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## Severing the Connection Between Sex Trafficking and U.S. Military Bases Overseas

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# SEVERING THE CONNECTION BETWEEN SEX TRAFFICKING AND U.S. MILITARY BASES OVERSEAS

*Anna Belle Hoots\**

*The sex trafficking of women and girls by U.S. military men remains an issue plaguing U.S. military bases overseas. While the U.S. government has offered several solutions to combat this specific niche of sex trafficking, the legislation and policy put forth are insufficient to eradicate the problem. After assessing the intersection of sex trafficking and overseas U.S. military bases, this Note both discusses why and proposes how, through the use of Status of Forces Agreements (SOFAs), all U.S. military bases abroad can and must commit to the prevention of this egregious human rights violation. Because SOFAs grant wide latitude to set terms and foster cooperation between the United States and a host country, this Note proposes a framework for utilizing SOFAs as a channel for stricter guidelines and greater enforceability of sex trafficking laws, specifically through the inclusion of a new sex trafficking provision.*

INTRODUCTION.....	734
I. A (S)TALE(MATE) AS OLD AS TIME .....	736
A. <i>The History of Overseas U.S. Military Bases and SOFAs</i> .....	737
B. <i>The United States and SOFAs</i> .....	737
C. <i>The Connection Between Sex Trafficking and U.S. Military Bases Overseas: An Overview</i> .....	739
II. LAW AND (DIS)ORDER .....	740
A. <i>The U.S. Government's Attempts to Curb Sex Trafficking Around U.S. Overseas Military Bases</i> .....	740
1. <i>The Trafficking Victims Protection Act of 2000</i> .....	741
2. <i>National Security Presidential Directive 22</i> .....	744
3. <i>The DoD's Strategic Action Plan</i> .....	745

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B. <i>A Case Study of South Korea</i> .....	746
1. The Beginnings of Sex Trafficking Around U.S. Military Bases in South Korea .....	747
2. The Current Trend of Sex Trafficking Around U.S. Military Bases in South Korea .....	748
III. RE(SEOUL)UTION AND BEYOND .....	752
A. <i>The Legal Feasibility of Including Sex Trafficking        Regulations in SOFAs</i> .....	753
B. <i>The Practical Impact of Using SOFAs to Combat Sex        Trafficking Around U.S. Military Bases Abroad</i> .....	757
CONCLUSION .....	759

#### INTRODUCTION

“Of the past 3,400 years, humans have been entirely at peace for 268 of them, or just 8 percent of recorded history.”<sup>1</sup> Perhaps this disconcerting statistic illuminates why the tangible fear of war remains pervasive throughout society.<sup>2</sup> Indeed, such a deep-seated fear of conflict necessitates a means to safeguard peace, and the installation of military bases around the world emerged as a strategy to do so.<sup>3</sup> As the country with the most military bases abroad, the United States has certainly taken advantage of this practice, with over 800 bases in nearly eighty foreign countries and territories,<sup>4</sup> all governed by Status of Forces Agreements (SOFAs).<sup>5</sup>

This peacekeeping policy, however, has come at a price. While foreign countries may find solace in a permanent U.S. presence,<sup>6</sup> the benefits of

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1. Chris Hedges, *What Every Person Should Know About War*, N.Y. TIMES (July 6, 2003), <https://www.nytimes.com/2003/07/06/books/chapters/what-every-person-should-know-about-war.html> [https://perma.cc/Y4JS-H275].

2. See Lily Rothman, *Why Americans Are More Afraid Than They Used To Be*, TIME (Jan. 6, 2016), <http://time.com/4158007/american-fear-history> [https://perma.cc/VGG5-2WMQ].

3. See MICHAEL J. LOSTUMBO ET AL., RAND, OVERSEAS BASING OF U.S. MILITARY FORCES: AN ASSESSMENT OF RELATIVE COSTS AND STRATEGIC BENEFITS xxi–xxii (2013), [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR200/RR201/RAND\\_RR201.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR200/RR201/RAND_RR201.pdf) [https://perma.cc/NGG9-J4KC].

4. See Cameron Orr, *Peace Movement Reviving to Challenge U.S.’ Empire of Foreign Bases*, PEOPLE’S WORLD (Apr. 10, 2018, 9:31 AM), <https://www.peoplesworld.org/article/peace-movement-reviving-to-challenge-u-s-empire-of-foreign-bases/> [https://perma.cc/2FZR-93SX].

5. See INT’L SEC. ADVISORY BD., U.S. DEP’T OF STATE, REPORT ON STATUS OF FORCES AGREEMENTS 1 (2015), <https://2009-2017.state.gov/documents/organization/236456.pdf> [https://perma.cc/JMD6-E54E] (“[SOFAs] define the legal status of U.S. Department of Defense (DoD) personnel, activities, and property in the territory of another nation and set forth rights and responsibilities between the United States and the host government.”).

6. See LOSTUMBO ET AL., *supra* note 3, at xxi–xxiii.

American troops on their soil are being eclipsed by concerns over the human rights abuses linked with these U.S. bases,<sup>7</sup> particularly sex trafficking.<sup>8</sup>

A subset of human trafficking, sex trafficking is often equated with modern-day slavery;<sup>9</sup> it also remains the most common form of human trafficking and disproportionately affects women and girls.<sup>10</sup> Statistics estimate that sex trafficking generates billions of dollars of profit per year,<sup>11</sup> turning it into an extremely lucrative industry. But sex trafficking is a crime, and one that often goes unnoticed.<sup>12</sup> Indeed, victims are frequently reluctant to come forward for a myriad of reasons, including “[l]anguage barriers, fear of their traffickers, and/or fear of law enforcement.”<sup>13</sup>

A grave violation of human rights, sex trafficking is prohibited under both domestic and international law.<sup>14</sup> Recognizing the prevalence of sex trafficking touching overseas U.S. military bases, the U.S. government increased its anti-trafficking efforts by implementing training programs and developing new policies and procedures for the military, civilian employees, and contractors.<sup>15</sup> After all, these bases—established to promote peace—should not be a source for activity that produces human suffering. While U.S. efforts are not futile, the issue is far from resolved.<sup>16</sup> Illicit sexual

7. See Alice Slater, *The US Has Military Bases in 80 Countries. All of Them Must Close.*, NATION (Jan. 24, 2018), <https://www.thenation.com/article/the-us-has-military-bases-in-172-countries-all-of-them-must-close> [<https://perma.cc/A3FR-XPYP>].

8. See Lindsey Posmanick, *The Department of Defense’s Strategic Approach to Human Trafficking*, HUM. TRAFFICKING CTR. (Apr. 19, 2018), <http://humantraffickingcenter.org/the-department-of-defenses-strategic-approach-to-human-trafficking> [<https://perma.cc/U7JZ-BR6M>].

9. See *What Is Modern Slavery?*, U.S. DEP’T ST., <https://www.state.gov/what-is-modern-slavery> [<https://perma.cc/W3TV-HC2N>] (last visited Oct. 6, 2019).

10. As of 2014, 51 percent of victims are women and another 20 percent are girls. See U.N. OFFICE ON DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 2016, at 23, U.N. Sales No. E.16.IV.6 (2016).

11. See *What Is Human Trafficking?*, HUM. TRAFFICKING CTR., <https://humantraffickingcenter.org/problem> [<https://perma.cc/CFE3-FUK8>] (last visited Oct. 6, 2019).

12. See *What Is Human Trafficking?*, U.S. DEP’T HOMELAND SECURITY, <https://www.dhs.gov/blue-campaign/what-human-trafficking> [<https://perma.cc/Z82Y-FV4S>] (last visited Oct. 6, 2019).

13. *Id.*

14. See G.A. Res. 55/25 (Nov. 15, 2000); see also G.A. Res. 55/25, annex II, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Nov. 15, 2000) [hereinafter Palermo Protocol] (providing a universal definition of human trafficking). To meet the universal definition, “three key elements” must be present: “(i) action (recruitment, . . .); (ii) means (threat, . . .); and (iii) purpose (exploitation).” OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, HUMAN RIGHTS AND HUMAN TRAFFICKING: FACT SHEET No. 36, at 3 (2014), [https://www.ohchr.org/Documents/Publications/FS36\\_en.pdf](https://www.ohchr.org/Documents/Publications/FS36_en.pdf) [<https://perma.cc/KF6K-KLWK>]. When the exploitation of an individual is sexual in nature, then, it is considered a situation of sex trafficking. See *id.*

15. See Posmanick, *supra* note 8 (noting that “the U.S. military adopted a zero-tolerance policy” following the issuance of National Security Presidential Directive 22 (NSPD 22), which “instruct[ed] federal agencies and the DoD, to strengthen their anti-trafficking efforts”).

16. See *id.*

activities between male U.S. soldiers and women and girls<sup>17</sup> abroad occur to this day, continuing the troubling pattern that has persisted for decades.<sup>18</sup>

Part I provides relevant background material about the emergence and purposes of U.S. military bases overseas and SOFAs and outlines the types of SOFAs the United States holds with various nations. It also delves into the history of sex trafficking involving U.S. military personnel assigned to foreign bases.

Part II focuses on U.S. attempts to attenuate this connection through specific policies and legislation. In analyzing the strengths and weaknesses of these laws, Part II demonstrates the inability of such policies and legislation to fully address the sex trafficking predicament around U.S. military bases. Additionally, this section presents a case study of the sex trafficking of women and girls around U.S. military bases in South Korea, highlighting the U.S. and South Korean governments' sovereign complicity in establishing and fueling the exploitation of women and girls for the sexual gratification of U.S. soldiers. This case study both illustrates how existing U.S. legislation is ineffective and exemplifies the need for a nuanced and targeted legal solution.

Part III then presents a resolution to the issue of sex trafficking around U.S. military bases abroad. Acknowledging that the United States alone cannot conquer this issue, this Note proposes a cooperative framework utilizing SOFAs—specifically concerning jurisdiction to prosecute crimes—between the United States and host countries to restrict sex trafficking by U.S. military personnel. SOFAs allow for wide latitude to set terms and foster cooperation between nations and should be used as a channel for stricter guidelines and greater enforceability of sex trafficking laws through the incorporation of provisions that implement the proposed cooperative framework.

#### I. A (S)TALE(MATE) AS OLD AS TIME

Part I discusses the history of U.S. military bases overseas and explains the rationale behind the creation of SOFAs. The United States has entered into these agreements—of which there are many types—to primarily address the jurisdictional issues that arise out of the placement of bases on foreign soil. This section thus describes the existing jurisdictional frameworks between the United States and host countries in SOFAs. In addition, Part I provides an overview of the connection between sex trafficking and U.S. military bases overseas.

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17. Sex trafficking affects all genders. This Note, however, focuses solely on the sex trafficking of women and girl victims by male U.S. soldiers.

18. See David Vine, *Women's Labor, Sex Work and U.S. Military Bases Abroad*, SALON (Oct. 8, 2017, 10:00 PM), <https://www.salon.com/2017/10/08/womens-labor-sex-work-and-u-s-military-bases-abroad> [<https://perma.cc/3C5J-U8YA>] (“Throughout history, women’s sex work has been used to help make male troops happy—or at least happy enough to keep working for the military.”).

### A. *The History of Overseas U.S. Military Bases and SOFAs*

The establishment of overseas U.S. military bases dates back to the Spanish-American War when the United States installed its first permanent bases in the Far East and the Caribbean.<sup>19</sup> Thereafter, U.S. military presence abroad remained small.<sup>20</sup> It was only after World Wars I and II that U.S. overseas military bases experienced extreme growth; indeed, they began to resemble their present-day setup and became “a more acceptable reality” for all nations.<sup>21</sup>

As U.S. military bases overseas grew more common, so too did conflicts implicating state sovereignty.<sup>22</sup> The SOFA emerged as the resolution.<sup>23</sup> SOFAs, which are “multilateral or bilateral agreements that generally establish the framework under which a state’s military forces can operate in a foreign country,”<sup>24</sup> include numerous provisions<sup>25</sup> but primarily govern civil and criminal jurisdiction over bases and personnel.<sup>26</sup> Following the implementation of SOFAs, questions regarding state sovereignty have greatly diminished and the establishment of U.S. military bases abroad has become more regulated.<sup>27</sup>

### B. *The United States and SOFAs*

The United States has more overseas military bases than any other nation.<sup>28</sup> Consequently, the United States is a party to more than one hundred SOFAs.<sup>29</sup> Around half of these agreements fall under the North Atlantic Treaty Organization (NATO) SOFA or the Partnership for Peace<sup>30</sup> SOFA,

19. See Addalyrica Q. George, *US Military Overseas Bases—How They Began and the Enduring Need for Forward Based United States’ Troops* . . . , at 7 (Apr. 6, 2017) (unpublished report), <http://www.dtic.mil/dtic/tr/fulltext/u2/1038289.pdf> [<https://perma.cc/SUJ3-8XV4>].

20. See *id.* at 8–9.

21. Bruna dos Santos Lersch & Josiane Simão Sarti, *The Establishment of Foreign Military Bases and the International Distribution of Power*, 2 UFRGS MODEL UNITED NATIONS J. 83, 85 (2014).

22. See *id.* at 88 (“Sovereignty . . . has been described as a right to exercise therein, to the exclusion of any other state, the function of a state . . . .” In other words, the principle of sovereignty of a state clashes with the implementation of military bases belonging to other countr[ies] inside another one’s territory.” (quoting Geert van Calster, *International Law and Sovereignty in the Age of Globalization*, in *INTERNATIONAL LAW AND INSTITUTIONS* 105 (Aaron Schwabach & Arthur John Cockfield eds., 2009))); see also Andrew I. Yeo, *Security, Sovereignty, and Justice in U.S. Overseas Military Presence*, INT’L J. PEACE STUD., Winter 2014, at 43, 43–44 (“From Spain and Portugal to South Korea and the Philippines, dozens of host governments that signed basing or status of forces agreements (SOFAs) with the U.S. during the early Cold War years, negotiated for greater sovereignty rights over time.”).

23. See Lersch & Sarti, *supra* note 21, at 88.

24. *Id.* at 89.

25. See *id.* (“[O]ther provisions dealing with subjects such as taxes and fees, test-ranges for weaponry and number of troops are also included in the SOFA’s scope.”).

26. See *id.*

27. See *id.* at 88–89.

28. See Orr, *supra* note 4.

29. See INT’L SEC. ADVISORY BD., *supra* note 5, at 1.

30. See *id.*; see also R. CHUCK MASON, CONG. RESEARCH SERV., RL34531, *STATUS OF FORCES AGREEMENT (SOFA): WHAT IS IT, AND HOW HAS IT BEEN UTILIZED?* 2 (2012) (“The

whereas the rest are either comprehensive or less comprehensive agreements formed through negotiations with long-standing U.S. allies or other nations.<sup>31</sup> Indeed, existing SOFAs differ immensely and are shaped according to negotiations because there is no formal document that promulgates international guidelines for these agreements.<sup>32</sup> Notwithstanding SOFA diversity, civil and criminal jurisdiction remain the most foundational aspects of these agreements.<sup>33</sup> While each SOFA's jurisdictional framework often encompasses both civil and criminal matters,<sup>34</sup> this Note focuses on the more contentious issue of criminal jurisdiction, specifically as it relates to sex trafficking.

Although the majority of U.S. SOFAs provide for "shared jurisdiction between the United States and the [host] country," there exist agreements pursuant to which the United States retains exclusive jurisdiction.<sup>35</sup> In exclusive jurisdiction agreements, the United States has the power to exercise "all criminal and disciplinary jurisdiction" over U.S. military personnel who violate the laws of either the United States or the host country.<sup>36</sup> Shared jurisdiction, on the other hand, grants the United States and the host country exclusive jurisdiction over certain offenses, typically according to which country punishes the offense.<sup>37</sup> Under these circumstances, "the country whose law has been offended has exclusive jurisdiction over the offender."<sup>38</sup> If U.S. personnel break the laws of both the United States and the host country, "additional qualifications are used to" decide which country retains the right to exercise jurisdiction.<sup>39</sup>

Most U.S. SOFAs require the United States to relinquish "primary jurisdiction"<sup>40</sup> in criminal cases to the host country with two exceptions: (1) "[w]hen the offense is committed by Americans against Americans ('inter se' cases)" and (2) "when the offense is committed by Americans in carrying out official duty."<sup>41</sup> These exceptions give the United States primary

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NATO SOFA is a multilateral agreement that has applicability among all the member countries of NATO. . . . Additionally, another 24 countries are subject to the NATO SOFA through their participation in the NATO Partnership for Peace (PfP) program. The program consists of bilateral cooperation between individual countries and NATO to increase stability, diminish threats to peace and build strengthened security relationships." (footnote omitted).

31. See INT'L SEC. ADVISORY BD., *supra* note 5, at 1–3 (detailing the variation among SOFAs between the United States and other countries).

32. See Lersch & Sarti, *supra* note 21, at 89.

33. See MASON, *supra* note 30, at 3.

34. See *id.*

35. See *id.*

36. See *id.*

37. See *id.* at 5.

38. *Id.*

39. *Id.*

40. Primary jurisdiction gives the host country power to exercise jurisdiction for all cases in which U.S. military personnel violate its laws. See *Status-of-Forces Agreement [SOFA]*, GLOBALSECURITY.ORG, <https://www.globalsecurity.org/military/facility/sofa.htm> [https://perma.cc/2M56-9DW6] (last visited Oct. 6, 2019).

41. *Id.*; see, e.g., Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces art. 7.3, June 19, 1951, 4.2 U.S.T. 1792, 199 U.N.T.S. 67 [hereinafter NATO SOFA].

jurisdiction over its accused military members.<sup>42</sup> In addition to the stated exceptions, the shared jurisdiction regime requires the host country to consider any U.S. requests for the host country to waive its primary jurisdiction.<sup>43</sup> In general, the United States has the right to exert jurisdiction over criminal activity of U.S. personnel both on and off base, which can completely immunize a military member from the host country's laws.<sup>44</sup> Through SOFA provisions governing jurisdiction, the U.S. Department of Defense (DoD) is able "to protect, to the maximum extent possible, the rights of United States personnel who may be subject to criminal trial by foreign courts and imprisonment in foreign prisons."<sup>45</sup>

*C. The Connection Between Sex Trafficking and U.S. Military Bases Overseas: An Overview*

The link between sex trafficking and U.S. military bases overseas is not a new phenomenon.<sup>46</sup> To this day, U.S. military personnel frequent bars off base and out of uniform where women and girls are trafficked into forced prostitution.<sup>47</sup> These individuals have fallen victim to sex trafficking through a variety of means, from being manipulated by a loved one to being baited with false pretenses such as a job.<sup>48</sup> Victims are most frequently found in fake massage businesses, residential brothels, bars, and strip clubs.<sup>49</sup> Despite both this reality and the high number of estimated victims and cases worldwide, prosecution rates in sex trafficking cases remain low.<sup>50</sup> This shocking disparity may stem partly from the victims' shame and fear of coming forward or, more generally, from a lack of good enforcement mechanisms.

Efforts to crack down on human trafficking began when President Bill Clinton signed the Trafficking Victims Protection Act of 2000<sup>51</sup> (TVPA), "the first comprehensive federal law" designed to address trafficking in

42. See *Status-of-Forces Agreement [SOFA]*, *supra* note 40.

43. See, e.g., NATO SOFA, *supra* note 41, 4.2 U.S.T. at 1800, 199 U.N.T.S. at 76–78.

44. See MASON, *supra* note 30, at 3–5.

45. U.S. DEP'T OF DEF., DIRECTIVE 5525.1, STATUS OF FORCES POLICY AND INFORMATION 2 (1979), <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/552501p.pdf> [<https://perma.cc/9UA8-RGH2>].

46. See Vine, *supra* note 18; see also Dan Lamothe, *The U.S. Military's Long, Uncomfortable History with Prostitution Gets New Attention*, WASH. POST (Oct. 31, 2014), <https://www.washingtonpost.com/news/checkpoint/wp/2014/10/31/the-u-s-militarys-long-uncomfortable-history-with-prostitution-gets-new-attention> [<https://perma.cc/D49G-X4F6>].

47. See Posmanick, *supra* note 8.

48. These jobs are often disguised as modeling or dancing careers. See, e.g., *Sex Trafficking*, POLARIS, <https://polarisproject.org/human-trafficking/sex-trafficking> [<https://perma.cc/RH2R-Q7WJ>] (last visited Oct. 6, 2019).

49. See *id.*; *Hostess/Strip Club-Based*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/sex-trafficking-venuesindustries/hostessstrip-club-based> [<https://perma.cc/69KK-WM7U>] (last visited Oct. 6, 2019).

50. See *Human Trafficking by the Numbers*, HUM. RTS. FIRST (Jan. 7, 2017), <https://www.humanrightsfirst.org/resource/human-trafficking-numbers> [<https://perma.cc/CXG6-GQYZ>].

51. See Pub. L. No. 106-386, div. A, 114 Stat. 1464 (codified as amended in scattered sections of the U.S.C.).



persons.<sup>52</sup> While additional strategies and legislation designed to correct this problem have since been formed and passed,<sup>53</sup> there is a gap between these policies as written and as practiced. Considering not only the continued prevalence of U.S. military bases worldwide but also their entrenchment in society,<sup>54</sup> the deplorable connection between U.S. military bases overseas and sex trafficking has faced considerably less scrutiny than it deserves.

## II. LAW AND (DIS)ORDER

The U.S. government has attempted to curb sex trafficking around U.S. military bases abroad through policies and legislation aimed at both the general population at large and military personnel specifically. Part II.A analyzes the strengths and weaknesses of these laws and explains why—despite improvement—they fall short of adequately addressing the sex trafficking crisis around U.S. military bases. Part II.B then presents a case study of the sex trafficking of women and girls around U.S. military bases in South Korea. By visiting bars and clubs where women and girls are trafficked into forced prostitution, U.S. personnel stationed in South Korea knowingly perpetuate the vicious sex trade cycle. In recent years, both the U.S. and South Korean governments have attempted to remedy the issue to no avail. U.S. military personnel in South Korea will continue to participate in the sex trade until a viable resolution is created and enforced.

### A. *The U.S. Government's Attempts to Curb Sex Trafficking Around U.S. Overseas Military Bases*

Tasked with the responsibility of keeping the United States safe and secure, the U.S. government—specifically the DoD—oversees a vast military.<sup>55</sup> As commander-in-chief of the armed forces, the president is the ultimate authority for military operations,<sup>56</sup> but the DoD is authorized to ensure that military personnel abide by the law and ethics of the Uniform Code of Military Justice (UCMJ)—the statutory framework of the military justice system.<sup>57</sup> It is important to distinguish, however, that while the UCMJ outlines the substantive law governing the conduct of all military

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52. *Federal Law*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/what-human-trafficking/federal-law> [https://perma.cc/E237-ZKZL] (last visited Oct. 6, 2019).

53. See discussion *infra* Part II.A.

54. See, e.g., Joseph Hincks, *Inside Camp Humphreys, South Korea: America's Largest Overseas Military Base*, TIME (July 12, 2018), <http://time.com/5324575/us-camp-humphreys-south-korea-largest-military-base/> [https://perma.cc/YJD2-6BAN].

55. See generally *Department of Defense*, PERFORMANCE.GOV, <https://www.performance.gov/defense/defense.html> [https://perma.cc/FP6J-W7NS] (last updated Sept. 19, 2019).

56. See U.S. CONST. art. II, § 2, cl. 1.

57. See Uniform Code of Military Justice, 10 U.S.C. §§ 801–946 (2012); *The Uniform Code of Military Justice (UCMJ)*, MILITARY, <https://www.military.com/join-armed-forces/the-uniform-code-of-military-justice-ucmj.html> [https://perma.cc/8CTU-NWK4] (last visited Oct. 6, 2019) (“The UCMJ defines the military justice system and lists criminal offenses under military law.”).

personnel, a SOFA outlines civil and criminal personal jurisdiction over personnel stationed overseas.<sup>58</sup>

In recent years, the DoD has denounced sex trafficking in the harshest terms.<sup>59</sup> Together with presidential leadership and various federal agencies, the DoD has enacted a “multi-pronged anti-trafficking approach” to prohibit military personnel from eliciting sexual services.<sup>60</sup> Their combined efforts certainly paid off in late 2005, when patronizing prostitution and pandering became a “specific, chargeable offense” under Article 134 of the UCMJ.<sup>61</sup>

Notwithstanding this provision, the United States still faces challenges in preventing and prosecuting sex trafficking crimes around U.S. military bases under the current legislative framework. The merits and limitations of legislation designed to address this issue are discussed in turn.

### 1. The Trafficking Victims Protection Act of 2000

On October 28, 2000, President Bill Clinton signed the TVPA into law,<sup>62</sup> symbolizing the U.S. effort to spearhead the eradication of trafficking both domestically and worldwide.<sup>63</sup> Designed to “ensure just and effective punishment of traffickers, and to protect their victims,”<sup>64</sup> the TVPA prohibits various forms of human trafficking and creates resources for its elimination through three methods: protection, prosecution, and prevention.<sup>65</sup> The U.S. Department of State recently introduced a “4th P” to the “3P” paradigm—partnership—emphasizing the importance of cooperation within the government and the international community.<sup>66</sup>

At the time of the TVPA’s passage, members of the international community, including the United States, had just finished drafting the Palermo Protocol, which clearly defined sex trafficking<sup>67</sup> and provided for

58. See discussion *supra* Part I.B.

59. See, e.g., Terri Moon Cronk, *Human Trafficking Has No Place in DoD*, *Pentagon Official Says*, U.S. DEP’T DEF. (Jan. 11, 2018), <https://dod.defense.gov/News/Article/Article/1414057/human-trafficking-has-no-place-in-dod-pentagon-official-says> [https://perma.cc/DJR5-X92W].

60. See *Trafficking in Persons and International Military Organizations*, U.S. DEP’T ST. (Feb. 22, 2007), <https://2001-2009.state.gov/g/tip/rls/fs/07/82340.htm> [https://perma.cc/X73D-RLGW].

61. *Id.*; see also Exec. Order No. 13,387, 70 Fed. Reg. 60,697, 60,701 (Oct. 14, 2005).

62. See *Summary of the Trafficking Victims Protection Act (TVPA) and Reauthorizations FY 2017*, ALLIANCE TO END SLAVERY & TRAFFICKING (Jan. 11, 2017, 8:40 AM), <https://endslaveryandtrafficking.org/summary-trafficking-victims-protection-act-tvpa-reauthorizations-fy-2017-2/> [https://perma.cc/X5VR-FX9F].

63. See 22 U.S.C. § 7101 (2012); see also Brittany Lieu, A Policy Analysis of the Trafficking Victims Protection Act of 2000, at 34 (May 2014) (unpublished M.S.W. dissertation, California State University, Long Beach), <https://pqdopen.proquest.com/pubnum/1527722.html?FMT=AI> [https://perma.cc/F78K-XCTX].

64. 22 U.S.C. § 7101(a).

65. See *3Ps: Prosecution, Protection, and Prevention*, U.S. DEP’T ST., <https://www.state.gov/3ps-prosecution-protection-and-prevention> [https://perma.cc/G8TF-Q5PK] (last visited Oct. 6, 2019).

66. See *id.*

67. See Palermo Protocol, *supra* note 14, at 42–43 (“(a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of

its criminalization.<sup>68</sup> The TVPA both implemented the protocol and filled gaps in U.S. law.<sup>69</sup> The scope of the Act, nevertheless, reaches far beyond the United States.<sup>70</sup> In outlining minimum standards that each government in countries of “origin, transit, or destination” should implement,<sup>71</sup> the U.S. government sought to eliminate sex trafficking on a global scale.<sup>72</sup>

Efforts to combat sex trafficking have undoubtedly accelerated since the TVPA’s enactment.<sup>73</sup> Most notably, there has been a measurable increase in prosecutions—a critical anti-trafficking effort.<sup>74</sup> Prosecutions not only lead to the punishment of the offense of exploiting other human beings but also improve deterrence.<sup>75</sup> In the years preceding the TVPA, sentences for sex trafficking were weak penalties that did not reflect the gravity of the crime.<sup>76</sup> Upon the Act’s passage, anyone caught trafficking an individual who was induced by force, fraud, or coercion for purposes of commercial sex could be fined and imprisoned for life, depending on the severity of the offense.<sup>77</sup> From 2011 to 2015, the number of sex trafficking suspects referred to U.S. attorneys for prosecution increased 82 percent.<sup>78</sup> In 2015 alone, U.S. attorneys prosecuted 1049 suspects for human trafficking offenses—a 44 percent increase from the 729 suspects prosecuted in 2011—and almost all

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the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used . . .”).

68. See Michelle Madden Dempsey et al., *Defining Sex Trafficking in International and Domestic Law: Mind the Gaps*, 26 EMORY INT’L L. REV. 137, 138 (2012).

69. See *Summary of the Trafficking Victims Protection Act (TVPA) and Reauthorizations FY 2017*, *supra* note 62.

70. See 22 U.S.C. §§ 7106–7107 (2012) (explaining that governments of other countries face consequences for failing to comply with the TVPA).

71. *Id.* § 7106(a). These minimum standards include prohibiting severe forms of trafficking, prescribing punishments equivalent to the crime, and making efforts to eliminate trafficking. See *id.*

72. See *id.* § 7107. To ensure compliance, the United States forfeits any form of financial assistance—excepting humanitarian and trade-related aid—to governments that fail to meet the minimum standards. See *id.* Despite U.S. intentions, it remains unclear whether the minimum standard provisions truly have any bite. See generally Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT’L L. 437 (2006).

73. See generally U.S. DEP’T OF JUSTICE, REPORT ON THE TENTH ANNIVERSARY OF THE TRAFFICKING VICTIMS PROTECTION ACT (2010), <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/tvpaanniversaryreport.pdf> [<https://perma.cc/E7C2-CYWT>].

74. See *id.* at 5–8; Lieu, *supra* note 63, at 43–44.

75. See U.S. DEP’T OF JUSTICE, *supra* note 73, at 5.

76. See Lieu, *supra* note 63, at 32–34.

77. See 22 U.S.C. §§ 7102(9)(a), 7109.

78. Press Release, U.S. Dep’t of Justice, Federal Human Trafficking Prosecutions Increased More Than 40 Percent from 2011 to 2015 (June 25, 2018), <https://www.bjs.gov/content/pub/pdf/fphtc15pr.pdf> [<https://perma.cc/6XWS-UBJ3>] (“This report presents statistics on . . . human trafficking offenses covered by the Trafficking Victims Protection Act of 2000 and Justice for Victims of Trafficking Act of 2015.”).

of the convicted defendants received a prison sentence, with a median term of fifteen years.<sup>79</sup>

The TVPA's anti-trafficking efforts also gleaned success through Congress's creation of T nonimmigrant status (T visa).<sup>80</sup> From a protection standpoint, the T visa has been crucial in providing refuge for victims of sex trafficking around the world.<sup>81</sup> By allowing sex trafficking victims and their immediate family members to remain and work temporarily in the United States—typically if they agree to help law enforcement prosecute the perpetrators—these survivors gain legal nonimmigrant status and are eligible to receive federal benefits.<sup>82</sup> This accessible grant of protection can offer a much-needed fresh start for victims. Indeed, the number of T visa applicants has steadily increased over the years since 2008.<sup>83</sup> Between 2008 and 2015, 6087 victims applied for T visas; of those, 4305 applicants were approved.<sup>84</sup>

Despite significant progress in combatting sex trafficking, weaknesses in the TVPA have yet to be addressed. Since 2000, Congress reauthorized the TVPA in 2003, 2005, 2008, 2013, and 2017 with modifications.<sup>85</sup> These changes were intended to reflect what the original TVPA did not account for.<sup>86</sup> Yet what the TVPA lacked, and still lacks, is the ability to counteract the sex trafficking of women and girls by U.S. military personnel off base, where the criminal activity actually takes place. Whereas trafficking crimes that occur on base are prosecutable through the TVPA and UCMJ, off-base offenses are not.<sup>87</sup> If the TVPA's mission truly were to eliminate sex trafficking worldwide, its failure to even acknowledge this problem would

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79. *Id.*

80. See 22 U.S.C. § 7105(b); Lieu, *supra* note 63, at 43.

81. See Lieu, *supra* note 63, at 44.

82. See 22 U.S.C. § 7105(b); *Victims of Human Trafficking: T Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVICES, <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status> [https://perma.cc/26L7-HQNT] (last visited Oct. 6, 2019).

83. See *Number of I-914 Applications for T Nonimmigrant Status (Victims of Severe Forms of Trafficking and Family Members) by Fiscal Year, Quarter, and Case Status 2008–2016*, U.S. CITIZENSHIP & IMMIGR. SERVICES, [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/1914t\\_visastatistics\\_fy2016\\_qtr2.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/1914t_visastatistics_fy2016_qtr2.pdf) [https://perma.cc/L5HG-WXNU] (last visited Oct. 6, 2019) [hereinafter *Applications for T Nonimmigrant Status*]. In 2018, President Donald Trump announced that persons who are denied a T visa will immediately be placed in removal (deportation) proceedings. See Daniel Shoer Roth, *The U.S. Now Has Even More Leeway to Start Deportation Proceedings for Immigrants*, MIAMI HERALD (Nov. 15, 2018, 2:08 PM), <https://www.miamiherald.com/news/local/immigration/article221655960.html> [https://perma.cc/2MPG-RCD9]. The new measure took effect on November 19, 2018. See *id.* Statistics have yet to be released reflecting any decline in number of T visa applicants.

84. See *Applications for T Nonimmigrant Status*, *supra* note 83.

85. See *Summary of the Trafficking Victims Protection Act (TVPA) and Reauthorizations FY 2017*, *supra* note 62 (discussing the evolution of the TVPA since its enactment in 2002).

86. See *id.*

87. Under existing SOFAs, the United States does not have jurisdiction to prosecute sex trafficking offenses that occur on foreign soil off base unless the host country waives its primary jurisdiction. See *supra* notes 37–43 and accompanying text; see also, e.g., NATO SOFA, *supra* note 41, 4.2 U.S.T. at 1800, 199 U.N.T.S. at 76–78.

be a huge oversight. Perhaps the issue requires a customized solution beyond the relative generality of the TVPA.<sup>88</sup>

## 2. National Security Presidential Directive 22

On December 16, 2002, President George W. Bush—in his role as commander in chief—issued National Security Presidential Directive 22 (NSPD 22), which orders federal agencies to improve and build upon their current anti-trafficking efforts.<sup>89</sup> Declaring the United States’ commitment “to the eradication of human trafficking both domestically and abroad,” the U.S. government took another step towards severing the link between sex trafficking and U.S. overseas military bases.<sup>90</sup> NSPD 22 established a “zero-tolerance” policy towards trafficking in persons among members of the U.S. armed forces,<sup>91</sup> aptly adopting a narrowly tailored approach to eliminate a specific niche of sex trafficking.

In NSPD 22, the president directs all relevant U.S. government agencies, including the DoD, to develop a strategic plan to combat trafficking in persons abroad.<sup>92</sup> This includes efforts to raise awareness about and eliminate sex trafficking through mandated training.<sup>93</sup> NSPD 22 also enforces the law against those who knowingly participate in and patronize trafficking networks.<sup>94</sup> As explained in DoD Instruction (DoDI) 2200.01, which implements NSPD 22, trafficking in persons not only violates U.S. law and human rights but also thwarts the DoD’s core values.<sup>95</sup>

Passing NSPD 22 has resulted in several noteworthy victories for the DoD.<sup>96</sup> In 2015, 90 percent of military members and civilian employees participated in human trafficking awareness training, an increase of 18

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88. See U.S. DEP’T OF DEF., STRATEGIC PLAN FOR COMBATING TRAFFICKING IN PERSONS (CTIP) 2014–2018, at 5–6, [https://ctip.defense.gov/Portals/12/Documents/Strategic\\_Plan\\_FINAL.pdf](https://ctip.defense.gov/Portals/12/Documents/Strategic_Plan_FINAL.pdf) [<https://perma.cc/R4G5-JNUB>] (last visited Oct. 6, 2019) (“The TVPA and its several reauthorizations . . . stress the role governments can play in eradicating trafficking in persons *in all aspects*, ranging from incorporating mandatory ‘zero-tolerance’ anti-trafficking clauses into all government contracts, to empowering vulnerable populations by informing them of their rights under both national and local laws.”) (emphasis added)).

89. See National Security Presidential Directive/NSPD-22, Memorandum from the President on Combating Trafficking in Persons 1 (Dec. 16, 2002), <https://ctip.defense.gov/Portals/12/Documents/NSPD-22.pdf> [<https://perma.cc/5EBH-6SQM>] [hereinafter NSPD].

90. Press Release, Office of the Press Sec’y, White House, Trafficking in Persons National Security Presidential Directive (Feb. 25, 2003), <https://georgewbush-whitehouse.archives.gov/news/releases/2003/02/20030225.html> [<https://perma.cc/F8J3-SYHR>].

91. See NSPD, *supra* note 89, at 4.

92. See *id.* at 3.

93. See *id.* at 4.

94. See *id.* at 2.

95. DoDI 2200.01—which has been reissued three times since 2007—states that DoD opposes prostitution, forced labor, and any related activities contributing to the phenomenon of trafficking in persons. U.S. DEP’T OF DEF., INSTRUCTION NUMBER 2200.01: COMBATING TRAFFICKING IN PERSONS (CTIP) (2017), <https://ctip.defense.gov/Portals/12/Documents/DoDI%20220001p.pdf?ver=2018-02-23-112018-570> [<https://perma.cc/KC9A-XNPZ>].

96. See generally *Combating Trafficking in Persons*, U.S. DEP’T DEF., <https://ctip.defense.gov> [<https://perma.cc/NS8R-P94P>] (last visited Oct. 6, 2019).

percent from 2008.<sup>97</sup> DoD personnel are now better equipped to recognize and report signs of trafficking both on and off base, which in turn has increased identification of trafficking victims.<sup>98</sup> Further, establishments suspected of involvement with prostitution and human trafficking have been placed off-limits to U.S. personnel.<sup>99</sup> Working with local governments and law enforcement, the DoD has attempted to curtail U.S. troops' patronage of these establishments and, as a result, tighten its zero-tolerance policy.<sup>100</sup>

Much like the TVPA, however, NSPD 22 needs considerable refinement. Notwithstanding heightened awareness and stricter policy, investigations into sex trafficking crimes around U.S. military bases abroad suggest that something more is required.<sup>101</sup> In fact, the DoD's continued efforts to adopt new and improved approaches to NSPD 22—like the Strategic Action Plan—corroborate this proposition.<sup>102</sup>

### 3. The DoD's Strategic Action Plan

In 2014, the DoD issued its five-year Strategic Action Plan to end human trafficking, supplementing NSPD 22.<sup>103</sup> Created by the Combating Trafficking in Persons (CTIP) Program, the Strategic Action Plan responded to an investigative report by the Office of Inspector General, which found the DoD's compliance with DoDI 2200.01 inadequate.<sup>104</sup> In adopting the report's recommendations, the U.S. military has utilized the Strategic Action Plan to combat sex trafficking over the past several years.<sup>105</sup>

While merely a vision, the Strategic Action Plan has come closer to addressing the problem of sex trafficking around military bases overseas than the TVPA and NSPD 22. Indeed, the plan's first-listed guiding principle is the “[reduction of] risk and incidence of trafficking in persons within DoD's garrison and *deployed military operations*.”<sup>106</sup> Highlighting a neglected problem area, the Strategic Action Plan provides a roadmap for what needs to be done to reduce trafficking in persons in the twenty-first century, including around military bases overseas.<sup>107</sup>

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97. *See id.*

98. *See id.*

99. *See id.*

100. *See* discussion *infra* Part II.B.2.

101. *See, e.g.,* Nat'l Ctr. on Sexual Exploitation, *Inextricably Bound: The Link Between the Military, Strip Clubs, Prostitution, and Human Trafficking*, YOUTUBE (Apr. 12, 2017), <https://www.youtube.com/watch?v=RMdqX7V0sMY> [<https://perma.cc/RXF5-MN5L>].

102. *See* discussion *infra* Part II.A.3.

103. *See generally* U.S. DEP'T OF DEF., *supra* note 88.

104. INSPECTOR GEN., U.S. DEP'T OF DEF., REPORT NO. DODIG-2014-079, EVALUATION OF THE DEPARTMENT OF DEFENSE COMBATING TRAFFICKING IN PERSONS PROGRAM 11 (2014), <https://media.defense.gov/2014/Jun/16/2001713368/-1/-1/1/DODIG-2014-079.pdf> [<https://perma.cc/ZRP6-ELFB>].

105. *See* Posmanick, *supra* note 8.

106. U.S. DEP'T OF DEF., *supra* note 88, at 8 (emphasis added).

107. *See id.* at 3.

The Strategic Action Plan's objectives generally revolve around improved partnership—the “4th P”—and with good reason.<sup>108</sup> As a global issue, sex trafficking cannot be fought solely by one country, especially when it involves the interests of two or more. The United States therefore recognizes the importance of cooperation with other countries and government agencies as a foundation for preventing trafficking.<sup>109</sup> The Strategic Action Plan defines the DoD's duty to understand the host country's local laws because “improved mutual understanding will enable joint programs and law enforcement efforts.”<sup>110</sup> Although a step in the right direction, the Strategic Action Plan lacks implementation procedures and is thus ineffective.<sup>111</sup> Indeed, the DoD has yet to publish an implementation plan that sets its vision in motion, and a plan without implementation is merely aspirational.

Overall, the United States has taken great strides in combating sex trafficking since enacting the TVPA. Upon the recognition of the U.S. military as a contributing source, the United States began to pursue legislation specifically targeting the sex trafficking of women and girls by male U.S. military personnel stationed overseas.<sup>112</sup> Despite increased awareness of and additional policies concerning the issue, the U.S. government has yet to create and implement a permanent solution. What has instead resulted from the TVPA, NSPD 22, and Strategic Action Plan is a collective blueprint for eliminating sex trafficking around U.S. military bases abroad that lacks enforceability.

#### *B. A Case Study of South Korea*

To highlight the inadequacies of existing frameworks, this section explores a country notorious for the commingling of U.S. military personnel and prostitutes: South Korea. Because sex trafficking around U.S. military bases has deep roots in South Korea, this subsection provides a concrete example of the ongoing human rights violations being committed against women and girls who are forced into prostitution. Additionally, this section surveys the efforts of the U.S. and South Korean governments to curtail sex trafficking, as well as more recent developments concerning this issue.

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108. *Id.* at 5.

109. *See id.* at 3.

110. *Id.* at 11.

111. *See id.* at 3.

112. *See supra* Parts II.A.1–3.

## 1. The Beginnings of Sex Trafficking Around U.S. Military Bases in South Korea

Women like me were the biggest sacrifice for my country's alliance with the Americans. Looking back, I think my body was not mine, but the government's and the U.S. military's.

—Anonymous sex worker<sup>113</sup>

Beginning in 1945,<sup>114</sup> American soldiers stationed in Korea turned to prostitution for comfort from both loneliness and the terrors of war.<sup>115</sup> Both the U.S. and South Korean governments shamelessly condoned this behavior.<sup>116</sup> By setting up “comfort stations” in camptowns—prostitution camps that catered to U.S. forces—compelling “entertaining girls” to be checked and treated for sexually transmitted diseases, and providing sex workers the opportunity to learn English and etiquette, these governments jointly fueled the sex industry.<sup>117</sup>

As South Korea struggled to emerge from war, prostitution became integral to the country's economic revitalization.<sup>118</sup> Following the signing of the 1953 mutual defense treaty, camptowns flourished.<sup>119</sup> “By 1958, there were an estimated 300,000 sex workers in a country with an entire population of just 22 million,” more than half of whom worked in camptowns.<sup>120</sup> These South Korean sex workers relied almost entirely on U.S. military personnel for their livelihoods, often remaining in camptowns for the duration of their lives with no opportunity to escape.<sup>121</sup> Another popular practice among U.S. soldiers during this time was “cohabitating marriage,” which was nothing

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113. WITW Staff, *How U.S. Bases in Korea Viciously Fuel the Sex Industry*, WOMEN WORLD (Nov. 6, 2015), <https://womenintheworld.com/2015/11/06/how-u-s-bases-in-south-korea-viciously-fuel-the-sex-industry> [<https://perma.cc/Z6GR-6DEL>].

114. In 1945, U.S. forces arrived in southern Korea to liberate the country from Japanese control. See *American Troops Arrive in Korea to Partition the Country*, HISTORY, <https://www.history.com/this-day-in-history/american-troops-arrive-in-korea-to-partition-the-country> [<https://perma.cc/RX5R-UJZL>] (last updated July 27, 2019). Although the U.S. occupation was supposed to be temporary—with the hope that Korea would “decide its own political future” following independence—it ultimately became permanent. *Id.* Indeed, Korea's situation worsened rather than improved, and sporadic conflict between the North and South led to the outbreak of the Korean War. See *id.* The Korean War officially divided the country into two regions: Soviet-aligned North Korea and U.S.-aligned South Korea. See *id.* Ever since the split, the United States has maintained a military presence in South Korea, founded on a 1953 mutual defense treaty. See *U.S. Relations with the Republic of Korea*, U.S. DEP'T ST. (July 17, 2018), <https://www.state.gov/r/pa/ei/bgn/2800.htm> [<https://perma.cc/V87L-NRPY>].

115. See WITW Staff, *supra* note 113.

116. See *id.*

117. *Id.*

118. *Id.*

119. See David Vine, *'My Body Was Not Mine, but the US Military's'*, POLITICO (Nov. 3, 2015, 5:30 AM), <https://www.politico.eu/article/my-body-was-not-mine-but-the-u-s-militarys> [<https://perma.cc/KLJ3-CTH7>] (“In the 1950s alone, 18 new camptowns were created.”).

120. *Id.*

121. See *id.*



more than sex slavery.<sup>122</sup> Whereas some sex workers would come and go from the camptown as part of a routine, others were *owned* by G.I.s, living with them permanently.<sup>123</sup> In the latter circumstance, when the G.I. eventually left South Korea, he would simply *sell* the sex worker to a new recruit.<sup>124</sup> But regardless of whether a sex worker was in a cohabitating marriage or “free” to come and go, the woman lacked any control or autonomy.

Conditions worsened when a military junta usurped the South Korean government in a 1961 coup d'état.<sup>125</sup> Shortly thereafter, Korean officials designated “special districts” for businesses catering to U.S. troops.<sup>126</sup> These legally recognized districts were strictly off-limits to Koreans, and American military police dominated the districts, allowing prostitution to run rampant.<sup>127</sup> By 1965, “85 percent of [G.I.s] surveyed reported having ‘been with’ or ‘been out with’ a prostitute.”<sup>128</sup>

Ultimately, a stunt so clear in the public eye could not avoid scrutiny. In recent years, investigations into and exposés on this stark reality have revealed the openly intertwined nature of prostitution and American military bases overseas, inducing both the U.S. and South Korean governments to clamp down on the industry;<sup>129</sup> for example, South Korea outlawed prostitution in 2004.<sup>130</sup> Instead of disappearing, however, prostitution has only become more shrouded in secrecy.<sup>131</sup>

## 2. The Current Trend of Sex Trafficking Around U.S. Military Bases in South Korea

In the mid-1990s, South Korea underwent a period of rapid economic development, allowing many Korean women to both escape and stay out of

122. *Id.* (“‘Cohabiting marriage,’ resembling European-style colonial concubinage, also became popular.”).

123. *See id.*

124. *See id.*

125. *See id.* In 1961, Park Chung-hee, a politician and general, led a successful coup against the South Korean government. *See* Michael Breen, *Gen. Park Chung-hee's May 16 Coup and Rise of Military Regime*, KOREA TIMES (May 16, 2010, 3:55 PM), [http://www.koreatimes.co.kr/www/news/nation/2010/05/117\\_65949.html](http://www.koreatimes.co.kr/www/news/nation/2010/05/117_65949.html) [<https://perma.cc/YW9Z-D8C3>].

126. *See* Na Young Lee, *The Construction of U.S. Camptown Prostitution in South Korea: Transformation and Resistance* 119 (2006) (unpublished Ph.D. dissertation, University of Maryland, College Park), <https://drum.lib.umd.edu/bitstream/handle/1903/4162/umi-umd-3959.pdf;sequence=1> [<https://perma.cc/KYG8-DJ84>].

127. *See* Vine, *supra* note 119.

128. *See id.* (“American military police could arrest sex workers without health inspection cards, and U.S. doctors treated women with sexually transmitted diseases at detention centers given names such as ‘the monkey house.’”).

129. *See id.*; *see also, e.g.*, Barbara Demick, *Off-Base Behavior in Korea*, L.A. TIMES (Sept. 26, 2002), <http://articles.latimes.com/2002/sep/26/world/fg-barwomen26> [<https://perma.cc/AU59-NUEG>]; Jon Rabirot, *Report on Human Trafficking Cites South Korean Juicy Bars*, STARS & STRIPES (June 18, 2010), <https://www.stripes.com/news/pacific/report-on-human-trafficking-cites-south-korean-juicy-bars-1.107610> [<https://perma.cc/5YEQ-JQX9>].

130. *See* Vine, *supra* note 119.

131. *See id.*

prostitution.<sup>132</sup> But where there is demand, there will always be supply. Indeed, “one of the many legacies of conflict has been South Korea becoming a destination for trafficked women, and the sex industry continues to hold a poisonous grip on the nation.”<sup>133</sup> South Korea’s camptowns now consist primarily of women from Russia and the Philippines<sup>134</sup> who enter the country on entertainment visas.<sup>135</sup> Lured to South Korea under false pretenses,<sup>136</sup> these women often emigrate in anticipation of a lucrative job and stability but are instead forced to engage in prostitution at “juicy bars.”<sup>137</sup> Caught between a rock and a hard place, the women must either risk being arrested and deported or endure the abuse since there is a slim chance that an American soldier will marry them out of prostitution.<sup>138</sup>

The U.S. and South Korean governments ultimately faced growing criticism and pressure for change, which led to several positive developments concerning sex trafficking. In 2004, South Korea not only outlawed prostitution<sup>139</sup> but also passed the Act on the Prevention of Commercial Sex Acts and Protection, etc. of Victims, which further regulated the sex industry.<sup>140</sup> Together, the two new laws recognized prostitution as a violation of women’s human rights and demanded its total elimination.<sup>141</sup>

132. See WITW Staff, *supra* note 113.

133. *Id.*

134. Stephen Evans, *Did Korea Encourage Sex Work at US Bases?*, BBC NEWS (Nov. 28, 2014), <https://www.bbc.com/news/magazine-30212673> [<https://perma.cc/3J69-27AH>].

135. See Press Release, Int’l Org. for Migration, South Korea’s Entertainment Visas Pose Risk of Human Trafficking: Policy Forum (Feb. 26, 2016), <https://www.iom.int/news/south-koreas-entertainment-visas-pose-risk-human-trafficking-policy-forum> [<https://perma.cc/9ZJZ-ABBF>].

136. While there are legitimate forms of the entertainment visa, such as the E-6-2 visa, it is often utilized as a vehicle to trick immigrant women into prostitution. See Um Ji-won, *S. Korea Still Failing to Effectively Fight Human Trafficking*, HANKYOREH (Feb. 24, 2016), [http://english.hani.co.kr/arti/english\\_edition/e\\_international/731884.html](http://english.hani.co.kr/arti/english_edition/e_international/731884.html) [<https://perma.cc/A7R2-EHRZ>] (“The South Korean government is under fire for being reticent to find a lasting solution to this problem, even though the abuse is continuing today.”).

137. See *id.*; Vine, *supra* note 119 (“[At juicy bars], men buy small glasses of supposedly alcoholic juice for scantily clad ‘juicy girls,’ most of whom have been trafficked from the Philippines or the former Soviet Union. The rules differ slightly from bar to bar, but basically, if a man buys enough juice, he can arrange to take a woman out. There’s no explicit exchange of money for sex at the bar, but once the two are off the premises, a deal is done.”).

138. See WITW Staff, *supra* note 113 (“Their only escape appears to be securing a commitment from a soldier, but about 90 percent of the women end up abandoned. It is not uncommon for them to be left alone when a G.I.’s tour is done, despite being pregnant, or married.”).

139. See Act on the Punishment of Arrangement of Commercial Sex Acts, etc., Act No. 7196, Mar. 22, 2004, *amended by* Act No. 12,349, Jan. 28, 2014 (S. Kor.), *translated in* Korea Legislation Research Institute online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=33012&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=33012&lang=ENG) [<https://perma.cc/A5UH-XRMU>].

140. See Act on the Prevention of Commercial Sex Acts and Protection, etc. of Victims, Act No. 12,550, Mar. 27, 2014, *amended by* Act. No. 14,442, Dec. 20, 2016 (S. Kor.), *translated in* Korea Legislation Research Institute online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=40974&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=40974&lang=ENG) [<https://perma.cc/6MY-Y-SGCH>].

141. See Ji Hye Kim, Note, *Korea’s New Prostitution Policy: Overcoming Challenges to Effectuate the Legislature’s Intent to Protect Prostitutes from Abuse*, 16 PAC. RIM L. & POL’Y J. 493, 494 (2007).

Following suit, U.S. Forces Korea (USFK)<sup>142</sup> began to seriously implement NSPD 22's zero-tolerance policy, developing a CTIP program that focused on "increasing awareness, identifying victims, reducing demand, and cooperating with local authorities."<sup>143</sup> USFK's comprehensive CTIP program eventually became a prototype for NATO's anti-trafficking training curriculum,<sup>144</sup> a testament to its exemplary nature. Additionally, USFK is cited as a model in the Strategic Action Plan for its great willingness to cooperate with local authorities on matters relating to sex trafficking.<sup>145</sup> To access information concerning trends in the sex trade industry, USFK interacts directly with the South Korean government and the Women and Juveniles Division of the Korean National Police, demonstrating the level of intergovernmental and interagency cooperation needed to effectively address the matter.<sup>146</sup>

In addition to legislative changes, the Seoul Central District Court recently conceded its government's heavy involvement in the sex trafficking of Korean women for U.S. personnel.<sup>147</sup> In 2014, more than 120 prostitutes who were detained and forced to undergo treatment for venereal diseases filed a lawsuit seeking not only compensation but also a formal government apology for what they faced in the 1960s and 1970s.<sup>148</sup> Sharing her experience, one former comfort woman explained, "[i]t's clear that they treated our venereal diseases not for us but for the American soldiers."<sup>149</sup> The court in 2017 ultimately admitted to the government's complicity.<sup>150</sup> Hailed as a landmark ruling, this decision was the first official acknowledgement that the legal rights of the women who supplied sexual services to American military men were violated.<sup>151</sup> Although only fifty-seven of the plaintiffs received compensation and the government refused to issue an apology, the court's ruling was a step in the right direction for justice.<sup>152</sup>

Notwithstanding these victories, sex trafficking around U.S. bases has not ended. South Korea may have outlawed prostitution in 2004 and USFK may

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142. USFK encompasses the entire U.S. armed presence in South Korea. See Ankit Panda, *US Forces Korea Is About to See a Change in Command*, DIPLOMAT (Sept. 17, 2018), <https://thediplomat.com/2018/09/us-forces-korea-is-about-to-see-a-change-in-command> [<https://perma.cc/8PC3-QJGJ>].

143. See *Trafficking in Persons and International Military Organizations*, *supra* note 60.

144. See *id.*

145. See U.S. DEP'T OF DEF., *supra* note 88, at 11.

146. See *id.*

147. See Jeff Kingston, Opinion, 'Comfort Women' in South Korea Who Serviced U.S. Forces Seek Justice, JAPAN TIMES (Mar. 4, 2017), <https://www.japantimes.co.jp/opinion/2017/03/04/commentary/comfort-women-south-korea-serviced-u-s-forces-seek-justice> [<https://perma.cc/792W-AL7K>].

148. See Choe Sang-Hun, *South Korea Illegally Held Prostitutes Who Catered to G.I.s Decades Ago, Court Says*, N.Y. TIMES (Jan. 20, 2017), <https://www.nytimes.com/2017/01/20/world/asia/south-korea-court-comfort-women.html> [<https://perma.cc/W7BJ-4V3A>].

149. *Id.*

150. See *id.*

151. See *id.*

152. The women plan to appeal the ruling for greater justice. See *id.*

have developed a resourceful CTIP program, but these initiatives have only forced the practice to become even more secretive.<sup>153</sup> To restrict its personnel from continuing to seek illicit sexual services, USFK more strictly monitors bars and clubs in the camptowns, keeping a vigilant watch for establishments—specifically juicy bars—involved in trafficking and placing them off-limits.<sup>154</sup> Yet their efforts have an unintended effect.<sup>155</sup> Rather than keeping troops away from these establishments, off-limits lists often give base personnel ideas about where to *find* the prostitutes.<sup>156</sup> And as for South Korea, the main problem remains the enforceability of its laws.<sup>157</sup> The country's legislation has certainly tightened the noose on the sex trade, but the apathetic and passive enforcement of these laws has stunted any progress.<sup>158</sup> Even more concerning, perhaps, is that high-ranking government officials and social leaders flout the very laws they create,<sup>159</sup> setting a poor precedent for South Korea's condemnation of the sex trade.

As USFK's military bases move towards consolidation, the once flourishing Seoul camptowns are losing critical consumers.<sup>160</sup> This, however, does not mark the end of the sex trade in South Korea. Concerns are now being raised about the trafficking of women around Camp Humphreys—a massive new base complex in Pyeongtaek—where most USFK personnel are being relocated.<sup>161</sup> Durebang<sup>162</sup> Director Kim Eun-jin shared her professional perspective on the move, declaring, “I bet there will

153. See Lee Ji-yoon, *Sex Trade Still Problem Despite Tough Law*, KOREA HERALD (Oct. 1, 2010, 8:48 PM), <http://www.koreaherald.com/view.php?ud=20101001000786> [<https://perma.cc/BHN5-GVWZ>].

154. See Memorandum from General Curtis M. Scaparrotti, U.S. Army, United States Forces Korea (USFK) Command Policy Letter #12, Combating Prostitution and Trafficking in Persons (CTIP) (Oct. 14, 2014), [http://www.usfk.mil/Portals/105/Documents/Policyletters/12\\_Combating\\_Prostitution\\_and\\_Trafficking\\_in\\_Persons.pdf?ver=2015-07-30-211909-313](http://www.usfk.mil/Portals/105/Documents/Policyletters/12_Combating_Prostitution_and_Trafficking_in_Persons.pdf?ver=2015-07-30-211909-313) [<https://perma.cc/WH57-3SD3>]; Jeff Schogol, *USFK: Troops Cannot Pay for the Companionship of 'Juicy Girls,'* USA TODAY (Oct. 31, 2014, 9:20 AM), <https://www.usatoday.com/story/news/nation-now/2014/10/31/troops-cannot-pay-for-juicy-girls/18234191> [<https://perma.cc/W3HB-PJRE>].

155. See Vine, *supra* note 119.

156. See *id.*

157. See Ji-yoon, *supra* note 153.

158. See *id.*

159. See *id.* (“Even high-ranking government officials and social leaders who are required to lead the anti-prostitution efforts are frequently reported to have been involved in the illegal sex trade.” (quoting Shin Park Jin-young, president of the human rights center at the Daegu Women's Association)).

160. See Anouk Eigenraam, *Korea's 'Patriotic Prostitutes' for US Soldiers Get Justice at Last*, ASIA TIMES (Mar. 2, 2018), <https://www.asiatimes.com/2018/03/article/koreas-patriotic-prostitutes-us-soldiers-get-justice-last> [<https://perma.cc/SW9S-LUZM>].

161. See Ko Dong-hwan, *Sex Trade Victims' Guardian Plans to Follow US Troops to Pyeongtaek*, KOREA TIMES (Aug. 28, 2018, 4:11 PM), [https://www.koreatimes.co.kr/www/nation/2018/08/177\\_253124.html](https://www.koreatimes.co.kr/www/nation/2018/08/177_253124.html) [<https://perma.cc/PM4U-CZ68>] (“Considering the huge number of people moving into Pyeongtaek—about 85,000, including the Eighth Army, the Second Infantry Division and the ROK-U.S. Combined Forces Command and their families—the sex trade is almost certain to emerge.”).

162. Durebang is “a welfare agency for women in prostitution in the entertainment districts near U.S. Forces Korea military camps in Uijeongbu and Dongducheon” that plans “to move to Pyeongtaek where 90 percent of American forces across South Korea are relocating.” *Id.*

be another entertainment district formed near those camps, just as it has been around American military camps across the country, with all those women suffering as a result of human trafficking.”<sup>163</sup> Unfortunately, this already appears to be happening. A new off-limits list has been issued for base personnel stationed at Camp Humphreys, pinpointing establishments notorious for prostitution and sex trafficking, reminiscent of other installations in South Korea.<sup>164</sup> USFK can hope that making Camp Humphreys a more family-centered base will help combat the sex trade,<sup>165</sup> but the presence of families has never deterred it in the past.<sup>166</sup> The problem is that U.S. military men will continue to solicit the sexual services of women wherever the base is located<sup>167</sup> if a supply is available.

### III. RE(SEOUL)UTION AND BEYOND

The economic, political, and cultural entrenchment of U.S. military bases overseas indicates that there is no simple solution for eradicating sex trafficking near these military installations. Indeed, South Korea is only one of the many countries touched by this issue. What is required to ameliorate the situation is a nuanced and targeted solution specific to each country in which the United States maintains a military base. Such a solution will require increased efforts from both the United States and host countries to eliminate trafficking culture around U.S. overseas military bases. This section thus proposes a solution for greater cooperation and enforceability in creating guidelines and signing SOFAs concerning sex trafficking. As flexible documents that not only necessitate party participation in the negotiation process but also last indefinitely, SOFAs can provide a workable and more permanent means through which to promulgate sex trafficking regulations.

Part III.A discusses the legal feasibility of amending existing SOFAs and drafting new ones to include provisions regulating sex trafficking. Using the U.S.-South Korea SOFA as an example, this section explores how environmental protection—an emerging human rights issue—has long been incorporated into such agreements.<sup>168</sup> This existing precedent should pave

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163. *Id.*

164. See *USAG Humphreys Off-Limits*, U.S. ARMY GARRISON HUMPHREYS, <https://home.army.mil/humphreys/index.php/about/us-army-garrison-humphreys-and-area-iii-limits-information> [<https://perma.cc/9WAU-LTJ3>] (last updated June 7, 2019, 4:30 AM).

165. See Jon Letman, *USAG Humphreys: The Story Behind America's Biggest Overseas Base*, DIPLOMAT (Nov. 6, 2017), <https://thediplomat.com/2017/11/camp-humphreys-the-story-behind-americas-biggest-overseas-base> [<https://perma.cc/6NFV-2M2H>].

166. Families of U.S. service members began arriving in South Korea as early as the 1960s. See, e.g., *US Army Garrison Yongsan*, GLOBALSECURITY.ORG, <https://www.globalsecurity.org/military/facility/yongsan.htm> [<https://perma.cc/RES6-G722>] (last visited Oct. 6, 2019).

167. Despite improving relations between North and South Korea, the United States has no intention of removing its bases from the peninsula. See Hincks, *supra* note 54. In fact, the recent emergence of Camp Humphreys as America's largest overseas military base has only strengthened the United States and South Korea's seven-decade military relationship. See *id.*

168. Jason Strother, *The U.S. Military's Yongsan Garrison Leaves a Mixed Legacy in Seoul*, USA TODAY (Dec. 27, 2017, 6:57 AM), <https://www.usatoday.com/>

the way for the inclusion of an additional human rights concern in SOFAs: sex trafficking. Part III.B then considers the practical impact of the solution and why using SOFAs to combat sex trafficking can have the specific and desirable effect of severing the connection between sex trafficking and U.S. military bases overseas.

*A. The Legal Feasibility of Including Sex Trafficking Regulations in SOFAs*

Recently, there has been increased interest in the debate over whether the United States should close its foreign military bases altogether, and part of this discourse stems from the human rights violations being perpetrated by U.S. personnel overseas.<sup>169</sup> The solution to eliminate abuses caused by overseas military installations is to simply get rid of the bases, which would severely limit the ability of U.S. military personnel to commit heinous crimes abroad, including sex trafficking. Yet America's overseas bases are largely considered necessary for U.S. foreign policy,<sup>170</sup> and countries continue to solicit military aid from the United States.<sup>171</sup> Shutting down U.S. bases overseas, then, seems impracticable.

A more modest solution is to find a means to prevent the crimes associated with U.S. base personnel overseas. This can be achieved by modifying the very agreements that allow overseas bases to exist in the first place: SOFAs. As contracts, SOFAs may be amended.<sup>172</sup> Indeed, the flexibility afforded to countries in designing and amending SOFAs is advantageous for both addressing and resolving key issues such as sex trafficking. Based on negotiations between the United States and host countries, SOFAs are drafted to anticipate the legal issues that arise when American service members commit crimes outside of U.S. jurisdiction.<sup>173</sup> Additionally, nothing currently forbids the inclusion of human rights concerns in SOFAs. Therefore, existing SOFAs must adapt to the changing times.

As an example, South Korea modified its SOFA with the United States to address environmental concerns after U.S. military personnel dumped toxic chemicals into the Han River, igniting a storm of protest.<sup>174</sup> As one Korean

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story/news/world/2017/12/27/u-s-militarys-yongsan-garrison-leaves-mixed-legacy-seoul/983602001 [https://perma.cc/8UQG-JFZG].

169. See Jon Glaser, *Why We Should Close America's Overseas Military Bases*, TIME (Oct. 7, 2016), <http://time.com/4511744/american-military-bases-overseas> [https://perma.cc/BE69-MRZC].

170. See, e.g., *id.*; Peace Sci. Digest, *Overseas Bases Could Do More Harm Than Good*, INKSTICK (Dec. 5, 2017), <https://inkstickmedia.com/overseas-bases-harm-good> [https://perma.cc/8LCA-LJGG].

171. See, e.g., Kyle Rempfer, *Why Poland Wants a Permanent US Military Base, and Is Willing to Pay \$2 Billion for It*, ARMY TIMES (May 29, 2018), <https://www.armytimes.com/news/2018/05/29/why-poland-wants-a-permanent-us-military-base-and-is-willing-to-pay-2-billion-for-it> [https://perma.cc/WL7Q-WRFA].

172. See, e.g., MASON, *supra* note 30, at 1, 7–17 (providing examples of SOFAs that were subject to amendment).

173. See discussion *supra* Part I.B.

174. See Youngjin Jung & Jun-Shik Hwang, *Where Does Inequality Come From?: An Analysis of the Korea-United States Status of Forces Agreement*, 18 AM. U. INT'L L. REV. 1103, 1113–14 (2003) (“On January 18, 2001, the Korea SOFA was revised for the second

citizen angrily shared, “[t]he SOFA has allowed American soldiers to get away with committing offenses here.”<sup>175</sup> The event sparked a legal battle<sup>176</sup> between the U.S. military and local authorities, resulting in an amended SOFA.<sup>177</sup> The agreement now reads:

The United States Government and the Republic of Korea Government recognize and acknowledge the importance of environmental protection in the context of defense activities in the Republic of Korea under the Mutual Defense Treaty of 1953. The United States Government commits itself to implementing this Agreement in a manner consistent with the protection of the natural environment and human health, and confirms its policy to respect relevant Republic of Korea Government environmental laws, regulations, and standards. The Republic of Korea Government confirms its policy to implement its environmental laws, regulations, and standards with due regard for the health and safety of United States personnel.<sup>178</sup>

The amended agreement reflects a cooperative model that lays out the responsibilities of both the U.S. and South Korean governments to address environmental concerns, which were absent in the original SOFA.<sup>179</sup> Human rights issues can similarly be negotiated into SOFAs, especially when they raise concerns over the actions of American service members and their resulting impact on the lives of Korean residents.

A SOFA amendment addressing sex trafficking would be similar to one imposing a responsibility to care for the environment. By adapting the SOFA to include the environmental amendment, USFK has shown its commitment

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*time* in response to concerns over environmental damage by U.S. military activities . . . .” (emphasis added)); Don Kirk, *U.S. Dumping of Chemical Riles Koreans*, N.Y. TIMES (July 15, 2000), <https://www.nytimes.com/2000/07/15/news/us-dumping-of-chemical-riles-koreans.html> [<https://perma.cc/VP6Z-P6CZ>]. The United States and Japan have also supplemented their SOFA regarding environmental regulations, which are framed as a human rights issue. See Lisa Ferdinando, *U.S., Japan Sign Environmental Clarification of Status of Forces Agreement*, U.S. DEP’T DEF. (Sept. 13, 2018), <https://dod.defense.gov/News/Article/Article/620839/us-japan-sign-environmental-clarification-of-status-of-forces-agreement> [<https://perma.cc/3PB8-282H>].

175. See Strother, *supra* note 168.

176. See Charles Lee, *U.S. Army Apologizes for Korean Toxic Dump*, UPI (July 24, 2000), <https://www.upi.com/Archives/2000/07/24/US-army-apologizes-for-Korean-toxic-dump/4678964411200> [<https://perma.cc/73V9-DFX8>] (“Forty-eight South Korean lawmakers adopted a statement Monday demanding that the U.S. officers be punished. . . . The lawmakers also called for a sweeping revision of the controversial Status of Forces Agreement that sets out the regulatory framework for U.S. troops in Korea.”).

177. See Jennifer Gannon, Student Article, *Renegotiation of the Status of Forces Agreement Between the United States and the Republic of Korea*, 12 COLO. J. INT’L ENVTL. L. & POL’Y 263, 263–64 (2000) (discussing how the Korean government placed pressure on the U.S. government to modify the SOFA).

178. Agreement Between the United States of America and the Republic of Korea Amending the Agreement Under Article IV of the Mutual Defense Treaty Between the United States of America and the Republic of Korea, Regarding Facilities and Areas and the Status of United States Armed Forces in the Republic of Korea of July 9, 1966, as Amended, S. Kor.-U.S., at 1, Jan. 18, 2001, T.I.A.S. No. 13,138.

179. See *id.*

to addressing environmental concerns.<sup>180</sup> And while the U.S. military has repeatedly pledged to eradicate sex trafficking,<sup>181</sup> it has not similarly demonstrated its commitment through a SOFA amendment targeting sex trafficking. Rather than having multiple unenforceable documents purporting to address the U.S. military's sex trafficking crisis, the logical solution would be to include a sex trafficking provision in one document. Memorializing such terms in the SOFA itself would allow all policy to exist in one place and have a specific and targeted solution for the United States and the host country.

What would ultimately give rise to problems are the differences in the legal approaches to combatting sex trafficking between the United States and host countries. Certain crimes that the United States considers particularly egregious may not be considered so by the local governments, and vice versa. It is not uncommon for the SOFA to become a hot-button issue after U.S. personnel allegedly commit crimes in many host countries with large foreign military presences.<sup>182</sup> This is particularly the case when the incident involves sex crimes and the United States and the host country define the charge differently.

Considering these differences, it is imperative that each SOFA between the United States and a host country has its own specialized definition of sex trafficking. This definition can easily incorporate the definition from the Palermo Protocol,<sup>183</sup> the United States'<sup>184</sup> or host country's definition of sex trafficking, or a hybrid. Finalizing a definition for sex trafficking will require extensive negotiations between the United States and the host country, but cooperation is ultimately key.<sup>185</sup> Indeed, the United States has been working to strengthen its partnership—the “4th P”—with other countries in its mission to eliminate sex trafficking around the world, as illustrated in its Strategic Action Plan.<sup>186</sup> Working with another country to find a mutually agreed-upon legal definition for sex trafficking only further promotes the

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180. See Strother, *supra* note 168 (“A statement issued by the public affairs office of United States Forces Korea says the American military takes ‘environmental protection, human health and public safety very seriously, and we are committed to responsible environmental stewardship.’”).

181. See discussion *supra* Part II.A.

182. See, e.g., *Korean Anger as US Soldiers Cleared*, BBC NEWS (Nov. 22, 2002, 3:37 PM), <http://news.bbc.co.uk/2/hi/asia-pacific/2497947.stm> [<https://perma.cc/F3HP-KFBN>].

183. See *supra* notes 67–68 and accompanying text.

184. See 18 U.S.C. § 1584(a) (2012) (“Whoever 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, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.”); see also *Involuntary Servitude, Forced Labor, and Sex Trafficking Statutes Enforced*, U.S. DEP’T JUST., <https://www.justice.gov/crt/involuntary-servitude-forced-labor-and-sex-trafficking-statutes-enforced> [<https://perma.cc/9M9W-G3XF>] (last visited Oct. 6, 2019) (detailing additional provisions in the U.S. Code that target sex trafficking).

185. See *supra* notes 66, 108–10 and accompanying text.

186. See *supra* Part II.A.3 (discussing the U.S. Strategic Action Plan).



partnership prong. Because the definition will be written into SOFAs, both the United States and host countries will be accountable for any violation against the agreed-upon language. Not only does this stop the United States from imposing its own sex trafficking legislation on sovereign states but it also is quintessential of the 4th P.

After formulating a collaborative definition for sex trafficking, there remains the hurdle of who will prosecute the crime. Once U.S. military personnel step off base, they are on foreign soil, and the host country may have the power to prosecute any crimes they commit, depending on the jurisdictional framework of the SOFA.<sup>187</sup> In the spirit of maintaining peaceful negotiation for an infraction of the sex trafficking provision of the SOFA, it is impracticable to grant the United States exclusive jurisdiction.<sup>188</sup> Instead, the United States and the host country should share jurisdiction over sex trafficking crimes.<sup>189</sup> In this scenario, shared jurisdiction would allow the host country to have the first opportunity to prosecute the crime. Since the crime is being committed outside the jurisdictional control of the United States, the host country should therefore have the power to try the offender. If the host country declines to exercise jurisdiction, the responsibility of prosecution will then fall to the United States.

Even if a U.S. soldier is tried by the host country, SOFAs dictate that he may still be afforded certain guarantees for a fair trial similar to those of criminal defendants in the United States.<sup>190</sup> Indeed, a U.S. soldier is typically appointed a SOFA representative—“[a]n observer from the same Military Service as the accused”—to attend his trial and act to protect his constitutional rights,<sup>191</sup> including the right to counsel and the right to an interpreter.<sup>192</sup> While the host country may not recognize an equivalent of U.S. constitutional rights, the SOFA typically stipulates what rights U.S. military personnel are entitled to in criminal trials.<sup>193</sup> If tried by the United States, a U.S. soldier is subject to the UCMJ.<sup>194</sup> While the United States remains one of the global leaders in protecting and promoting human rights,<sup>195</sup> the host country should still have primary jurisdiction for the aforementioned reasons.

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187. See discussion *supra* Part I.B.

188. See *supra* notes 35–36 and accompanying text for a discussion of exclusive jurisdiction. If the sex trafficking crime were to occur on base, which falls under U.S. jurisdiction, the United States should retain exclusive jurisdiction.

189. See *supra* notes 37–38 and accompanying text for a discussion of shared jurisdiction.

190. See DEP'T OF DEF., *supra* note 45, at 2 (“The same procedures for safeguarding the interests of United States personnel subject to foreign jurisdiction shall be applied in so far as practicable in overseas areas where U.S. Forces are regularly stationed.”).

191. *Id.* at 4.

192. See *Status-of-Forces Agreement [SOFA]*, *supra* note 40.

193. See, e.g., *The SOFA and You*, U.S. FORCES KOREA (Apr. 25, 2016), [http://www.usfk.mil/Portals/105/Documents/SOFA/I\\_20160425\\_The\\_SOFA\\_and\\_You.pdf](http://www.usfk.mil/Portals/105/Documents/SOFA/I_20160425_The_SOFA_and_You.pdf) [<https://perma.cc/Y6L2-C9KY>].

194. See ANNA C. HENNING, CONG. RESEARCH SERV., RL34697, SUPREME COURT APPELLATE JURISDICTION OVER MILITARY COURT CASES 1 (2009).

195. See *United States Key Role in Support of Human Rights*, U.S. EMBASSY CZECH, <https://cz.usembassy.gov/our-relationship/policy-history/usa-and-human-rights>

*B. The Practical Impact of Using SOFAs to Combat Sex Trafficking Around U.S. Military Bases Abroad*

The United States has not been able to single-handedly stop the sex trafficking of women and girls around its military bases overseas. The presence of U.S. armed forces should not be a contributing factor to crime that will harm the residents of another nation, especially when they are stationed overseas to protect that country's interests. Additionally, the host country should not be obligated to follow the unilateral laws set by the United States when it is its own sovereign state and the U.S. military base is on foreign soil. Allowing the United States and the host country to contribute to a definition for sex trafficking not only makes both parties more willing to adhere to their own laws but also entices them to honor the commitment they made. While an argument could be made that there is the possibility of one country having greater influence over creating the definition, ultimately both the United States and the host country must execute the agreement. If one country is dissatisfied with the terms, it is unlikely to ratify the document without further negotiation. Therefore, cooperation will ensure a balance between the two countries' interests.

The same logic applies to the jurisdictional framework regarding sex trafficking in SOFAs. Here, the U.S. base exists only because the sovereign state has allowed its presence and location. The United States should therefore honor the host country's choice of whether it wants to prosecute the crime or relinquish jurisdiction to the United States. If the host country decides to exercise its jurisdiction, this will serve as a powerful psychological deterrent to U.S. military personnel seeking to indulge in sex trafficking because they understand that they may be incarcerated in a foreign prison.<sup>196</sup> In any case, if the host country declines jurisdiction, then the United States will have the opportunity to prosecute the crime itself.

The United States has undeniably demonstrated its commitment to the global eradication of sex trafficking. But it is not always clear whether the host country has the same intention. Although the host country should be inclined to protect its citizens' human rights, this moral obligation may not be enough to entice them into incorporating a sex trafficking provision in the SOFA. If the host country is altogether apathetic to this issue, the United States could condition its military presence in the state on the host country's

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[<https://perma.cc/ZS83-VS9Q>] (last visited Oct. 6, 2019) ("The United States today, as two centuries ago, is a world leader in the ongoing struggle for human rights."). *But see* Michael Posner, *Why U.S. Withdrawal from the Human Rights Council Is a Dangerous Leadership Mistake*, FORBES (June 19, 2018, 5:50 PM), <https://www.forbes.com/sites/michaelposner/2018/06/19/u-s-withdrawal-from-the-un-human-rights-council> [<https://perma.cc/XKH8-QUFM>] (explaining how the United States can no longer be considered the leading champion of human rights).

196. *See, e.g.*, David Allen, *Ex-Marine Decries Nature of Japan Prison Work*, STARS & STRIPES (July 18, 2004), <https://www.stripes.com/news/ex-marine-decries-nature-of-japan-prison-work-1.21905> [<https://perma.cc/G74M-CVHT>].

cooperation regarding sex trafficking.<sup>197</sup> The minimum effort that a host country should contribute would be the drafting of a definition of sex trafficking for the SOFA, considering that the United States will prosecute any crime over which the host country declines to exercise jurisdiction.

To replace the United States' multitudinous SOFAs with various countries, the United States recently developed a "global SOFA template" to govern its foreign bases overseas.<sup>198</sup> The global SOFA template does not include a sex trafficking provision but, even if it did, it would be nearly impossible to apply a global definition to every country. Indeed, a global definition—most likely drafted by the United States alone—would neither accurately depict nor resolve how the U.S. military's sex trafficking crisis affects each country. For example, a solution designed to target the sex trafficking of women and girls in South Korea may not work for the type of sex trafficking that occurs around a military base in a different nation; in this case, one size does not fit all. Therefore, it is of utmost importance for the success of each SOFA that the document retains its flexibility and is tailored to the needs and conditions of the host country.

Today, this issue is more pertinent than ever. In a male-dominated world with a male-dominated culture, the continuous empowerment of women and girls and the recognition of their autonomy has important implications for the future.<sup>199</sup> Because sex trafficking disproportionately affects women and girls, the illegal industry not only undermines gender equality but also perpetuates a culture of toxic masculinity—especially when the solicitation of sexual services stems from U.S. military men. Indeed, the "macho" male culture that is often associated with the U.S. military will only continue to be fed by the exploitation of women and girls who are powerless over their own bodies. Masculinity is no longer an excuse.

Sex trafficking undoubtedly contributes to the vicious cycle of male dominance, which is yet another reason why its elimination is of paramount importance. With respect to the sex trafficking of women and girls around U.S. military bases overseas, a strong SOFA provision would likely deter these men from participating in the sex industry and, consequently, prevent

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197. See *supra* note 6 (discussing why host countries desire U.S. military presence). It has been scientifically proven that better results are achieved when punishment is given rather than reward. See Gaia Remerowski, *Carrot or Stick?: Punishments May Guide Behavior More Effectively Than Rewards*, SOURCE (May 6, 2015), <https://source.wustl.edu/2015/05/carrot-or-stick-punishments-may-guide-behavior-more-effectively-than-rewards> [<https://perma.cc/G4LU-LZBD>]. The United States could therefore punish the host country for refusing to comply, such as by reducing the number of military personnel or cutting back on financial aid.

198. See INT'L SEC. ADVISORY BD., *supra* note 5, at 3–5. A standardized SOFA would be far too rigid for a document that requires flexibility. *Id.*

199. The empowerment of women has blossomed in the United States following the #MeToo movement. See, e.g., Audrey Carlsen et al., *#MeToo Brought Down 201 Powerful Men. Nearly Half of Their Replacements Are Women*, N.Y. TIMES (Oct. 29, 2018), <https://www.nytimes.com/interactive/2018/10/23/us/metoo-replacements.html> [<https://perma.cc/E3UA-7N53>]. While the movement continues to gain traction, turning a blind eye to the sex trafficking of women and girls runs counter to any progress the United States has made in advancing women's rights and equality.

them from reinforcing gender inequality. Additionally, this will further give decline to a “macho” military culture that, above all, breeds promiscuous behavior.

#### CONCLUSION

Right now, there are insufficient procedures in place to permit the vigorous prosecution of sex trafficking offenses involving U.S. military personnel overseas. The United States can continue to unilaterally promulgate legislation and policy, but these one-sided laws will always fail to adequately address the issue at hand. Existing legislation and policy prove the point. While the TVPA, NSPD 22, and the Strategic Action Plan all strive to eliminate sex trafficking, they fall short of being able to grasp the nuances necessary for the elimination of sex trafficking around the U.S. military bases located on foreign soil. Here, a sex trafficking solution that works for one country may not be applicable to another. Therefore, SOFAs can serve as the fundamental building blocks for the creation of a solution that will sever the connection between sex trafficking and U.S. military personnel in a specific host country. The agreed-upon definition of sex trafficking and the proposed jurisdictional framework underlie the importance of the United States and the host country working together to effectively target the many forms of sex trafficking around U.S. military bases. Such a resolution will ultimately allow the military to state that it finally has a handle on criminal sexual activities that stem from the actions of its very own personnel, bringing the United States one step closer to eliminating sex trafficking on a global scale.