/88, at 88 (1996).

135. *Id.* at 88.

136. *Id.* at 91-92.

137. See *id.* (surmising that 1989 Resolution focused on action that each individual Member State should pursue, as opposed to common policy); see also 1989 European Parliament Resolution, *supra* note 130, art. 8.2 (demonstrating that actions recommended to Member States by 1989 Resolution were considerably more general than those of 1996 Resolution).

### iii. 1997 Joint Action

In February 1997, the Council of the European Commission adopted the 1997 Council of the EU Joint Action<sup>138</sup> ("1997 Joint Action") on the trafficking of human beings for sexual exploitation, in an attempt to strengthen cooperation among Member States in order to eliminate sex trafficking.<sup>139</sup> The 1997 Joint Action provides details concerning the measures each Member State must take separately, and collaboratively with other EU Member States in order to put a stop to trafficking and sexual exploitation.<sup>140</sup> It requires every Member State to categorize trafficking and sexual exploitation as criminal offenses under their domestic laws.<sup>141</sup> Additionally, Member States must take certain measures to ensure protection for witnesses in trafficking cases and provide all necessary assistance for victims and their families, so that they may provide evidence in criminal actions.<sup>142</sup>

### iv. 2000 Resolution

On May 19, 2000, the European Parliament adopted another Resolution<sup>143</sup> ("2000 Resolution") to further the fight against trafficking of women, based on a Recommendation of the Committee of Ministers.<sup>144</sup> The 2000 Resolution condemns trafficking of women as an intolerable violation of fundamental human rights, and therefore, designates it as a criminal act.<sup>145</sup> The 2000 Resolution recognizes both that forced prostitution is a serious crime and that the number of trafficking victims is con-

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138. 1997 Joint Action, *supra* note 36.

139. *See id.* at III(A) (stating that "Member States shall grant each other the widest possible judicial cooperation in the investigations and judicial processes relating" to trafficking and sexual exploitation). Member States must effect the mandates contained within the 1997 Joint Resolution, choosing only the form and methods for adaptation into their national legal systems. *Id.* at I, II, III; *see also* Hauber, *supra* note 18, at 189 n.48 (explaining that, in contrast to 1989 and 1996 European Parliament Resolutions, 1997 Joint Action creates binding obligations for Member States).

140. 1997 Joint Action, *supra* note 36, at I-III.

141. *Id.* at II(A)(a).

142. *Id.* at II(F)(a), II(F)(b)(i)-(ii).

143. 2000 Resolution, *supra* note 36, O.J. C 59/307 (2000).

144. Recommendation No. R (2000) 11 of the Committee of Ministers to Member States on Action Against Trafficking in Human Beings for the Purpose of Sexual Exploitation (Adopted by the Committee of Ministers on May 19, 2000, at the 710th meeting of the Ministers' Deputies) at 2 [hereinafter Recommendation 11].

145. 2000 Resolution, *supra* note 36, O.J. C 59/307, at 309 (2000).

stantly increasing; accordingly, the communication stresses that it is necessary to augment efforts and resources aimed at eradicating the problem through a strong pan-European strategy.<sup>146</sup> The Resolution expands upon the 1997 Joint Action by urging the European Commission to establish a common definition of trafficking, whereby the crime is categorized in the same way in every Member State, and to implement effective and proportional penal sanctions against traffickers, as well as measures to protect victims and witnesses of trafficking.<sup>147</sup>

Specifically, the 2000 Resolution calls on Member States to define trafficking of women and forced prostitution as crimes in their legislation and enforce anti-trafficking laws; to improve coordination of anti-trafficking efforts at a national level and establish a central authority dedicated to fighting trafficking and associated crimes; to create or reinforce anti-trafficking law enforcement units; and to improve reporting and increase cooperation in investigations and judicial actions.<sup>148</sup> Moreover, the 2000 Resolution encourages Member States to combat traffickers' use of new technologies, such as the Internet, to further their illegal activities.<sup>149</sup> Finally, the Resolution calls on Member States to ratify the statute of the International Criminal Court, so that its substantial potential for combating trafficking may be realized.<sup>150</sup>

### 3. United States Laws that Apply to Trafficking of Women

Many women are trafficked to the United States for purposes of sexual exploitation.<sup>151</sup> Experts note that the United States lacks a comprehensive anti-trafficking law.<sup>152</sup> Instead, law enforcement agencies employ various criminal, labor, and immi-

146. *Id.* at 308, 310. The 2000 Resolution recommends "a common EU policy focused on a legal framework, on law enforcement, on measures to combat and punish offenders, on prevention and on protection of and support for victims." *Id.*

147. *Id.* at 310.

148. *Id.*

149. *Id.* at 311.

150. *Id.* at 313.

151. See RICHARD, *supra* note 6, at iii (revealing that as many as 50,000 women and children are trafficked to United States every year); see also Young, *supra* note 17, at 77 (noting that number of trafficking victims in United States is increasing).

152. See RICHARD, *supra* note 6, at 35 (noting that several federal initiatives focus on insufficiencies in U.S. laws addressing trafficking and associated activities); see also Brinkley, *supra* note 14, at 22 (recognizing lack of federal or state laws directly addressing trafficking of women for sex trade).



gration laws to address the multitude of offenses perpetrated by trafficking operations and prosecute traffickers.<sup>153</sup>

#### a. Laws Prohibiting Involuntary Servitude

Under the Thirteenth Amendment to the United States Constitution,<sup>154</sup> it is illegal to place any individual into a condition of peonage,<sup>155</sup> to arrest someone with the intent of placing him or her into a state of peonage,<sup>156</sup> to entice anyone into slavery or involuntary servitude,<sup>157</sup> or to sell an individual into involuntary servitude, which includes bringing any persons into the United States for these proscribed purposes.<sup>158</sup> Scholars maintain that U.S. law enforcement officials use laws against involuntary servitude to prosecute individuals who force women into prostitution, therefore, these laws are potentially useful in many trafficking cases.<sup>159</sup> Courts often find a violation of the Thirteenth Amendment when a person is coerced into forced labor

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153. See Young, *supra* note 17, at 82-96 (discussing that certain existing U.S. laws can be used to punish traffickers); see also RICHARD, *supra* note 6, at 35 (claiming that U.S. prosecutors often combine several different types of charges in order to adequately punish traffickers and those associated with trafficking operations).

154. U.S. CONST. amend. XIII, §§ 1, 2. Section 1 of the Thirteenth Amendment to the U.S. Constitution states that “[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” *Id.* § 1. Section 2 of the Thirteenth Amendment to the U.S. Constitution states that “Congress shall have power to enforce this article by appropriate legislation.” *Id.* § 2.

155. 18 U.S.C. § 1581(a) (1994). Pursuant to its Constitutional Thirteenth Amendment § 2 enforcement powers, Congress enacted a statute that abolishes peonage and prohibits anyone from “hold[ing] or return[ing] any person to a condition of peonage, or arrest[ing] any person with the intent of placing him in or returning him to a condition of peonage.” *Id.* See U.S. CONST. amend. XIII annot. (Peonage) (defining peonage). Peonage is defined as “a condition of enforced servitude by which the servitor is compelled to labor against his will in liquidation of some debt or obligation, either real or pretended.” *Id.*

156. 18 U.S.C. § 1581(a) (1994).

157. *Id.* § 1583. Section 1583 states that:

“[w]hoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or [w]hoever entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held [s]hall be fined under this title or imprisoned not more than 10 years, or both.”

*Id.*

158. *Id.* § 1584. Section 1584 punishes “[w]hoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held.” *Id.*

159. See Young, *supra* note 17, at 82-83 (explaining possible application of involun-

through fraud or deceit, and is then unable to leave, often as a result of contrived or manipulated indebtedness.<sup>160</sup>

U.S. case law demonstrates the successful application of these laws in situations of trafficking for forced labor.<sup>161</sup> In *United States v. Booker*,<sup>162</sup> the defendants promised the victims jobs, then transported them across state borders to the defendants' migrant agricultural labor camp.<sup>163</sup> Once at the camp, the captors physically abused their victims, subjected them to slavery-like practices by forcing them to work, withheld their wages, and prohibited the victims from leaving the camp.<sup>164</sup>

The conviction of the defendants in this case indicates the availability of U.S. involuntary servitude laws as a means of convicting traffickers in other cases involving forced labor.<sup>165</sup> The U.S. Supreme Court defined involuntary servitude under 18 U.S.C. § 1584 as a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical violence or legal coercion.<sup>166</sup> Accordingly, laws prohibiting involuntary servitude can be used to prosecute offenders in traf-

tary servitude laws to trafficking cases); *see also* RICHARD, *supra* note 6, at 35 (reporting that trafficking cases may be prosecuted under involuntary servitude laws).

160. *See, e.g.,* *Bailey v. Alabama*, 219 U.S. 219, 245 (1911) (invalidating Alabama statute that set forth criminal penalties for laborers who breached their employment contracts without satisfying debts owed their employer because it violated Thirteenth Amendment); *see also* *Taylor v. Georgia*, 315 U.S. 25, 29 (1942) (finding Georgia statute similar to Alabama statute voided in *Bailey* case to be unconstitutional because it involved coerced labor, or peonage); *Pollock v. Williams*, 322 U.S. 4, 25 (1944) (asserting unconstitutionality of Florida statute, similar in nature to Alabama statute voided in *Bailey*, which violated Thirteenth Amendment and federal Antipeonage Act); Catharine A. MacKinnon, *Prostitution and Civil Rights*, 1 MICH. J. GENDER & L. 13, 23 (1993) (postulating that debt is common element of servitude).

161. *See* Young, *supra* note 17, at 83 (discussing *United States v. Booker*, 655 F.2d 562 (4th Cir. 1981)).

162. 655 F.2d 562 (4th Cir. 1981) (holding that kidnapping and carrying away two persons with intent to hold them as slaves violates 18 U.S.C. §§ 1583-82). The defendant, Booker, lured the victims to his migrant labor camp in North Carolina with promises of steady employment and free transportation. *Id.* at 563. Upon arrival, the victims learned that the work was sporadic, and Booker withheld their wages, forbidding them to leave until they had paid all alleged debts owed to him. *Id.*

163. *Id.* at 563-64.

164. *See id.* at 567 (finding that victims were held as slaves by defendants). When the victims attempted to leave the camp, they were severely beaten, kidnapped, and taken back to the camp where they were threatened with death if they attempted to leave again before satisfying their debt. *Id.* at 563-64.

165. *See* Young, *supra* note 17, at 83 (arguing that women trafficked for forced prostitution suffer similar abuses to victims in *Booker* case).

166. *See* *United States v. Kozminski*, 821 F.2d 1186, 1192 (6th Cir. 1987) (holding

ficking and forced prostitution cases where traffickers use or threaten to use physical violence or legal coercion.<sup>167</sup>

### b. Laws Regulating Labor

The U.S. Federal Fair Labor Standards Act<sup>168</sup> ("FLSA") governs numerous elements of working conditions in the United States, including minimum wages, hours, overtime pay, and child labor.<sup>169</sup> The FLSA fixes a national wage and establishes a standard workweek of forty hours, with overtime compensation for any additional time worked.<sup>170</sup> The FLSA is enforced through several provisions.<sup>171</sup> For example, under § 216(a) the Department of Justice may initiate criminal actions against employers who willfully violate the FLSA by failing to pay minimum wage or provide overtime compensation.<sup>172</sup> Section 216(b) authorizes an individual claim against any employer for recovery of unpaid wages, including overtime pay, by employees.<sup>173</sup> In addi-

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that definition of involuntary servitude includes cases where victim is subjected to involuntary servitude through fear of physical abuse or legal coercion).

167. *See* Young, *supra* note 17, at 83 (maintaining that definition of involuntary servitude encompasses trafficking cases in which defendant holds victim in servitude through imposition of fear of violence or legal coercion).

168. 29 U.S.C. §§ 201-19 (1994).

169. *See id.* § 206 (regulating minimum wages); *see also id.* at § 207 (establishing maximum hours and overtime pay); *Id.* at § 212 (controlling child labor).

170. 29 U.S.C. § 207(a)(1). Section 207 states that:

[e]xcept as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

*Id.*

171. *See* Young, *supra* note 17, at 84 (indicating that numerous sections of Fair Labor Standards Act ("FLSA") provide for enforcement of FLSA's provisions).

172. 29 U.S.C. § 216(a). Section 216(a) states that "[a]ny person who willfully violates any of the provisions of section 215 of this title shall upon conviction thereof be subject to a fine of not more than [U.S.] \$10,000, or to imprisonment for not more than six months, or both." *Id.*

173. *See id.* § 216(b). Section 216(b) states that:

[a]n action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated.

*Id.*

tion, under section 216(c), the U.S. Department of Labor may bring a civil action for unpaid minimum wages and overtime compensation against employers on behalf of employees.<sup>174</sup>

Trafficking cases can be prosecuted under the FLSA because most sex trafficking cases include involuntary labor.<sup>175</sup> Additionally, trafficking cases typically involve victims who are forced to work more than forty hours each week, without lawful compensation.<sup>176</sup> The FLSA can be very useful in sex trafficking cases because it allows individual victims to institute private rights of action.<sup>177</sup>

### c. Laws Regulating the Sex Industry

The White-Slave Traffic Act<sup>178</sup> ("Mann Act") can be used to prosecute traffickers who profit from the forced prostitution of women.<sup>179</sup> The Mann Act provides for the punishment of anyone who knowingly transports any individual in interstate or international commerce for purposes of prostitution or any other criminal sexual activity.<sup>180</sup> The Mann Act also penalizes those who persuade or coerce any individual to travel in interstate or

174. *See id.* § 216(c). Section 216(c) states that "[t]he Secretary may bring an action in any court of competent jurisdiction to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages." *Id.*

175. *See Young, supra* note 17, at 84 (explaining application of FLSA to cases involving forced labor). For example, in *Bureerong v. Uvawas*, No. CV95-5958 ABC (BQRx), the Asian Pacific American Legal Center ("APALC") alleged a Fair Labor Standards Act ("FLSA") violation for Thai garment workers enslaved on a compound in California, against those who managed the facility and the manufacturers that purchased garments made there. *Id.*

176. *See id.* (noting that FLSA can be applied in trafficking case involving situations similar to that in *Bureerong*, where laborers do not receive adequate compensation under statute, are made to work more than forty hours per week with no overtime pay, or do not meet statutory age requirement).

177. *See id.* at 84-85 (emphasizing importance of private right of action for victims of trafficking).

178. White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421-24 (1994)).

179. *See, e.g., United States v. Clemones*, 577 F.2d 1247, 1253 (5th Cir. 1962), *cert. denied*, 445 U.S. 927 (1980) (holding that pimps violated Mann Act by transporting women across state lines as part of multi-state prostitution enterprise).

180. 18 U.S.C. § 2421 (1994). The Act provides that anyone who:

"knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years or both."

*Id.*

foreign commerce for purposes of prostitution.<sup>181</sup>

The Mann Act can be used in cases of trafficking for purposes of sexual exploitation.<sup>182</sup> A violation of § 2421 of the Mann Act involves transportation across state borders for a prohibited purpose.<sup>183</sup> Sex trafficking typically involves recruiting and transporting women, often across state borders, for a prohibited purpose such as forced prostitution.<sup>184</sup> Accordingly, the Mann Act should be applicable in many cases of sex trafficking.<sup>185</sup>

#### d. Laws Regulating Organized Crime

The Racketeer Influenced and Corrupt Organizations Act<sup>186</sup> ("RICO") is another means by which prosecutors may convict traffickers in the United States.<sup>187</sup> RICO allows a private

181. *Id.* § 2422. Section 2422 provides that anyone who:

"knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years or both."

*Id.*

182. See Young, *supra* note 17, at 85 (explaining application of Mann Act in trafficking cases).

183. See generally Hansen v. Haff, 291 U.S. 559, 563 (1934) (maintaining that necessary elements for Mann Act conviction are transportation of women in interstate commerce and that purpose of journey is immoral sexual relations); United States v. McConney, 329 F.2d 467 (2d Cir. 1964) (finding that essential element of Mann Act violation is that interstate transportation be means of accomplishing or facilitating prohibited activities); Stewart v. United States, 311 F.2d 109 (9th Cir. 1962) (holding that knowingly transporting women across state lines for purpose of prostitution is violation of Mann Act).

184. Young, *supra* note 17, at 85-86; see Cao, *supra* note 15, at 1310 (reporting that traffickers violate Mann Act when they transport women into United States from other countries or across state lines within United States for purposes of sexual exploitation).

185. See Young, *supra* note 17, at 86 (theorizing that most sex trafficking cases involve Mann Act violation).

186. 18 U.S.C. §§ 1961-68 (1994 & Supp. 1998). The Racketeer Influenced and Corrupt Organizations Act ("RICO") was enacted at Title IX of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 1970 U.S.C.C.A.N. (84 Stat.) 922, 941-48.

187. See Pilkerton, *supra* note 26, at 246 (maintaining that Racketeer Influenced and Corrupt Organizations Act ("RICO") was enacted to oppose organized crime). The Racketeer Influenced and Corrupt Organizations Act ("RICO") enhanced existing legislation by augmenting criminal and civil penalties for organized crime activities. *Id.*; see also Cao, *supra* note 15, at 1298 (explaining that private cause of action under RICO can assist victims of sex trafficking in combating traffickers); Young, *supra* note 17, at 86-87 (surmising that RICO can be used to prosecute traffickers).

cause of action<sup>188</sup> for anyone injured by the actions of an “enterprise” illegally engaged in interstate or international commerce through a “pattern of racketeering activity” or unlawful acquisition of income.<sup>189</sup> Under RICO, a “pattern of racketeering activity” requires two violations of certain state and federal offenses, which include abduction and trafficking of women for the sex trade.<sup>190</sup>

RICO creates a private cause of action for individuals alleging a violation of the Mann Act and various labor laws.<sup>191</sup> If a victim of sex trafficking can prove injury to business or property, she will be able to invoke a civil RICO action against the traffickers.<sup>192</sup> In sex trafficking cases, injury to a trafficked woman’s person or body constitutes injury to property under RICO § 1964(c).<sup>193</sup>

Congress enacted RICO to eliminate the unlawful activities

188. 18 U.S.C. § 1964(c) (1982). Section 1964(c) states that “[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore [sic] in any appropriate United States district court.” *Id.*

189. *Id.* § 1962(a)-(d); 1961(5); see Cao, *supra* note 15, at 1309 (discussing that organized traffickers with financial purpose, engaged in ongoing illegal traffic of women for sexual exploitation, constitute “enterprise” under RICO).

190. See Cao, *supra* note 15, at 1309 (asserting that proving “pattern of racketeering activity” requires that plaintiff demonstrate that defendant perpetrated two RICO violations within last ten years). These necessary predicate acts are comprised of various state and federal offenses, including kidnapping, mail and wire fraud, and interstate transportation of women for prostitution (Mann Act violation). *Id.*; see also Pilkerton, *supra* note 26, at 248 (including extortion and unlawful debt as pertinent predicate acts in trafficking context).

191. See Young, *supra* note 17, at 87 (explaining application of Mann Act and labor laws as predicate acts under RICO); see also Cao, *supra* note 15, at 1310-1311 (noting that predicate acts are necessary to establish “pattern of racketeering activity”). Effective prosecution of a RICO offender requires that the predicate acts be connected to the business of the enterprise. *Id.* at 1311. The illegal activities associated with sex trafficking constitute a pattern of racketeering activity related to the criminal enterprise when organized trafficking operations kidnap or otherwise coerce women into being transported in interstate or international commerce for purposes of prostitution. *Id.*

192. See Cao, *supra* note 15, at 1312 (asserting that injury to “business or property” as required under RICO is injury effected through predicate acts, including violation of Mann Act). Under the U.S. Supreme Court’s decision in *Sedima S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497 (1985), recovery in a RICO case is allowed for injury caused by the predicate acts alone. *Id.*; see also Pilkerton, *supra* note 26, at 249 (listing numerous injuries to victims during course of being trafficked for forced prostitution). Some of these injuries include being forced to work as prostitutes, often without compensation, rape and other physical abuse, psychological abuse, illegal detention, discrimination, and confiscation of passports and other documentation by traffickers. *Id.*

193. See Cao, *supra* note 15, at 1313 (contending that legislative history of RICO allows interpretation of trafficking victim’s body as property).

of those engaged in organized crime.<sup>194</sup> Commentators agree that forced prostitution is a highly organized business in which women are often controlled by organized groups of traffickers.<sup>195</sup> Accordingly, RICO applies to cases involving trafficking operations and prostitution rings managed by organized criminal groups.<sup>196</sup> Additionally, the Mann Act is considered a racketeering act, and therefore, the illegal trafficking of women for purposes of sexual exploitation are within the realm of activities prohibited by RICO.<sup>197</sup>

#### e. Civil Rights Laws

The Civil Rights Act of 1964<sup>198</sup> protects civil rights guaranteed by the U.S. Constitution and provides recourse for violations of such rights.<sup>199</sup> Section 1985(3) of the Civil Rights Act creates a private cause of action in cases involving two or more persons in any state or territory who conspire for the purpose of depriving any person or group of persons of the equal protection of the laws or of equal privileges and immunities under the laws.<sup>200</sup> The protection provided by § 1985(3) includes the right to be free from slavery and involuntary servitude.<sup>201</sup> A § 1985(3) claim has three elements; plaintiffs must prove the existence of a

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194. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 922-23 (1970); Cao, *supra* note 15, at 1313.

195. See Cao, *supra* note 15, at 1299 (asserting that organized crime is involved in trafficking of women); see also Young, *supra* note 17, at 86 (indicating that organized criminal groups are engaged in international trafficking of women for sex trade).

196. See Cao, *supra* note 15, at 1313 (surmising that private causes of action will assist in eliminating organized crime and trafficking); see also Young, *supra* note 17, at 86-87 (explaining that high level of participation in international sex trafficking by organized crime mandates increased efforts to combat organized crime in order to eradicate trafficking).

197. See Cao, *supra* note 15, at 1314 (maintaining that RICO charges apply in trafficking context).

198. 42 U.S.C. § 1985(3) (1994).

199. Young, *supra* note 17, at 87.

200. 42 U.S.C. § 1985(3). Section 1985 provides that:

If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against one or more of the conspirators.

*Id.*

201. See Young, *supra* note 17, at 88 (citing *Bailey v. Alabama*, 219 U.S. 219, 241 (1911)).

conspiracy, discriminatory animus, and protected rights.<sup>202</sup> The Civil Rights Act is applicable in most trafficking cases because organized groups of traffickers conspire to conduct illegal traffic of women for purposes of sexual exploitation, which violates the women's right to be free from slavery and involuntary servitude, and they often target women based on stereotypes regarding gender and ethnicity.<sup>203</sup>

#### f. Immigration Laws

The U.S. Immigration and Nationality Act<sup>204</sup> ("INA") punishes individuals who bring into or harbor illegal aliens in the United States.<sup>205</sup> The INA "bringing in and harboring" provisions can be used to prosecute trafficking cases.<sup>206</sup> Section 1324(a)(1)(A)(iv) penalizes those who encourage or induce an alien to enter or reside in the United States, either knowing, or in reckless disregard of the fact that such entry violates the law.<sup>207</sup> Experts discuss that traffickers usually lure their victims to the United States through kidnapping and false promises of profitable jobs abroad.<sup>208</sup> Usually, the traffickers know that trafficking victims' entry into or residence in the United States is illegal because the victims intend to engage in prostitution in the United States.<sup>209</sup> Therefore, § 1324 applies in the sex trafficking context.<sup>210</sup>

202. *See id.* (explaining requirements under § 1985(3)).

203. *See id.* (arguing that § 1985(3) can be used to punish traffickers in United States).

204. *See generally* Immigration and Nationality Act of 1952 ("INA"), ch. 477, 8 U.S.C. 1324, 66 Stat. 163 (1952).

205. *Id.*

206. Young, *supra* note 17, at 89.

207. 8 U.S.C. § 1324(a)(1)(A)(iv). Section 1324(a)(1)(A)(iv) applies to anyone who "encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law." *Id.*; *see* 8 U.S.C. § 1324(a)(2) (penalizing anyone who brings aliens into United States "knowing or in reckless disregard of the fact that an alien has not received prior official authorization" to enter United States).

208. *See* Young, *supra* note 17, at 89 (discussing typical manner in which traffickers draw victims into sex trade in United States).

209. *Id.*; *see* 8 U.S.C. § 1182(a)(2)(D)(i). Section 1182(a)(2)(D)(i) declares ineligible for visas or admission into the United States "any alien who is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status." *Id.*

210. *See* Young, *supra* note 17, at 89 (stating that "bringing in and harboring" provisions can be used to punish traffickers).



In addition, the INA authorizes civil and criminal punishments for document fraud associated with immigration.<sup>211</sup> Under § 1324C(A), it is unlawful to falsify any document in order to obtain a benefit under the INA; to provide a fraudulent document to someone else; or to prepare, file, or assist another in preparing or filing any application for benefits.<sup>212</sup> These document fraud provisions apply to traffickers who use fake immigration documents as a means of bringing women into the United States.<sup>213</sup> Organized traffickers routinely use fraudulent identification and travel documents for trafficking victims, including stolen or fake passports and visas, in conducting their illegal business.<sup>214</sup> These fraudulent activities are prohibited by the INA.<sup>215</sup> Thus, in trafficking cases involving immigration related document fraud, prosecutors may charge traffickers with

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211. See 8 U.S.C. § 1324C.

212. 8 U.S.C. § 1324C(A)(1)-(5). Section 1324C(A) states that:

It is unlawful for any person or entity knowingly (1) to forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of this chapter or to obtain a benefit under this chapter, (2) to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this chapter or to obtain a benefit under this chapter, (3) to use or attempt to use or to provide or attempt to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this chapter or obtaining a benefit under this chapter, (4) to accept or receive or to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual) for the purpose of complying with section 1324a(b) of this title or obtaining a benefit under this chapter, or (5) to prepare, file, or assist another in preparing or filing, any application for benefits under this chapter, or any document required under this chapter, or any document submitted in connection with such application or document, with knowledge or in reckless disregard of the fact that such application or document was falsely made or, in whole or in part, does not relate to the person on whose behalf it was or is being submitted.

*Id.*

213. Young, *supra* note 17, at 90.

214. See *id.* (explaining common methods used by traffickers to gain entry for victims into United States); see also Raghu, *supra* note 8, at 161 (contending that traffickers often transport women to United States for forced prostitution using falsified identification and travel documents). Traffickers commonly use false or stolen documents and travel through a third country to traffic women to the United States, or they may falsely claim that the women are employees of a non-existent U.S. corporation abroad who are transferring to the U.S. office. *Id.*

215. See Young, *supra* note 17, at 90 (explaining how document fraud provisions of Immigration and Nationality Act ("INA") can be applied to traffickers who falsify documents in order to bring trafficked women into United States).

various INA violations.<sup>216</sup>

The INA designates certain aliens as ineligible for visas or admission to the United States,<sup>217</sup> including those who commit crimes of moral turpitude.<sup>218</sup> Moral turpitude is most commonly defined as an act of baseness, vileness, or depravity towards others or to society in general, contrary to the accepted and customary notion of what is right and the duty owed between human beings.<sup>219</sup> Traffickers may be prosecuted under INA provisions that punish those who commit crimes of moral turpitude.<sup>220</sup> Commentators note that many trafficking cases involve intent to defraud, through use of fraudulent documents and various fraudulent practices by which women are procured and trafficked for purposes of sexual exploitation.<sup>221</sup> If the traffickers' fraudulent conduct is considered criminal in nature, then the criminal activities qualify as crimes of moral turpitude.<sup>222</sup>

Furthermore, the INA allows for deportation of individuals convicted of aggravated assaults.<sup>223</sup> There are a multitude of offenses associated with trafficking which are deemed aggravated felonies under the INA.<sup>224</sup> Numerous aggravated felonies may

216. *Id.*

217. See generally 8 U.S.C. § 1182.

218. 8 U.S.C. § 1182(a)(2)(A)(i)(I). One class of excludable aliens includes "any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . . a crime involving moral turpitude." *Id.*

219. See, e.g., *Pichardo v. INS*, 104 F.3d 756, 760 (5th Cir. 1997) (defining moral turpitude). Moral turpitude is an "act which is per se morally reprehensible and intrinsically wrong or *malum in se*, so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude." *Id.* at 760; *Franklin v. INS*, 72 F.3d 571, 595 (8th Cir. 1995) (holding that crimes involving fraud are always rendered crimes of moral turpitude).

220. See *Young*, *supra* note 17, at 93 (contending that many traffickers perpetrate crimes of moral turpitude).

221. See *id.* (explaining that trafficking sometimes involves kidnapping victims, and almost always involves fraudulent conduct); see also *Cao*, *supra* note 15, at 1299 (discussing fraudulent means by which traffickers recruit women). The fraudulent ways that traffickers lure women include both employment and marriage frauds. *Id.* at 1300.

222. See *Young*, *supra* note 17, at 93 (asserting that crimes involving intent to defraud are considered crimes of moral turpitude). Moreover, the majority of crimes against property involve intent to defraud, and as such, constitute crimes of moral turpitude. *Id.*

223. 8 U.S.C. § 1227(a)(2)(A)(iii). Section 1227(a)(2)(A)(iii) states that: "[a]ny alien who is convicted of an aggravated felony at any time after admission is deportable." *Id.*

224. 8 U.S.C. § 1101(a)(43). Section 1101(a)(43) states that "aggravated felony" includes: (D) offenses related to money laundering; (F) crimes of violence; (J) racketeering offenses; (K)(i) owning, controlling, managing, or supervising a prostitution

be considered crimes of moral turpitude.<sup>225</sup> Prosecutors should be able to prove the moral turpitude of an aggravated felony where intent to defraud is a specific element of the statutory definition or implicit in the nature of the crime.<sup>226</sup> Accordingly, the INA exclusion provisions can be invoked to deport traffickers and banish them from the United States.<sup>227</sup>

## II. AN ANALYSIS OF EXISTING REGULATIONS

International conventions calling for the prevention of trafficking of women are legally binding for signatory nations.<sup>228</sup> While the existing international instruments are potentially valuable for their efforts to eliminate international sex trafficking, they have failed to do so.<sup>229</sup> The 1949 Convention and CEDAW are rendered ineffective by weak enforcement structures.<sup>230</sup> The European legal mechanisms that ban trafficking of women,

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business; (K) (ii) transportation for purposes of prostitution; (K) (iii) peonage, slavery, and involuntary servitude; (N) alien smuggling; (P) document fraud; and (U) attempts or conspiracies to commit one of the enumerated offenses. *Id.*

225. See Young, *supra* note 17, at 93 (explaining that distinction between aggravated felonies and crimes of moral turpitude may be difficult, but INA provides for deportation of those convicted of both types of crimes).

226. See *Goldeshtein v. INS*, 8 F.3d 645, 647 (9th Cir. 1993) (holding that crime involves moral turpitude for purposes of INA if intent to defraud is implicit in nature of crime).

227. See Young, *supra* note 17, at 93 (explaining value of INA laws in trafficking context).

228. See Vienna Convention on the Law of Treaties, May 23, 1969, art. 26, 8 I.L.M. 679 (1969) [hereinafter Vienna Convention] (stating that “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith”); see also Dietz, *supra* note 34, at 559 (discussing that State responsibility in international law includes liability for violations of human rights under both customary law and binding treaties).

229. Young, *supra* note 17, at 80. See Margareth Etienne, *Addressing Gender-Based Violence in an International Context*, 18 HARV. WOMEN’S L. J. 139 (1995) (explaining that international conventions failed to eliminate trafficking of women in several ways). Violence against women, which both the 1949 Convention and CEDAW seek to eliminate, is still rampant. *Id.* In addition, many U.N. member nations are not parties to these treaties, and not all signatories enforce the obligations they impose. *Id.* Moreover, it is difficult for individual victims to employ the provisions of the conventions as a means of protecting their rights. *Id.*; see also Ulrich, *supra* note 8, at 644 (proclaiming that CEDAW lacks force to alter present social construction that discriminates against women and tolerates gender-based violence).

230. See Raghuram, *supra* note 8, at 164 (asserting that international law is unable to successfully eliminate trafficking of women because of inadequate enforcement mechanisms). Both CEDAW and the 1949 Convention bind States Parties to various measures designed to eliminate illegal traffic of women for sexual exploitation, but neither convention has been effectively enforced. *Id.* at 166; see also Ulrich, *supra* note 8, at 645

while comprehensive, are also marked by serious enforcement problems that undermine their efficacy.<sup>231</sup> The United States has numerous laws that may be used to combat trafficking of women for the sex trade, but as with the international and European Union structures, these laws are ineffective in eliminating the problem, largely due to difficulties defining the issue.<sup>232</sup>

### A. *Relevant Treaty Law*

Although the U.N. Commission on the Status of Women asserted and defined an international prohibition of discrimination against women, the international enforcement of women's rights remains inadequate.<sup>233</sup> Experts agree that the lack of enforcement mechanisms prevents individual trafficking victims from effectively asserting treaty violations.<sup>234</sup> Enforcement problems associated with the 1949 Convention and CEDAW are exacerbated by numerous reservations that remove the binding

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(maintaining that CEDAW's effectiveness is limited by obstacles to enforcement). CEDAW's enforcement problems are especially acute. *Id.*

231. See Toepfer & Wells, *supra* note 9, at 118 (asserting that European Convention contains procedural requirements that limit ability to enforce anti-trafficking provisions); see also Hauber, *supra* note 18, at 184 (claiming that European legal instruments have serious enforcement problems and require more coordinated efforts by EU to effectively combat trafficking).

232. See RICHARD, *supra* note 6, at 31-35 (discussing numerous obstacles to effective elimination of sex trafficking in United States, most of which revolve around lack of common definition for trafficking that creates confusion among different branches of law enforcement); see also Demleitner, *supra* note 50, at 164 (theorizing that individual nations may be able to prosecute traffickers, but international community is unable to effectively eradicate trafficking of women due to lack of universal focal point for problem).

233. See Toepfer & Wells, *supra* note 9, at 114 (noting that U.N. human rights agreements lack access to enforcement); see also Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 VA. J. INT'L L. 643, 707 (1990) (commenting that discriminatory practices outlawed by CEDAW continue to plague women despite States Parties obligations to abolish them); Raghu, *supra* note 8, at 163-64 (contending that international conventions are only binding for signatories, and they fail to provide sufficient redress for victims); Elizabeth F. Defeis, *Women's Human Rights: The Twenty-First Century*, 18 FORDHAM INT'L L. J. 1748, 1751 (1995) (explaining that women's human rights are marginalized in U.N. human rights instruments).

234. See Judith Armatta, *Getting Beyond the Law's Complicity in Intimate Violence Against Women*, 33 WILLAMETTE L. REV. 773, 837 (1997) (explaining that lack of enforcement structures in international anti-trafficking instruments prevents trafficking victims from effectively asserting treaty violations); see also Toepfer & Wells, *supra* note 9, at 91 (admitting that international efforts to address trafficking for forced prostitution is weakened by absence of enforcement).

effects of these treaties.<sup>235</sup> Moreover, these treaties are carried out by various U.N. committees authorized only to collect and evaluate reports regarding international trafficking of women.<sup>236</sup>

Many nations lack the political will to eliminate international sex trafficking.<sup>237</sup> Commentators note that a significant impediment to the abolition of trafficking is that many industrialized nations refuse to sign the 1949 Convention or CEDAW because they are legally binding.<sup>238</sup> Therefore, nations such as the United States, who have not signed the treaties, are not bound by the anti-trafficking provisions contained therein.<sup>239</sup> At least one commentator notes that for certain nations, participation in international treaties proscribing trafficking and forced prostitution is often meaningless.<sup>240</sup> States Parties frequently declare their commitment to upholding the anti-trafficking provisions of international treaties, while trafficking and forced pros-

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235. See Cook, *supra* note 233, at 644 (stating that CEDAW has multitude of reservations by numerous signatories). Reservations indicate a State's unwillingness to accept CEDAW's principles. *Id.* at 707; see also Armatta, *supra* note 234, at 837 (noting that effectiveness of CEDAW is curbed by volume of reservations by ratifying States). Reservations allow States to sign a convention while releasing themselves from certain obligations contained therein, often based on customs or religion. See WOMEN AND THE LAW, § 9C.02[1][b], at 9C-15 n.61 (Carol H. Lefcourt ed. 1996); Ulrich, *supra* note 8, at 645-46 (noting that CEDAW is among most highly reserved treaties in history). Allowing reservations impedes CEDAW's effectiveness. *Id.* at 646.

236. Toepfer & Wells, *supra* note 9, at 91-92; see Margaret E. Galey, *International Enforcement of Women's Rights*, 6 HUM. RTS. Q. 463, 474-75 (1984) (noting various limitations of CEDAW's reporting process, including absence of provision for investigating alleged violations or for penalties against States that violate CEDAW).

237. See Raghu, *supra* note 8, at 167 (alleging that numerous nations' refusal to participate in anti-trafficking treaties illustrates absence of political will to eliminate sex trafficking and contributes to non-enforcement of international law); see also Young, *supra* note 17, at 80 (explaining that many nations do not possess will to stop trafficking).

238. See Young, *supra* note 17, at 80 (noting that nations that have not signed international treaties are not bound by them); see also Raghu, *supra* note 8, at 166-67 (explaining that numerous powerful and influential countries, including United States, declined to sign 1949 Convention or CEDAW because of unwillingness to adhere to associated legal obligations).

239. See Young, *supra* note 17, at 80 (indicating that non-signatory nations are not obligated to conform to anti-trafficking provisions of treaties). Consequently, these nations are compelled to eradicate trafficking of women for forced prostitution purely based on domestic concern for human rights and international pressure; with regard to trafficking, this impetus is not very powerful. *Id.*

240. See Toepfer & Wells, *supra* note 9, at 92 (discussing effect of weak enforcement mechanisms on treaty compliance).

titution persist, unabated, at home.<sup>241</sup>

Individuals have very limited remedies under the terms of the 1949 Convention or CEDAW.<sup>242</sup> Under both conventions, complaints may be brought before the International Court of Justice<sup>243</sup> ("ICJ"), however, only signatories may be parties to claims of treaty violations, not individuals.<sup>244</sup> The treaty protections are unavailable to an individual trafficking victim unless a signatory nation institutes a claim on her behalf.<sup>245</sup>

This requirement prevents individuals from attaining any remedy for their own State's human rights violations.<sup>246</sup> Additionally, the absence of individual access to petitions alleging treaty violations leaves trafficking victims subject to the priorities of various political agendas.<sup>247</sup> States Parties to the international anti-trafficking treaties may be unwilling to address human

241. *See id.* (describing failure of signatory nations to uphold obligations imposed by international conventions).

242. *See* Armatta, *supra* note 234, at 837 (theorizing that effectiveness of CEDAW is constrained by absence of enforcement measures allowing individuals to seek redress for treaty violations); *see also* Young, *supra* note 17, at 80 (explaining that remedies available to trafficking victims under existing international conventions are insufficient).

243. *See* Statute of the International Court of Justice ("ICJ"), June 26, 1945, art. 34, 59 Stat. 1055, 1059. The Statute of the International Court of Justice ("ICJ") provides that: "[o]nly states may be parties in cases before the Court." *Id.*

244. *Id.*; *see* Toepfer & Wells, *supra* note 9, at 107 (explaining that complaint alleging treaty violation by State must be filed by another State on victim's behalf before International Court of Justice ("ICJ")); *see also* Raghu, *supra* note 8, at 166 (noting that alleged violations of international conventions can be heard by ICJ, but only States that accept ICJ's jurisdiction may be parties to suit).

245. *See* 1949 Convention, *supra* note 35, art. 22. Article 22 provides:

[i]f any dispute shall arise between the Parties to the present Convention relating to its interpretation or application and if such dispute cannot be settled by other means, the dispute shall, at the request of any one of the Parties to the dispute, be referred to the International Court of Justice.

*Id.*; *see also* Toepfer & Wells, *supra* note 9, at 107 (discussing that individuals are unable to bring claims under terms of 1949 Convention and CEDAW). There are various political costs associated with initiating a legal action before the ICJ, including potential retaliatory actions, legal or economic, against the complaining nation. *Id.* at 107 n.147.

246. *See* Toepfer & Wells, *supra* note 9, at 114 (explaining that complaint alleging State violation against individual must be filed by State on individual's behalf, thereby eliminating recourse for trafficking victims harmed by their own State's human rights violations).

247. *Id.*; *see* Chuang, *supra* note 13, at 104 (indicating that in countries where prostitution is criminalized, trafficking victims may be punished by States for illegal conduct, regardless of forced nature of activities). Neither CEDAW nor the 1949 Convention contain provisions expressly protecting victims of forced prostitution from prosecution. *Id.*

rights violations perpetrated by other States for numerous political reasons, such as promoting positive foreign relations.<sup>248</sup> Additionally, it is improbable that States will respond to another State's alleged human rights violations when they are violating their own treaty obligations.<sup>249</sup>

Experts argue that the 1949 Convention's potential to eliminate international sex trafficking is thwarted by inadequate enforcement mechanisms.<sup>250</sup> Under the 1949 Convention, States must report annually to the U.N. Secretary General with information regarding all legal and non-legal measures they adopted in furtherance of the terms of the treaty.<sup>251</sup> The information received by the Secretary-General is to be published and communicated to all U.N. Member States, as well as to certain non-member States called upon to ratify the Convention.<sup>252</sup> This reporting and communicating procedure is the only method of enforcing the 1949 Convention's provisions.<sup>253</sup> The 1949 Convention does not provide for an independent supervisory body empowered to evaluate and act upon States' reports, or respond to indi-

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248. See Toepfer & Wells, *supra* note 9, at 114 (discussing hesitancy of governments to assert violations of trafficking treaties against other nations for fear of negative reprisals).

249. See *id.* at 105-06 (asserting that numerous States Parties to 1949 Convention and CEDAW allow trafficking to occur in their countries); see Chuang, *supra* note 13, at 104 (claiming that governments are often involved in trafficking and sexual exploitation operations).

250. See Farrior, *supra* note 16, at 220 (arguing that 1949 Convention is ineffective due to inability to enforce provisions); see also Toepfer & Wells, *supra* note 9, at 105 (reporting that international treaties do not eliminate trafficking of women for forced prostitution because of unsuccessful enforcement).

251. See 1949 Convention, *supra* note 35, art. 21. Article 21 provides:

The Parties to the present Convention shall communicate to the Secretary-General of the United Nations such laws and regulations as have already been promulgated in their States, and thereafter annually such laws and regulations as may be promulgated, relating to the subjects of the present Convention, as well as all measures taken by them concerning the application of the Convention. The information received shall be published periodically by the Secretary-General and sent to all Members of the United Nations and to non-member States to which the present Convention is officially communicated in accordance with article 23.

*Id.*; see also Farrior, *supra* note 16, at 220 (explaining 1949 Convention's general reporting requirement).

252. 1949 Convention, *supra* note 35, art. 21.

253. See Farrior, *supra* note 16, at 220 (arguing that 1949 Convention is ineffective because of insufficient mechanisms to ensure adherence to anti-trafficking provisions by Member States).

vidual petitions brought by trafficking victims.<sup>254</sup>

The 1949 Convention is also ineffective because the treaty's language is marked by several unresolved ambiguities.<sup>255</sup> The terms "prostitution" and "exploits" contained in Article 1 are ambiguous because the 1949 Convention does not provide definitions.<sup>256</sup> In addition, the 1949 Convention fails to describe the manner in which States Parties must punish pimps, procurers, and consumers of prostitution for their involvement in sex trafficking.<sup>257</sup>

CEDAW, while potentially useful in promoting the equality of women, is ineffective as a prohibition against international trafficking of women for the sex trade.<sup>258</sup> CEDAW directs signatories to take all necessary actions to eliminate trafficking and forced prostitution of women and purports to oversee the institution of anti-trafficking policies contained in the treaty.<sup>259</sup> This mandate is undermined by a lack of enforcement power arising out of the fact that CEDAW's professed goals and anti-trafficking measures are carried out by various U.N. committees that cannot successfully enforce the treaty.<sup>260</sup> CEDAW is monitored only

254. *See id.* (delineating extent of 1949 Convention's implementation and enforcement mechanisms). In 1974, the Economic and Social Council of the U.N. ("ECOSOC") declared that 1949 Convention signatories would present periodic trafficking status reports to the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, which in turn reviews the reports, but is not authorized to act upon them. *See id.* (citing E.S.C. Decision 16, U.N. ESCOR, 56th Sess., 1899th mtg., Supp. No. 2, at 7, U.N. Doc. E/DEC/5-22 (LVI) (1974), cited in Annotations to the Provisional Agenda, Prepared by the Secretary-General, Commission on Human Rights, Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Working Groups on Contemporary Forms of Slavery, 20th Sess., at 2, U.N. Doc. E/CN.4/Sub.2/AC.2/1995/1/Add.1 (1995)).

255. *See* Toepfer & Wells, *supra* note 9, at 99 (discussing limitations of 1949 Convention in effectively combating trafficking).

256. *See* Raghu, *supra* note 8, at 165 (recognizing uncertainty regarding meaning of "prostitution" and "exploits" in 1949 Convention).

257. *See id.* at 166 (declaring that 1949 Convention lacks specific instructions regarding punishment of offenders under treaty).

258. *See* Toepfer & Wells, *supra* note 9, at 105 (stating that CEDAW failed to eliminate trafficking).

259. *See* Hauber, *supra* note 18, at 193 (recognizing that CEDAW allows for supervision of signatories in effecting anti-trafficking provisions); *see also* Ulrich, *supra* note 8, at 642 (recognizing that CEDAW professes commitment to gender equality and compels States to take proscribed actions to end discrimination against women).

260. *See* Dietz, *supra* note 34, at 578 (indicating that most significant obstacle to utilization of CEDAW as protection against trafficking is inability to enforce provisions of treaty); *see also* Ulrich, *supra* note 8, at 644 (commenting that CEDAW's enforcement measures are ineffective). CEDAW is monitored only through a reporting system. *Id.* at



through a self-reporting system, in which signatories provide reports regarding their progress in ending discrimination against women to the CEDAW Committee, and like the 1949 convention, lacks any authority to challenge the non-compliance of States Parties to the treaty's terms.<sup>261</sup> CEDAW lacks both a schedule with specific parameters regarding when States must accomplish the eradication of trafficking and forced prostitution, and an independent body to collect information regarding the status of women.<sup>262</sup> Instead, the CEDAW Committee depends on State Parties for evidence regarding trafficking and adherence to the treaty's anti-trafficking mandates.<sup>263</sup> Moreover, the obstacles preventing successful enforcement of CEDAW are intensified by the convention's ambiguous language.<sup>264</sup>

### B. EU Law

Despite the strengths of the European human rights structure, commentators note that the EU anti-trafficking instruments are unsuccessful in eliminating the illegal traffic of women for the sex trade.<sup>265</sup> The European Convention is under-

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645. See Toepfer & Wells, *supra* note 9, at 91-92 (discussing inability of U.N. committees receiving reports on treaty violations to effectively implement treaties).

261. CEDAW art. 18. See Dietz, *supra* note 34, at 578 (remarking that implementation of CEDAW is supervised only by ineffective self-reporting system in which CEDAW evaluates reports on status of women); see also Toepfer & Wells, *supra* note 9, at 108 (explaining that CEDAW Committee is authorized evaluate reports of States Parties and issue recommendations, but it is unclear who receives recommendations); Etienne, *supra* note 229, at 139 (stating that Article 20 of CEDAW provides that CEDAW Committee may meet to evaluate States Parties' reports for only two weeks each year, thereby limiting number of reports that can be reviewed and effectively eliminating timely response to problems); Ulrich, *supra* note 8, at 645 (alleging that CEDAW does not authorize action to ensure signatories' compliance with CEDAW).

262. Toepfer & Wells, *supra* note 9, at 110.

263. See Ulrich, *supra* note 8, at 644 (stating that enforcement of CEDAW is effected only by States Parties providing annual reports to CEDAW Committee concerning status of trafficking and other human rights violations); see also Toepfer & Wells, *supra* note 9, at 110 (maintaining that absence of supervision over collection of evidence regarding State compliance with treaty hinders enforcement of CEDAW).

264. See Hauber, *supra* note 18, at 193 & n.87 (noting that CEDAW does not provide instructions regarding actions required by States to suppress trafficking and forced prostitution under Article 6); see also Etienne, *supra* note 229, at 139 (postulating that vague language of CEDAW impedes its effectiveness).

265. See Hauber, *supra* note 18, at 193 (indicating failure of EU legal mechanisms targeted at stopping trafficking of women); see also Toepfer & Wells, *supra* note 9, at 118 (stating that European documents do not adequately enforce anti-trafficking provisions).

mined by difficulties regarding enforcement and the inability of victims to successfully register complaints against traffickers under the treaty, as well as a disinclination to do so based on fear of deportation.<sup>266</sup> The majority of the aspirational instruments, while valuable for the recommendations they make to combat trafficking and protect women's rights, are not legally binding.<sup>267</sup>

### 1. European Convention

Experts agree that the European Convention is ineffective in eliminating trafficking of women for prostitution.<sup>268</sup> A trafficking victim's ability to seek legal remedies against violators of the treaty is extremely limited for several reasons.<sup>269</sup> The European Convention allows an individual to petition for relief only if the State formally recognizes that right.<sup>270</sup> The European Commission, therefore, may only accept allegations of treaty violations from individuals or groups if the State charged with perpetrating the offense specifically consents to the European Commission's authority in receiving such complaints.<sup>271</sup>

A second barrier to the success of individual petitions is that, in accordance with Articles 26 and 27 of the European Convention, the European Commission decides whether complaints are admissible.<sup>272</sup> Article 26 provides that the European Commission may evaluate individual petitions only after all domestic

266. See Hauber, *supra* note 18, at 193 (explaining shortcomings of EU documents that prohibit trafficking).

267. See *id.* at 196 (demonstrating that aspirational documents seeking to eradicate trafficking, such as 1997 Joint Action, are not legally binding).

268. *Id.* at 193; see Toepfer & Wells, *supra* note 9, at 118 (stating that European legal instruments do not adequately enforce anti-trafficking provisions).

269. See Toepfer & Wells, *supra* note 9, at 114-18 (noting that procedural limitations regarding individual right of petition prevent trafficking victims from enjoying protection from trafficking under European Convention); see also Garrity-Rokous & Brescia, *supra* note 105, at 601 (asserting that limited standing for individuals places trafficking victims at mercy of State interests).

270. Toepfer & Wells, *supra* note 9, at 114-15.

271. European Convention, *supra* note 36, art. 25. Article 25(2) states that "such declarations may be made for a specific period." *Id.*; see Toepfer & Wells, *supra* note 9, at 115 n.195 (asserting that State's recognition of European Court's jurisdiction may be temporary).

272. European Convention, *supra* note 36, arts. 26 & 27. See Toepfer & Wells, *supra* note 9, at 115 (explaining procedures regarding manner in which European Commission receives individual complaints under European Convention).

solutions have been exhausted.<sup>273</sup> Article 27(2) instructs the European Commission to reject any petition it deems incompatible with the Convention's provisions.<sup>274</sup> On occasion, the European Commission has refused to hear several complaints because they alleged violations against individuals rather than governments.<sup>275</sup> Accordingly, this restriction may be invoked to reject individual petitions by victims of traffickers against pimps.<sup>276</sup>

At least one author asserts that the European Commission routinely uses procedural standards regarding admissibility of petitions to exclude a high number of cases.<sup>277</sup> A significant limitation of the European Convention, hindering the successful eradication of trafficking, is that the European Commission declares ninety percent of all petitions it receives to be inadmissible.<sup>278</sup> Yet another problem arises from the fact that it takes approximately five years for a case to proceed through the system

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273. European Convention, *supra* note 36, art. 26. Article 26 states: "The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken." *Id.*

274. *Id.* art. 27(2). Article 27 states:

- (1) The Commission shall not deal with any petition submitted under Article 25 which:
  - (a) is anonymous, or
  - (b) is substantially the same as a matter which has already been examined by the Commission or has already been submitted to another procedure of international investigation or settlement and if it contains no relevant new information.
- (2) The Commission shall consider inadmissible any petition submitted under Article 25 which it considers incompatible with the provisions of the present Convention, manifestly ill-founded, or an abuse of the right of petition.
- (3) The Commission shall reject any petition referred to it which it considers inadmissible under Article 26.

*Id.*

275. See Toepfer & Wells, *supra* note 9, at 116 (arguing that Article 27(2) allows European Commission to avoid receiving complaints beyond its authorized scope, including alleged violations of private individuals instead of States Parties).

276. *Id.*

277. See Garrity-Rokous & Brescia, *supra* note 105, at 585-86 (providing admissibility statistics regarding European Commission's decisions involving individual petitions to illustrate use of rules of procedure to limit caseload). Out of 5,550 petitions filed in 1991, the Commission ultimately ruled only 216 petitions admissible. *Id.*

278. Nanette Dumas, *Enforcement of Human Rights Standards: An International Human Rights Court and Other Proposals*, 13 HASTINGS INT'L & COMP. L. REV. 585, 604 (1990).

of adjudication.<sup>279</sup> These procedural standards significantly decrease the opportunities for a trafficking victim to present her case before the European Commission.<sup>280</sup>

In addition to the difficulty that a trafficking victim might encounter in asserting her claim before the European Commission, the European system can only enforce the human rights contained in the European Convention, and is not authorized to enforce any other conventions.<sup>281</sup> Therefore, the European Court cannot enforce the anti-trafficking protections established in the 1949 Convention or CEDAW.<sup>282</sup> It is also noteworthy that the European Convention lacks provisions explicitly addressing trafficking of women or the accompanying forced prostitution.<sup>283</sup>

Another shortcoming of the European Convention that impedes individual victims of treaty violations from successfully petitioning for recourse against a State arises out of the procedural limitations regarding the authority of the European Commission.<sup>284</sup> The European Commission is empowered to receive petitions but does not have the authority to make the ultimate decision regarding cases.<sup>285</sup> The European Commission is author-

279. *See id.* (arguing that five years is inappropriate for cases of human rights abuses involving threat to life).

280. *See* Toepfer & Wells, *supra* note 9, at 117 (describing limitations that prevent trafficked women from asserting alleged treaty violations before European Commission).

281. European Convention, *supra* note 36, arts. 31(1), 32(1), 45, 50. Article 31(1) states that the European Commission shall issue reports regarding "whether the facts found disclose a breach by the State concerned of its obligations under the Convention." *Id.* art. 31(1). Article 32(1) provides for the Committee of Ministers to determine "whether there has been a violation of the Convention." *Id.* art. 32(1). Article 45 asserts that "[t]he jurisdiction of the Court shall extend to all cases concerning the interpretation and application of the present Convention." *Id.* art. 45. Article 50 authorizes the European Court to provide remedies to injured parties "[i]f the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the present Convention." *Id.* art. 50.

282. *See* Toepfer & Wells, *supra* note 9, at 118 (maintaining that EU legal mechanisms aimed at combating sex trafficking only apply to protections available under European Convention).

283. European Convention, *supra* note 36, arts. 31(1), 32(1), 45, 50; *see* Hauber, *supra* note 18, at 187 (discussing limited ability of European Convention to provide remedies for trafficking victims, due in part to lack of provisions directly addressing trafficking of women).

284. *See* Toepfer & Wells, *supra* note 9, at 117 (noting limited authority of European Commission under European Convention).

285. European Convention, *supra* note 36, art. 31.

ized to review petitions and assist with settlements.<sup>286</sup> In the event that a settlement is impossible, the European Commission may issue its findings of fact along with a non-binding opinion.<sup>287</sup> Once a non-binding opinion is issued, Article 44 provides that the European Commission or a State party may then submit the case to the European Court of Human Rights for a binding determination.<sup>288</sup> The effect of this system is to subject an individual alleging treaty violations to the discretion of the European Commission or her own State government to submit cases to the European Court.<sup>289</sup>

## 2. Aspirational Instruments

The European aspirational instruments are important in recognizing the international significance of violence against women and declaring that women are entitled to protection from violence based on gender, which includes trafficking for purposes of sexual exploitation.<sup>290</sup> The right to be free from traf-

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286. See Toepfer & Wells, *supra* note 9, at 118 (discussing that European Commission lacks authority to make binding determinations regarding cases before it).

287. European Convention, *supra* note 36, arts. 28-31. See Toepfer & Wells, *supra* note 9, at 117 (discussing limited power of European Commission to enforce treaty protections for trafficking victims).

288. European Convention, *supra* note 36, art. 44. Article 44 states that “[o]nly the High Contracting Parties and the Commission shall have the right to bring a case before the Court.” *Id.* art. 44. Article 47 grants the European Court jurisdiction over a case, only “after the Commission has acknowledged the failure of efforts for a friendly settlement.” *Id.* art. 47. Further, Article 48 gives the European Court jurisdiction only over High Contracting Parties which have accepted compulsory jurisdiction under Article 46 or which consent to jurisdiction in a particular case. *Id.* art. 48. See Toepfer & Wells, *supra* note 9, at 117 (explaining that women are only able to have cases heard before European Court if European Commission or their State allows it).

289. European Convention, *supra* note 36, arts. 32, 44. Article 32 provides that in a situation where a case is not referred to the European Court, “the Committee of Ministers shall decide by a majority of two-thirds of the members entitled to sit on the Committee whether there has been a violation of the Convention.” *Id.* art. 32(1). “The High Contracting Parties undertake to regard as binding on them any decision which the Committee of Ministers may take.” *Id.* art. 32(4). See Statute of the Council of Europe, May 5, 1949, arts. 13-14, 8 Europ. T.S. No. 2, 6 (explaining that Committee of Ministers consists of Minister of Foreign Affairs from each Member State); see also Toepfer & Wells, *supra* note 9, at 118 (asserting that individual petitioners may obtain binding decisions by Committee of Ministers if case does not reach European Court). This provision does not guarantee remedies for trafficking victims because decisions of Committee of Ministers may be influenced by political agendas of participants. *Id.*

290. See Armatta, *supra* note 234, at 839 (asserting valuable contributions of various aspirational instruments); see also Dietz, *supra* note 34, at 589 (indicating awareness raised by instruments such as Vienna Declaration).

ficking is an affirmative right, and the various aspirational instruments assert the affirmative commitments of States to guarantee that right for all women.<sup>291</sup> Although several European bodies condemn trafficking and promulgate comprehensive procedures and recommendations for eliminating it, few States have fully implemented these recommendations.<sup>292</sup> Additionally, most of these instruments fail to provide concrete remedies against States because they have no legally binding authority and merely advocate State action.<sup>293</sup> These non-legal efforts to combat sex trafficking cannot succeed without collaborative efforts among EU Member States.<sup>294</sup> The effectiveness of the aspirational instruments that proscribe trafficking is contingent upon a heightened level of cooperation among the various law enforcement entities within individual Member States and also between all Member States.<sup>295</sup>

### C. U.S. Law

There are many difficulties associated with prosecuting trafficking cases in the United States that frustrate U.S. law enforcement efforts to eradicate the illegal traffic of women for forced prostitution.<sup>296</sup> One of the most significant problems in combating trafficking in the United States is the lack of a common definition for sex trafficking cases.<sup>297</sup> The various divisions of law

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291. See Armatta, *supra* note 234, at 839 (noting responsibilities of States to end violence against women).

292. See ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, TRAFFICKING IN HUMAN BEINGS: IMPLICATIONS FOR THE OSCE, REVIEW CONFERENCE 5.1 (1999), available at <http://www.osce.org/odihr/documents/background/trafficking> (noting that pledge to eliminate trafficking in European States is rarely carried out by States who have adopted measures and recommendations).

293. See Defeis, *supra* note 233, at 1750 (contending that certain aspirational instruments are not legally binding); see also Dietz, *supra* note 34, at 589 (noting that Vienna Declaration is not legally binding).

294. See Hauber, *supra* note 18, at 198 (postulating that cooperation within EU and also between EU and other countries is necessary to eradicate trafficking); see also 1997 Joint Action, *supra* note 36, pmbl. (advocating common anti-trafficking measures and improved cooperation among nations to effectively eliminate sex trafficking).

295. Hauber, *supra* note 18, at 198; 2000 Resolution, *supra* note 36, O.J. C 59/307, at 310 (2000).

296. See RICHARD, *supra* note 6, at 32 (explaining that problems associated with prosecuting trafficking cases in United States include limited resources and multitude of ethnicities and languages involved in trafficking schemes, which make undercover investigations difficult).

297. See *id.* at 31 (indicating existence of numerous manners of classifying trafficking cases in various law enforcement agencies).

enforcement often classify and treat trafficking cases differently.<sup>298</sup> In addition, limited resources prevent U.S. law enforcement from effectively discovering and prosecuting sex trafficking cases.<sup>299</sup> At least one commentator notes that an important aspect of sex trafficking cases in the United States is the inadequate enforcement of laws that can be used to prosecute traffickers.<sup>300</sup> U.S. laws that can be used to prosecute traffickers are weakened by limited enforcement measures and lack of desire to punish those who conduct illegal traffic of women for the sex trade.<sup>301</sup>

### 1. Laws Prohibiting Involuntary Servitude

Prosecuting trafficking cases involving involuntary servitude is challenging, because prosecutors typically must offer evidence that traffickers used force or the threat of force in the perpetration of their crimes.<sup>302</sup> In many trafficking cases, the traffickers use psychological violence to intimidate victims.<sup>303</sup> This makes the force element more difficult to demonstrate because it is often the word of the victim in opposition to that of the trafficker.<sup>304</sup>

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298. *See id.* (explaining that U.S. Department of Justice, Department of State, Department of Treasury, and Department of Labor are all involved in combating trafficking, as are various state and local law enforcement agencies, each of which regard trafficking cases differently). The U.S. Immigration and Naturalization Services ("INS") handles many cases involving illegal workers as situations of alien smuggling rather than trafficking for forced prostitution. *Id.* As a result, the INS often deports trafficking victims, instead of assisting them as victims of forced prostitution. *Id.* Similarly, the Department of Justice occasionally addresses trafficking cases as primarily involving violations of wage and hour regulations, instead of more serious violations, such as involuntary servitude and the exploitation of prostitution. *Id.*

299. *See id.* at 32 (surmising that investigating trafficking cases and prosecuting traffickers, while simultaneously protecting and aiding victims, requires substantial resources).

300. Young, *supra* note 17, at 79.

301. *See id.* at 79-80 (explaining that marginalization of trafficking victims results in lack of attention to problem of trafficking for forced prostitution); *see* Cao, *supra* note 15, at 1304 (declaring that U.S. law enforcement is unsuccessful in eliminating trafficking). As in other countries, some U.S. officials accept bribes and allow trafficking networks and forced prostitution to continue. *Id.* at 1304-05.

302. *See* RICHARD, *supra* note 6, at 32 (explaining obstacles to obtaining convictions under involuntary servitude laws).

303. *See* Cao, *supra* note 15, at 1302 (maintaining that victims of trafficking are psychologically manipulated and intimidated); *see also* RICHARD, *supra* note 6, at 32-33 (noting that law enforcement official involved in prosecuting trafficking cases reports that trafficked women frequently suffer psychological instead of physical abuses).

304. RICHARD, *supra* note 6, at 33.

## 2. Laws Regulating Labor

The FLSA is limited in its ability to punish traffickers because it is applicable only in situations involving an employer-employee relationship.<sup>305</sup> In addition, the criminal provisions of the FLSA authorize only minimal penalties for willful violations, which creates obstacles in using the labor statutes to effectively prosecute traffickers who force women into prostitution.<sup>306</sup> The punishment imposed in cases involving illegal traffic of women for purposes of sexual exploitation in the United States are relatively minor as compared to other crimes.<sup>307</sup>

## 3. Laws Regulating Sex Industry

There are several limitations regarding use of the Mann Act to prosecute sex trafficking cases.<sup>308</sup> The Mann Act was enacted almost one hundred years ago, and the majority of cases applying the statute are at least thirty years old.<sup>309</sup> At least one commentator asserts that prosecutors may be reluctant to invoke the Mann Act because they consider it to be outdated.<sup>310</sup> In addition, as with other U.S. laws that can be used to prosecute traffickers, the Mann Act imposes only minimal penalties relative to the injuries suffered by trafficking victims.<sup>311</sup>

Another obstacle in applying the Mann Act to trafficking cases is that historically, the statute is almost never used to prosecute cases that involve women who are trafficked beyond na-

305. See Young, *supra* note 17, at 85 (explaining challenges associated with proving existence of employer-employee relationship in cases involving prostitution as employment).

306. See RICHARD, *supra* note 6, at 34 (explaining difficulties in applying labor laws to trafficking cases involving forced labor). The FLSA limits punishment to a six-month prison term for willful violators. *Id.* The statutes fail to provide guidelines for sentencing, which results in judges sentencing traffickers to mere probation. *Id.*

307. See *id.* at 33 (commenting that general view among U.S. prosecutors is that trafficking sentences do not adequately penalize offenders). The penalties for trafficking of women are equivalent to or less than the penalties imposed on drug traffickers. *Id.*

308. See Young, *supra* note 17, at 86 (discussing failure of Mann Act to adequately combat trafficking).

309. *Id.*

310. See *id.* (explaining that Mann Act was originally intended to combat immorality or corruption of women). The Mann Act was only expanded to encompass prohibitions against transporting any individual, rather than just women or girls, in 1986. *Id.*

311. See RICHARD, *supra* note 6, at 34 (explaining that traffickers receive short prison sentences under Mann Act).



tional borders.<sup>312</sup> Notwithstanding the language of the Mann Act specifically targeting women transported in "interstate or foreign commerce," it is generally invoked only in cases where women are transported between states within the United States.<sup>313</sup> The absence of judicial precedent employing the Mann Act as a means of prosecuting perpetrators of international sex trafficking results in a reluctance for U.S. prosecutors to utilize the statute in such cases.<sup>314</sup>

#### 4. Laws Regulating Organized Crime

In the United States, sex trafficking is often orchestrated by numerous connected and organized criminal groups, each of which carries out a different phase of the trafficking scheme.<sup>315</sup> In conjunction with their illegal traffic of women for purposes of sexual exploitation, traffickers are often guilty of kidnapping, involuntary servitude, extortion, bribery, document fraud, racketeering, and money laundering,<sup>316</sup> but are frequently prosecuted for violating immigration laws or the Mann Act, which carry lesser penalties.<sup>317</sup> It may be difficult to prosecute traffickers under RICO because a civil RICO charge necessitates the classifi-

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312. See Young, *supra* note 17, at 86 (indicating that prosecutors do not often use Mann Act in trafficking cases where women travel abroad).

313. See *id.* (surmising that use of Mann Act decreased while international sex trafficking escalated).

314. See *id.* (contending that plain language of Mann Act allows for prosecution of traffickers who transport women across international borders).

315. See RICHARD, *supra* note 6, at 13 (maintaining that involvement of elusive organized crime groups in trafficking of women increases difficulty for law enforcement officials in uncovering trafficking operations); see also Cao, *supra* note 15, at 1301-02 (explaining that traffickers work in organized groups designed to effectively procure women for forced prostitution). Trafficking networks are very systematic in their operations so as to avoid prosecution. *Id.* at 1303.

316. See RICHARD, *supra* note 6, at 13, 34 (describing numerous criminal activities in which traffickers are involved).

317. See *id.* at 34 (claiming that many traffickers receive punishment under laws with lesser penalties than RICO). For example, in a trafficking case in Los Angeles, California, traffickers abducted a woman, raped her, forced her to prostitute herself, held her captive, and burned her with cigarettes; the primary defendant was sentenced to four years in prison while the other traffickers were punished with two to three year sentences. *Id.* at 33. In another trafficking case, Russian and Ukrainian women who responded to ads for nannies, saleswomen, and waitresses were forced into prostitution and imprisoned in a massage parlor in Maryland. *Id.* The massage parlor owner was punished with a fine; he agreed to a plea bargain and the charges were dismissed contingent upon his promise not to operate another business in that county. *Id.* In yet another case, numerous women were imprisoned for several years under the supervision of guards and an electronic monitoring device and forced to engage in sexual

cation of the traffickers' operation as an "enterprise" and their activities as a "pattern of racketeering activity."<sup>318</sup> While it may not be possible to prosecute cases of isolated trafficking under RICO, the recognized participation of organized criminal groups in the international sex trafficking business indicates the potential for RICO as a tool in prosecuting large, organized trafficking operations.<sup>319</sup>

### 5. Civil Rights Laws

The Civil Rights Act is limited in its application to the trafficking context because it imposes a difficult burden of proof.<sup>320</sup> It may be possible to prove a conspiracy amongst those involved in the trafficking operations and a violation of protected rights of the victims, however, conviction under the Civil Rights Act also requires proof of discriminatory animus, rather than profit, as the motivation for the trafficking.<sup>321</sup> Although traffickers of women for the sex trade typically focus their efforts on specific groups of women based on a discriminatory belief that such groups will be particularly submissive due to their marginalized status, such motives are difficult to prove.<sup>322</sup>

### 6. Immigration Laws

The immigration laws, while potentially useful in prosecuting traffickers, are ineffective for several reasons.<sup>323</sup> One problem with using immigration laws to combat trafficking is that they are often viewed as applying to cases involving aliens who employ the services of smugglers in order to illegally enter the

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activity with as many as 400 clients to repay their trafficking debts. *Id.* The traffickers' punishment ranged from four to nine years in prison. *Id.*

318. *See* Young, *supra* note 17, at 87 (discussing proof of "enterprise" and "pattern of racketeering activity" as requirements for violation of §§ 1962(a)-(d) of RICO).

319. *See id.* (demonstrating applicability of civil RICO provisions to trafficking cases where organized criminal networks perpetrate trafficking schemes for forced prostitution); *see also* RICHARD, *supra* note 6, at 34 (asserting applicability of RICO to many trafficking cases).

320. *See* Young, *supra* note 17, at 88 (discussing limitations in applying Civil Rights Act to sex trafficking cases).

321. *Id.*

322. *See id.* (noting that proving discriminatory animus without evidence of marketing materials used to procure women creates significant limitation in application of Civil Rights Act to trafficking cases).

323. *See id.* at 90 (discussing limitations in application of immigration laws to trafficking cases).

United States, rather than to trafficking cases where the women are coerced into entering the United States, sometimes through illegal means.<sup>324</sup> Accordingly, law enforcement agencies may be reluctant to apply the “bringing in and harboring” provisions of the immigration laws to cases involving trafficking because they are traditionally applied only to alien smuggling cases.<sup>325</sup>

In addition, U.S. immigration laws may conflict with the protections available to victims of trafficking and forced prostitution under international agreements.<sup>326</sup> Consequently, victims of trafficking and forced prostitution are often disinclined to report to local law enforcement based on fear of arrest.<sup>327</sup> Moreover, U.S. immigration laws are unable to effectively combat trafficking because they often cause additional injury to trafficking victims by calling for their deportation.<sup>328</sup> Experts opine that trafficking victims are frequently reluctant to seek assistance out of fear of further victimization through deportation.<sup>329</sup>

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324. *See id.* (explaining that aliens involved in trafficking cases are considered victims, while aliens seeking assistance in illegal entry into United States are not).

325. *See id.* (declaring that immigration laws are not adequately enforced due to misperceptions among law enforcement regarding their applicability in trafficking cases).

326. *See* Chuang, *supra* note 13, at 97 (indicating ability of domestic immigration and anti-prostitution laws to undercut benefits afforded to trafficking victims by international anti-trafficking treaties).

327. *See id.* (explaining that trafficking victims fear punishment for illegal immigration or prostitution in countries to which they have been trafficked); Talleyrand, *supra* note 17, at 170 (alleging that numerous nations criminalize prostitution based on notions of morality, which results in criminal penalties and social stigmatization that prevent victims of trafficking and forced prostitution from seeking assistance from authorities). Victims may also be afraid of negative repercussions in the countries to which they will be deported. Chuang, *supra* note 13, at 97.

328. *See* Chuang, *supra* note 13, at 100-01 (noting that many trafficking victims may experience further social and economic victimization once they return to their native countries).

329. *See* Pilkerton, *supra* note 26, at 245-46 (indicating that most destination countries for trafficked women invoke domestic immigration laws to prosecute and deport victims instead of treating them as victims of human rights violations); *see also* CALDWELL ET AL., *supra* note 7, at 55 (stating that governments often view trafficking as immigration problem, prosecuting trafficked women as criminals who violate immigration laws because they frequently enter countries unlawfully and work without authorization). Furthermore, women who are forced into prostitution are also penalized for prostitution in countries where it is illegal. *Id.*

III. *AN EFFECTIVE REMEDY TO STOP TRAFFICKING OF  
WOMEN FOR REQUIRES  
INTERNATIONAL COOPERATION*

Trafficking is an international problem that requires an international solution.<sup>330</sup> Every year, the illegal traffic of women for the sex trade puts multitudes of women at risk of losing their personal freedom, suffering physical and emotional abuses, and being sexually exploited for the profit of others.<sup>331</sup> Typically, trafficking victims are lured from their home countries by common practices involving coercion and deceit, and are then transported to sex trafficking destination countries and forced into prostitution.<sup>332</sup>

Traffickers profit from the unequal status of women in many countries around the globe, which includes higher levels of poverty and unemployment for women, and discriminatory treatment of women as property and sexual objects.<sup>333</sup> Commentators agree that trafficking and forced prostitution enterprises manipulate women's bodies so as to gain profit in their illegal business.<sup>334</sup> Frequently, trafficking victims are bought and sold and handled as property.<sup>335</sup> International and domestic laws should, therefore, uniformly acknowledge the body as a form of property and allow trafficking victims to demonstrate injury to their property as a means of invoking existing laws, such as § 1964(c) of RICO in the United States, to protect themselves and punish the traffickers.<sup>336</sup>

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330. *See supra* notes 6-9, 13 and accompanying text (accounting international dimensions of trafficking of women for sexual exploitation).

331. *See supra* notes 10, 24-25 and accompanying text (describing numerous dangers associated with international sex trafficking).

332. *See supra* note 17 and accompanying text (discussing that traffickers induce women into participation in international sex trade through coercive and dishonest practices, and then force them into prostitution).

333. *See supra* notes 20-22 and accompanying text (concluding that disproportionately low economic and social status of women in many parts of world increases their vulnerability to involvement in trafficking schemes).

334. *See supra* notes 8, 10, 25-26, 29 and accompanying text (stating that trafficking victims are subjected to various methods of sexual exploitation for profit of others).

335. *See supra* note 26 and accompanying text (indicating that traffickers frequently buy and sell women and force them into debt bondage as means of increasing their earnings).

336. *See supra* notes 192-93 and accompanying text (theorizing that injury to woman's body equates to injury to her property, and consequently affords victims standing to invoke civil RICO).

International sex trafficking flourishes because traffickers prey upon vulnerable women who seek to change their unequal status in countries all over the world, especially in the primary source countries for traffickers.<sup>337</sup> To effectively address this transnational phenomenon, policies to prevent and punish global sex trafficking must be instigated on both national and international levels.<sup>338</sup> Due to the widespread nature of the problem, trafficking of women for forced prostitution will be eradicated only through the consistent enforcement of legal and non-legal measures to combat the problem in all nations.<sup>339</sup> Non-legal strategies for educating women around the world and providing support to victims must be enacted in conjunction with forceful legal procedures sanctioning trafficking and associated activities.<sup>340</sup>

A broad range of treaties address the problem of trafficking of women for the sex trade.<sup>341</sup> There is, however, a tremendous problem with the implementation of existing laws.<sup>342</sup> The lack of force behind international anti-trafficking provisions results from the inadequacy of domestic or regional laws and the pervasive lack of enforcement of the existing laws.<sup>343</sup> Anti-trafficking laws cannot succeed until the extensive corruption associated with the sex trafficking industry in many source, transit, and destination countries ceases.<sup>344</sup>

Countries of origin, transit, and destination must collabo-

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337. *See supra* notes 22-23 and accompanying text (explaining that international sex trafficking schemes succeed through exploitation of discriminatory practices against women across globe, including conditions of severe poverty for women in developing countries).

338. *See supra* notes 7-9, 13 and accompanying text (asserting that sex trafficking is international problem).

339. *See supra* notes 34-37 and accompanying text (noting legal and non-legal efforts of various nations to combat international trafficking of women for forced prostitution).

340. *See supra* notes 229-32 and accompanying text (explaining that existing legal measures aimed at eradicating trafficking and associated activities lack force).

341. *See supra* notes 34-36, 47 and accompanying text (discussing numerous international legal instruments that proscribe trafficking).

342. *See supra* notes 233-41 and accompanying text (alleging that existing legal prohibitions against trafficking are inadequate to successfully eliminate problem).

343. *See supra* notes 229-34, 300 and accompanying text (commenting that laws proscribing trafficking are undermined by substantial enforcement problems).

344. *See supra* notes 16, 301 and accompanying text (explaining that corruption in many nations contributes to traffickers' success).

rate to successfully curtail trafficking.<sup>345</sup> It is also imperative to the successful abolition of international sex trafficking that all nations that did not ratify the international human rights treaties concerning trafficking do so, and as signatories, they must stand firmly behind the obligations imposed by the treaties.<sup>346</sup> For example, the United States must ratify the international trafficking treaties and thereby encourage other nations to follow suit.<sup>347</sup> 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 purposes of sexual exploitation.<sup>348</sup>

Increased acknowledgement of sex trafficking as an unacceptable violation of human rights may lead to significant improvement in the implementation and enforcement of existing treaties.<sup>349</sup> For international agreements to be effective in eradicating trafficking for the sex trade, they must incorporate all nations, and be consistently imposed with force. All anti-trafficking treaties should therefore be expanded to include reporting and individual complaint mechanisms.<sup>350</sup>

Central to the successful elimination of trafficking of women for purposes of sexual exploitation is the effort of all nations to individually and collectively increase enforcement efforts regarding domestic, as well as international, anti-trafficking provisions.<sup>351</sup> In countries such as the United States, where various law enforcement agencies may possess jurisdiction over dif-

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345. *See supra* notes 14, 18-22, 146 and accompanying text (describing trends in trafficking patterns regarding source and destination countries and need for collaborative efforts to effectively combat trafficking of women for forced prostitution).

346. *See supra* notes 237-39 and accompanying text (discussing that trafficking treaty provisions are not binding for non-signatory nations).

347. *See supra* note 239 and accompanying text (recognizing that United States is not party to international human rights treaties addressing trafficking).

348. *See supra* notes 240-41 and accompanying text (noting that many nations involved in anti-trafficking treaties lack necessary political will to abolish international sex trafficking).

349. *See supra* notes 11-12 and accompanying text (indicating that trafficking of women for sex trade constitutes human rights violation).

350. *See supra* notes 242-49 and accompanying text (concluding that existing treaties contain inadequate reporting mechanisms and limit victims' ability to seek redress for treaty violations).

351. *See supra* notes 136-37, 139, 140, 146-47 and accompanying text (discussing need for cooperation among all nations to successfully eliminate trafficking).

ferent elements of trafficking crimes, the laws must be enhanced to authorize consistent prosecution of traffickers, as well as severe punishments.<sup>352</sup> Uniform government action sanctioning trafficking and all related human rights abuses is especially important in situations involving laws without private causes of action, as traffickers cannot be prosecuted under such laws unless the government initiates legal proceedings.<sup>353</sup>

The absence of a comprehensive anti-trafficking law often leads to light or inconsistent sentences for traffickers.<sup>354</sup> Effectively deterring and punishing traffickers requires strengthening of the laws and penalties against perpetrators and creating new legislation specifically designed to prosecute those who traffic women for forced prostitution.<sup>355</sup> Anti-trafficking laws must encompass substantially more severe penalties that reflect the intolerable nature of the abuses inflicted upon victims.<sup>356</sup> Only with stronger sentences will traffickers fear the repercussions of their illegal business.<sup>357</sup> Accordingly, sentencing enhancements should be available in trafficking cases involving a multitude of victims, repeated violence or abuse, or death to victims.<sup>358</sup>

For these legal and non-legal anti-trafficking measures to be effective, close cooperation between all countries is essential.<sup>359</sup> Prosecution of elusive trafficking networks requires coordination between the various law enforcement organizations within individual nations as well as close cooperation among the law enforcement entities in every nation.<sup>360</sup> All States should establish

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352. *See supra* notes 297-98, 307 and accompanying text (explaining difficulties in applying existing laws to trafficking context in United States where various branches of law enforcement handle trafficking cases differently and penalties are insignificant).

353. *See supra* notes 188-89, 244-46 and accompanying text (contending that absence of individual right of petition necessary for protection of victims is major problem in existing laws regarding trafficking).

354. *See supra* notes 307, 311, 316-17 and accompanying text (describing relatively minor penalties for trafficking cases in United States).

355. *See supra* note 307 and accompanying text (noting that current legislation lacks substantial penalties for trafficking violations).

356. *See supra* notes 298, 317 and accompanying text (stating that sentences in trafficking cases are often disproportionate to injury inflicted upon victims).

357. *See supra* notes 7, 29-30 and accompanying text (explaining that traffickers are able to earn enormous profits with minimal risk of detection or punishment).

358. *See supra* notes 8, 10 and accompanying text (discussing severity of violations perpetrated by traffickers).

359. *See supra* notes 136-37 and accompanying text (emphasizing need for greater cooperation between all nations to successfully eradicate international sex trafficking).

360. *See supra* notes 315-16 and accompanying text (describing how involvement of

a central authority to coordinate its response to the problem of trafficking of women.<sup>361</sup> These task forces would facilitate the investigation and prosecution of the traffickers and would be essential in ensuring that sufficient attention is given to trafficking cases and that they receive necessary funding and adequate staffing.<sup>362</sup> The anti-trafficking task forces should include representatives from law enforcement, immigration, and social services organizations.<sup>363</sup> A centralized anti-trafficking unit would assist in ensuring that trafficking cases are handled uniformly, rather than being treated differently by the different law enforcement agencies assigned to cases in different regions of the same nation.<sup>364</sup> As part of this cooperative effort, anti-trafficking task forces should work closely with other agencies combating organized criminal activities, as traffickers are often associated with large criminal networks.<sup>365</sup>

Moreover, economic alternatives for women in developing countries and effective prevention programs, including public awareness campaigns in the source countries, will decrease impoverished women's vulnerability to the false promises of traffickers.<sup>366</sup> Trafficking victims need shelter and protection once they are discovered. Accordingly, it is essential that all nations recognize and accept the innocence of women forced into prostitution and desist all practices criminalizing women who are the victims of traffickers.<sup>367</sup>

Organized information campaigns, with a gender perspec-

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organized criminal enterprises in trafficking schemes makes detection more difficult for law enforcement).

361. *See supra* notes 297-99 and accompanying text (noting lack of uniform method for prosecuting trafficking cases in United States).

362. *See supra* notes 299-300 and accompanying text (asserting that lack of resources is obstacle in prosecuting trafficking cases in United States).

363. *See supra* notes 327-29 and accompanying text (explaining that trafficking victims are often unwilling to seek assistance from authorities because of criminalization of and social stigma attached to prostitution).

364. *See supra* note 147 and accompanying text (discussing need for consistent classification of trafficking cases within and among nations in order to effectively eliminate problem).

365. *See supra* notes 27-29, 195-96 and accompanying text (discussing that many trafficking enterprises are part of large organized crime groups).

366. *See supra* notes 20-29 and accompanying text (asserting that adverse socioeconomic conditions for women worldwide increases their susceptibility to trafficking).

367. *See supra* notes 326-329 and accompanying text (discussing continued victimization often experienced by trafficking victims once law enforcement becomes involved in case).



tive, are crucial to the successful elimination of international sex trafficking. Women must be constantly informed and updated regarding the hazardous situations that may lead to trafficking and forced prostitution.<sup>368</sup> Women everywhere must be educated regarding the dangers associated with sex trafficking, through education programs and information campaigns focusing on source countries.<sup>369</sup> It is essential that women be armed with knowledge regarding trafficking schemes and the numerous associated abuses, so as to resist the lure of traffickers.<sup>370</sup>

Increased dissemination of information regarding trafficking, through the media, can be used to combat the problem.<sup>371</sup> Public awareness programs should be implemented through all forms of the media, particularly television, radio, newspapers, and the Internet. Traffickers take advantage of technological and communication advancements; effective prevention strategies should do the same.<sup>372</sup> Information campaigns must be promoted in all forms, at all levels.<sup>373</sup> In addition, there must be ongoing efforts to teach equality between men and women and respect for human rights and individual dignity.<sup>374</sup> Prevention of international sex trafficking necessitates legal, social, and cultural reforms that effectively eliminate gender discrimination worldwide.<sup>375</sup>

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368. *See supra* notes 19-23 and accompanying text (noting that women are often vulnerable to dangers involved in trafficking because of pervasive economic and social injustices for women combined with previously unavailable freedom to pursue careers abroad).

369. *See supra* notes 20-21 and accompanying text (explaining that women living in impoverished areas with few employment opportunities are especially vulnerable to traffickers false promises of lucrative employment elsewhere).

370. *See supra* notes 17, 24-26 and accompanying text (maintaining that trafficked women suffer multitude of abuses, including forced prostitution).

371. *See supra* notes 32-33 and accompanying text (discussing expansion of global communications).

372. *See supra* notes 15, 31-33 and accompanying text (stating that traffickers use technological advances to further their illegal business).

373. *See supra* notes 7-9 and accompanying text (explaining that international sex trafficking is growing problem affecting numerous women across globe).

374. *See supra* notes 61, 63, 258 and accompanying text (discussing international efforts to elevate status of women to equality with men).

375. *See supra* notes 86-88, 94-96 and accompanying text (explaining that trafficking of women for forced prostitution is sexual discrimination that prevents equal enjoyment of fundamental rights for women).

*CONCLUSION*

The need to eliminate international trafficking of women for the sex trade is urgent due to its prevalence and rapid expansion. The international community has attempted to eliminate trafficking through treaty law and various domestic regulations, but this legislation is ineffective. The global problem of trafficking of women for the sex trade may be substantially decreased through focused efforts aimed at eradicating trafficking in source, transit, and destination countries; enhancing the laws and sanctions for trafficking and associated offenses; and providing remedies and protection for trafficking victims.