

# Trafficking in persons

## The Scope of the Problem and the Appropriate Responses

### Global Perspective

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It is my privilege to be speaking to you this afternoon on the problem of trafficking in persons.

I have two sessions. So I will divide the topic into two main issues.

#### Issue 1

What is the scope of the problem of trafficking, the nature of the crime, the concept itself? That is what I am going to be talking to you in the first session.

#### Issue 2

Based upon our understanding of this transnational crime, I will address the question how can we combat the problem? In other words, what are the appropriate responses to the problem?

For this session, let me discuss with you the nature of the problem.

And this is not an easy task, since trafficking in persons may be addressed a

- crime control issue
- immigration policy issue
- state security issue
- human security issue
- human rights issue
- trade or business issue
- foreign policy concern

These are 7 different approaches to the problem. But obviously we are speaking about the same thing. Before I do that, I have to start with numbers, if we can find them.

The Congress in its findings in the Trafficking Victims Protection Act, which was signed into law in 2000, estimated that approximately 50,000 women and children are trafficked into the U.S. each year.

This number has decreased in accordance with the Department of State Report of 2003 which

placed the number of persons trafficked to the United States between 18-20,000.

Currently the U.S. Department of State in its report entitled Assessment of US Activities to Combat Trafficking in Persons estimates that between 14,500-17,500 are trafficked annually into the United States.

So according to these official numbers, there is a decline in cases of trafficking in the United States.

The Department of Justice has significantly increased its efforts to prosecute cases of trafficking. Between 2001 and March 2004, at least 150 traffickers have been charged, of these 79 included sex trafficking allegations, 77 of these cases have resulted in convictions or guilty pleas. Of those 59 defendants were found guilty of sex trafficking charges.

Based upon the analysis conducted by The Protection Project on these cases, which the Department of Justice kindly made available, I can say that the majority of victims that are trafficked into the U.S. come from countries in Africa, especially Cameroon, Nigeria, Ghana and Tonga; Latin America, especially Jamaica, Mexico, Honduras and Guatemala; Asia, especially South Korea, Indonesia, Uzbekistan, Vietnam, Thailand and China and Russia, China, Ukraine.

They are trafficked to different states, in particular, California, Florida, New York, Hawaii, Georgia, Alaska, Texas and North Carolina.

Globally the numbers also are in decline. We were talking in year 2000 about 700 000.

On September 23, 2003, President Bush talked about 800 000 to 900 000 in his speech to the United Nations.

Now we have been told by the Department of State, that around 600 000 women and children are trafficking globally.

One may question, however, whether this decline in the number of trafficking cases is because of recent efforts to combat the problem, or simply because victim identification has become more difficult.

Anyway, many factors suggest to us that trafficking in persons is still a significant problem. Especially, with the rise of globalization, the widening of the gap between developing and developed countries, the increase in poverty, unemployment, and lack of equal opportunity, are all factors that contribute to the trafficking infrastructure.

Poverty creates a condition of economic vulnerability. Innocent women and children become an easy target for traffickers, who take advantage of women and children's economic vulnerability by offering illusionary economic opportunities.

Many local practices create conditions of cultural vulnerability, such as early marriages, mail order brides, arranged marriages, temporary marriages, and other harmful institutions, which do not rely upon any valid legal foundation, but are widely recognized and accepted. Sex tourism is becoming a main source of income for many countries.

Instability, hostile occupation, armed conflict, and civil unrest create social vulnerability of an insecure population that becomes disintegrated, displaced and easily subjected to trafficking

for illicit sexual purposes or forced labor.

The collapse of the Soviet Union in particular led to an increase of trafficking activities. Women are trafficked from the former Soviet Union to countries of Western Europe, the Middle East and the United States.

The transition from communism to democracy, civil unrest, loss of national identity, and political instability all have created a favorable environment for organized crime, including trafficking in persons.

Unfortunately, few of those victims have been identified. For instance, in 2003 the Department of Homeland Security (DHS) received 601 applications and has granted only 297 T-visas. In 2002 only 5 visas were granted, while so far in 2004 78 visa applications were approved.

And this is the first challenge that we face in the anti trafficking movement today, identification of victims of trafficking.

This is not an easy task especially because many cases of trafficking involve organized crime. Victims' mistrust of public officials and the lack of public awareness about victims' rights make it difficult for victims of trafficking to come forward and cooperate with law enforcement officials in the investigation and prosecution of cases of trafficking.

So all these factors contribute to the problem of trafficking in person. But first, let us agree to what we consider as trafficking in persons.

It basically means the act of "recruiting, transporting, transferring, harboring, or receiving of a person."

By using illegal means usually force, fraud, coercion, deception, abuse of power or a position of vulnerability. For the purpose of exploitation.

And here I would like to refer to Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children supplementing the United Nations Convention against Transnational Organized Crime.

The Protocol talks about 7 forms of trafficking:

1. Trafficking for the exploitation of prostitution of others.
2. Trafficking for other forms of sexual exploitation
3. Trafficking for forced labor
4. Trafficking to place someone in a condition of servitude
5. Trafficking for the purpose of enslavement of someone
6. Trafficking for purposes similar to slavery; and
7. Trafficking for organs, or the removal of organs from human beings.

The forms of trafficking under Article 3 are not exhaustive, but they are mentioned, and now I am using the Protocol's language, "at a minimum."

Therefore, it is up to the particular legal system to include any and all of these forms. But what we must emphasize here is that every legal system must recognize all forms of trafficking as a criminal offense.

There is trafficking for domestic service. People being trafficked from the Philippines, Sri Lanka, Bangladesh, Indonesia, Ethiopia, Somalia, Nepal and India to countries like Saudi Arabia, Bahrain, Jordan, Lebanon, Oman to wash dishes and cook.

Employers often hold the domestic servants' passports and other travel documents, thus preventing them from leaving their jobs for other work, or returning home.

In the United States, we are all familiar with the case of *United States v. Satia*, which was decided in 2001. The case involved a Cameroonian Female minor who was enslaved and harbored in the defendant's home to be used as their domestic servant in violation of the prohibition against involuntary servitude. This is labor trafficking.

- There is trafficking for forced labor. People being trafficked from China and Russia to Western Europe to work fifteen hours a day in textile factories.
- There is trafficking for adoption. A pregnant Guatemalan woman being kidnapped prior to childbirth, given drugs, and having her child taken and sold abroad.

However, illicit sale of children for the purpose of intercountry adoption does not constitute a form of trafficking in some countries, such as the countries of the Middle East because Islamic law does not recognize the institution of adoption in accordance with the Qur'an.

Islamic law recognizes Kafala, as an alternative to adoption. Kafala is a system of fosterage where a child may be placed under the guardianship of a family, but the child continues to retain his lineage. This explains why many countries of the Middle East that follow Islamic law had reservations regarding Article 21 of the 1989 Convention on the Rights of the Child, which recognizes adoption as it is inconsistent with Islamic law. Unlike other regions where baby trafficking is prevalent, there is no demand for adopted children in the Middle East.

There is trafficking for military service. Young children being taken from their homes and pressed into military service in militia and guerilla groups and forced to fight in the Democratic Republic of Congo.

- There is trafficking for street children. Children throughout Latin America being taken to states like Guatemala and put to work as beggars.
- There is trafficking for camel jockeys. Sri Lankan children being sent to the United Arab Emirates to ride camels.
- There is trafficking for child bearing. So if you are trafficking a woman from one country to another to have sex with, and you're not paying her, but you're having sex with her to have a child, then you are trafficking for child bearing.
- Also, if we are trafficking a woman, a bride from the Philippines to the United States to be married to an old man, that is a mail-order bride, which can be a form of trafficking.

Would sex trafficking involve cases of mail-order brides, especially since the only law that covers the issue of mail order brides is Section 652 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996?

At least 200 matchmaking organizations are operating in the United States and between 2,000-3,500 men find brides through catalogues. I understand that personal freedoms and privacy rights, especially in the area of marriage and family relations must be protected and perhaps left unregulated. However, when brides are beaten, tortured and treated like slaves by their husbands or when they are forced to perform illicit sexual activities or placed in condition of forced labor, such instances of abuse must be confronted and a legal response

must be developed to protect such victims.

- Also, if you are trafficking children to have sex with Professor Hersh, and Professor Hersh is getting boys from Honduras to Florida, or Professor Hersh is traveling to Honduras to have sex with boys, that is sex tourism, and that can be a form of sex trafficking.

On the day following President Bush's speech to the United Nations on September 23, 2003 on Iraq and Sex Tourism, Michael Lewis Clark, a 69 year old retired United States army sergeant, was charged with sex tourism in one of the first indictments under the new law. Clark was indicted by a Seattle Grand Jury on two counts: traveling to via foreign commerce to Cambodia, engaging in illicit sexual conduct with a minor. He paid two young homeless boys, aged ten and thirteen, two dollar each to have sex with them. Clark was convicted for 8 years.

- The first successful prosecution of sex tourists was in Norway in 1990. Three Norwegian nationals were sentenced for indecent intercourse with 13 year-old boys in the Philippines and Thailand.
- Also, if you are trafficking, for purpose of pornography, taking girls from Vietnam to Cambodia and selling pornographic images of them, this is sex trafficking for the purpose of pornography.

Trafficking of girls for the purpose of marriage to avoid the payment of a dowry, takes place in countries like India.

In India, girls are also trafficked for religious purposes.

Organ trafficking out of China has also been documented.

Trafficking of girls for religious purposes to serve in Indian temples as a "female slave of God."

This is a lot of trafficking going on and the United Nations Protocol mandates that countries recognize all these forms of trafficking.

Unlike the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially women and children, the U.S. Trafficking Victims Protection Act of 2000 adopts a narrow definition of what constitutes trafficking in persons to include only sex trafficking and trafficking for labor or services.

The Act draws a distinction between sex trafficking and severe forms of sex trafficking, whereas sex trafficking means "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act", if such an act is "induced by force, fraud, or coercion" it is considered a "severe form of trafficking"(section 103 (8)). If the person induced to perform such an act has not attained 18 years of age, the trafficking of that person is also considered a severe form of trafficking, even in the absence of any "force, fraud, or coercion" (section 103 (8)).

Only severe forms of trafficking trigger the application of the operative provisions of the act.

Whether trafficking is for sex or for labor or for other purposes, trafficking is a crime, it is a crime of transnational nature, it is a serious crime, that constitute a threat against a state and against an individual.

Few words about the classification of trafficking as a crime.

First of all, trafficking is a crime of a global or a transnational nature, a crime that goes beyond the domestic territory of a particular state.

The United Nations Convention against Transnational Organized Crime defines a transnational crime broadly to include not only crimes that are committed in more than one state, but also the crimes that are committed in one state but where "a substantial part" of incidental activities takes place in another state, or organized criminal group engaging in criminal activities in several states is involved, or the crime "has substantial effect in another state."

Thus, as a transnational crime, trafficking in persons is similar to drug trafficking and money laundering.

It must be noted that the transnationality of trafficking and the involvement of an organized criminal group are not requirements for the establishment of the offense of trafficking under the domestic law of a particular country.

Second, trafficking in persons is generally an organized crime. While trafficking in persons may be committed by an individual, or a husband and a wife, in most cases it involves an organized criminal group.

Often, organized criminal activity allows for maintaining a complex trafficking infrastructure, which facilitates the falsification of travel documents, sets up an organized recruitment of potential victims, and involves corruption of public officials.

I believe others will address models of organized crimes that are involved in trafficking. Briefly, scholars distinguished among the five models.

1) The natural resources model or the Russian model of trafficking that sells women as natural resources such as an other commodity. Traffickers according to this model have no interest making long-term profits. They merely deliver their merchandise to their clients.

2.) The trade and development model, that is Chinese model, that is a model of total control of trafficking in all of its stages from recruitment till assignments in brothels. Trafficked under this model are interested in long-term profits.

3) The supermarket model, that is the Mexican style of trafficking, you can call it trafficking or you can call it smuggling. It is illegal activity that takes place between the borders of Mexico and the United States. According to this model, profits made by traffickers are return to the country of origin.

4) The violent entrepreneur model. That is the Balkans model of trafficking. It relies on violence and physical abuse, such as trafficking women from the Balkans to Europe.

5) The slavery – technology model. That is the Nigerian organized crime. Trafficking women to Europe, especially Italy, relying upon exploiting the vulnerability of the victims and placing them in the traditional conditions of slavery.

Thirdly, trafficking in persons is a serious crime.

You have to recognize trafficking not only as a crime but as a serious crime.

Why?

Because if you only recognize trafficking as a crime, and not as a serious crime, you would not be able to apply many of the protections granted to victims of trafficking by the legal system.

Let me give you two examples.

One is the witness protection program.

This program does not apply except when a witness is testifying in cases involving serious crimes.

The witness protection program under the United States Victim and Witness Protection Act provides for protection of a witness in proceedings concerning "an organized criminal activity or other serious offense."

So, the United States Trafficking Victims Protection Act of 2000, had to recognize trafficking as "an organized criminal activity or other serious offense" for the purpose of applying the witness protection program to the victims of trafficking.

This is also true regarding the application of the money laundering laws of the different countries.

Because the proceeds of serious crimes are to be confiscated under money laundering laws, countries like Spain, Thailand and Cyprus had to expand the scope of the offense of money laundering from one exclusively related to goods arising from drug trafficking to one related to proceeds derived from trafficking in persons as a serious crime.

The Trafficking Victims Protection Act enhances the penalty for trafficking to 20 years, and the 20 years can be increased to life imprisonment if you are trafficking a child under the age of 14.

And now, trafficking in persons is not only recognized as a crime but as a serious crime.

The 10 years under the Mann Act became 20 and the 5 years under the Involuntary Statutes became 20 under the Act.

The 20 can be increased to any term of years or life.

That is a harsh sentence and it is longer than sentences imposed in European countries in cases of trafficking.

One reason for this difference among the American legal system and European legal systems is that plea-bargaining, which is absent in European legal systems, provides for a more realistic sentence in the U.S.

But regardless of the length of the sentence which should be left to the individual country we would like for all countries to recognize trafficking as a "serious crime."

The U.N Convention against Transnational Organized Crime defines a "serious crime" as any crime the punishment for which is four or more years in prison.

The Act says when the judge orders the sentencing; the judge shall also order mandatory restitution to compensate the defendant victim to the full amount of the victim's losses.

The Act goes after the traffickers' assets by providing for forfeiture of assets, any property of the trafficker, real property or personal property.

Drawing a Distinction between Drug Trafficking and Trafficking in Persons, many countries, while recognizing trafficking in drugs as a serious crime that warrants serious punishment, provide for a much lesser sentence for the crime of trafficking in persons.

For instance in Poland, while selling drugs to minors is punished by 5 to 15 years of imprisonment, an individual who induces a person under the 18 years of age into prostitution is punished only by 1 to 10 years of imprisonment.

In the year 2000, only 19 cases of trafficking in persons were registered with the Polish police, while 19,649 cases of drug trafficking were registered during the same year.

Similarly, while capital punishment is the sanction for drug trafficking in Tajikistan, recruitment for the purpose of exploitation may only be punished by a fine or two years imprisonment.

Fourth, trafficking in persons is a crime not only against the state but against the individual as well.

And that is why we distinguish between alien smuggling and trafficking in persons. Alien smuggling is a crime against the state while trafficking in persons should constitute a crime against a person.

Several important questions arise in this respect.

Should internal trafficking acquire the same importance as international trafficking?

Should victims of trafficking be eligible to receive the residency status on humanitarian basis even if it places a burden on state's immigration policy?

Should they be penalized for commission of unlawful acts that are incident to their trafficking?

Should they be eligible for witness protection programs if they agree to testify against their traffickers?

The answers to these questions depend on the type of protected interest threatened by trafficking in persons.

If trafficking in persons is considered mainly as a threat to the state, then addressing internal trafficking becomes less important, although in many cases it poses a real threat to human security.

For instance, it is estimated that 100,000 women and children are sexually exploited annually within the borders of Brazil, and 40,000 children are bought and sold every year for work in domestic service or in agriculture.

There are also reports of internal trafficking in such countries as Afghanistan, Haiti, India, the



Philippines, Russia, and Thailand.

Nevertheless, many countries still consider only transborder trafficking and refuse to recognize internal trafficking as an offense.

While crossing of international borders should not be an element of the crime of trafficking itself, it may warrant a different response, such as transnational cooperation or an enhanced penalty.

Smuggling of aliens or "illegal migrant smuggling" is defined by the UN 2000 Protocol Against Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against transnational Organized crime, to mean "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of illegal entry of a person into a state, party of which the person is not a national or permanent resident" (Article 3 (a)).

Unlike trafficking in persons, which may occur internationally as well as internally or domestically, alien smuggling is always of a transnational nature, since it requires crossing a national border, and as such it involves an "illegal entry" of a person into a country of which such a person does not have legal status. Illegal entry, in this context, means "crossing borders without complying with the necessary requirements for legal entry into the

receiving state" (Article 3 (b)).

For instance, in Bosnia, police arrested 37 criminals from Iran and Turkey who allegedly smuggled some 900 illegal immigrants into countries of the European Union. In the U.S., federal officials discovered in August 2002 a huge child-smuggling ring, smuggling hundreds of children from Guatemala, El Salvador and Honduras through Mexico to Los Angeles. In 2000, U.S. officials discovered another ring that smuggled aliens from China through the Caribbean countries including Jamaica, the Dominican Republic and Haiti, to the United States.

These criminal offenses are considered crimes against the state, while trafficking in persons is a crime against the individual. Moreover, in cases of alien smuggling, the smuggled alien, consenting to be smuggled, is treated as a criminal, whereas a trafficked person is considered a victim of the crime of trafficking since the trafficked person is typically subject to the "threat or use of force or other forms of coercion, of abduction, or fraud and deception, of the abuse of power or of a position of vulnerability..." (Article 3(a) of the Trafficking in Persons Protocol), and as such, the person's consent is either lacking altogether or defective. In either case it becomes "irrelevant".

Consequently, while governments should adopt protective measures to protect trafficked persons, including granting such persons a residency status, in cases of alien smuggling, the smuggled person becomes subject to deportation.

Fifth, trafficking is also considered a crime against humanity under international law.

The definition of "crimes against humanity" is found in the Rome Statute of the International Criminal Court (the ICC Statute) and includes, inter alia, "enslavement," "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law," and "rape, sexual slavery, enforced prostitution, forced pregnancy ... or any other form of sexual violence of comparable gravity."

According to the ICC Statute, the term "'enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children." Trafficking in

persons falls into these definitions and is, consequently, a crime against humanity and may be prosecuted by the ICC if it meets the criteria set forth in Article 7 of the ICC Statute.

Again, trafficking in persons is a crime of transnational nature that is committed not only against the state but also against the individual. In fact, against all the humanity.

As such, trafficking in persons is a human rights violation.

Trafficking in persons violates the right of the victim to be free from slavery or servitude.

Trafficking in persons violates the right of the victim to freedom of movement.

In fact, trafficking in persons is now recognized as a threat to not only human rights but also to human security.

Addressing the security of the trafficked person as a part of a person's right to security is limited in scope. Security, in that sense, is confined to "personal security" as opposed to "human security."

That was the approach adopted by traditional international law.

The concept of "security" of the individual was defined as personal in nature.

For instance, the Universal Declaration of Human Rights (UDHR) states that "[e]veryone has the right to ... security of person.."

Similarly, the International Covenant on Civil and Political Rights (ICCPR) states that "[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention."

Thus, when the right to security was addressed as a part of human rights discourse, it was mainly defined as "personal security," which was interpreted basically as the right to "liberty" and "safety" from bodily harm.

By contrast, the new concept of human security is broader than merely personal security, personal safety, or the right to security.

The concept was first introduced in the United Nations Development Program's 1994 Human Development Report: New Dimensions of Human Security (Report), with the intent "to bridge the concepts of the freedom from want and freedom from fear, [which] lay at the heart of the philosophy of the United Nations."

The former freedom has been interpreted to mean freedom from violence, while the latter freedom from poverty.

Human rights have been an important foreign policy objective of the United States, and the Foreign Assistance Act of 1961 prohibited economic assistance to any government who engages in "a consistent pattern of gross violations of internationally recognized human rights.

The 1961 Act made the promotion and the encouragement of increased respect for human rights and fundamental freedoms a foreign policy objective.

Section 110 of the TVPA requires the Department of State, through its Office to Monitor and Combat Trafficking in Persons, to prepare an annual report on "the status of severe forms of trafficking in persons," which divides the countries of the world into three tiers on the basis of their compliance with "the minimum standards for the elimination of trafficking" or, in the case of non-complying countries, their "making significant efforts to bring themselves into compliance [with the minimum standards]." If a country is placed on Tier 3 of the annual report, Section 110 of the TVPA calls for imposition of sanctions on such country, which prohibit the flow of any non-humanitarian, non-trade-related official foreign aid to the country's government.

So, the Act also requires naming names by classifying countries into different categories depending on government efforts to combat trafficking through the 3 tier model.

Moreover, the Act calls for taking action, that is to say imposing sanctions, against governments that do not recognize the magnitude of the problem, are not serious about initiating programs to protect victims of trafficking, and lack the political will to punish the traffickers.

Some argue that a government that does not meet the minimum standards should bear the burden of providing information about its efforts to comply with such standards.

Failure to provide information or the withholding of such information would be a sufficient reason to place a country in Tier 3.<sup>52</sup> It is hard to formulate a legal basis for the imposition of a duty to "report" or a duty to "inform" on the part of a government towards another in the absence of a bilateral agreement or foreign assistance.

However, sharing of information among countries is an international obligation under the UN Protocol.

The UN Protocol provides that law enforcement, immigration officials, and other relevant authorities of a country shall cooperate with other countries by exchanging information, especially regarding travel patterns of potential victims of trafficking or the perpetrators of the acts of trafficking, travel documents, and the means and methods used by organized criminal groups that are engaged in acts of trafficking.

The UN Protocol however, while providing for the duty to cooperate and exchange certain information in the context of trafficking, does not make such an obligation mandatory in nature. Countries may comply "as appropriate in accordance with their domestic law."

The United States has signed the UN Protocol, but is yet to ratify it.

Sanctions are designed to alter governments' behavior or policies so that a government complies with certain norms which the United States considers important. Sanctions however, have been criticized as violations of human rights themselves, in that they have adverse affects on the economic, cultural and social rights of civilian populations.

The US has been assisting countries to draft anti-trafficking legislation.

The majority of the countries of the Middle East do not have a specific anti-trafficking legislation. Morocco and Turkey are among the few that criminalize trafficking, while Qatar's criminal laws prohibit trafficking only for the purposes of sexual exploitation.

Similarly, most of the countries in Africa do not have anti-trafficking legislation, including Ghana, Angola, Burundi, Cameroon, the Gambia, Mauritius, Mozambique, Niger, Rwanda,

South Africa, Togo, Uganda, Democratic Republic of Congo, Ethiopia, Madagascar, Burma, Senegal, Sudan, Cote d'Ivoire, Gabon, Kenya, Malawi, Zambia, Zimbabwe, Equatorial Guinea, Sierra Leone.

Countries from Latin America that lack specific anti-trafficking legislation include: Argentina, Chile, Honduras, Jamaica, Mexico, Peru, Suriname, Ecuador, Guyana, and Venezuela.

On the international level, the U.S. has been active promoting a role for non-governmental organizations (NGOs) and urging foreign countries to allow NGOs to work to further the cause of human rights, including combating trafficking in persons as a human rights violation. This is important because in many countries it is the government that determines the degree of freedom the NGO enjoys while pursuing its goals.

The Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime also emphasizes the need to cooperate with NGOs.

Based upon this comprehensive understanding of the concept of the trafficking in persons, any response to the problem must be comprehensive enough to address all aspects of the issues involved.

The Act changed the foreign policy of the United States. The Act makes trafficking in persons as important as fighting

- weapons of mass destruction
- or terrorism
- or drug trafficking.

Now, let's take a break. When we come back, we will cover the second half and that is the appropriate responses to the problem of trafficking.

Let me start by identifying 5 Ps, 3 Rs, 3Exs.

On the first day of school, I took my daughter to a class and there were three Rs. Respect yourself, respect other, and respect your school.

So what do we mean by 5 Ps. These are:

- prevention
- protection
- provision
- prosecution
- participation.

When we talk about trafficking and protection of victims of trafficking I like to distinguish what I call the Three Re-s

- Re-habilitation
- Re-integration
- Repatriation

And since trafficking in persons is a transnational crime, it requires transnational policies:

- exchange of information
- extradition
- extraterritoriality

As to prevention, the Protocol calls on States Parties to "establish comprehensive policies and programs and other measures...to prevent and combat trafficking in persons."

And that is why I like the Trafficking Victims Reauthorization Act when it addressed sex tourism specifically, in the area of prevention and called for the development and dissemination of materials to inform travelers about sex tourism, its dangers and the criminal penalties that may be imposed for the crime of sex tourism.

Punishment of that international tourist should not be limited to putting him in prison. Countries should consider revoking the passport of a convicted sex tourist so he may not be able to travel again as a tourist for the purpose of engaging in sex with a child.

In many countries, deportation of the tourist is the only sanction imposed.

Birth registration laws should be enforced in accordance with Article 7 of the Convention on the Rights of the Child since unregistered children, such as 400,000 children in Honduras, are left vulnerable to exploitation.

They do not attend school and they are targeted by traffickers who force them to work or sexually exploit them.

As an example of such a measure, in 1998, the United Arab Emirates, then a Tier 1 country, issued a special decree prohibiting single women from the NIS under the age of 31 from entering the United Arab Emirates, unless accompanied by male relatives or unless visiting the country for business purposes.

The effect of this rule, however, has been mixed, as traffickers often manage to overcome the stated restrictions.

Thus, travel agents and pimps often recruit men in the NIS to assume the role of a husband or a brother to the trafficked woman.

In many cases, a citizen of the United Arab Emirates is paid to obtain papers of a "false" marriage, to allow the woman to enter the country.

In addition, the traffickers utilize the help of corrupt law enforcement officials in Central Asia and obtain passports for their potential victims that show different dates of birth.

Thus, it has been noted that "almost all the women trafficked to the UAE as [commercial sex workers] are at least ten to fifteen years younger than the age recorded in their passports."

A legal system must control issuance of visas so that traffickers do not take advantage of existing types of visas that disguise the real purpose of travel of the holder of the visa.

Although entertainment visas are used properly and legally in some countries, the law must

provide for strict requirements so that such visas are not used illegally by the traffickers.

In Cyprus the law allows for only 15 entertainment visas per nightclub and requires that prospective employers apply for the visa on behalf of the employee.

The Thai law requires a letter issued by the employer confirming responsibility of the applicant for the entertainment visa and specifying the time of employment.

In Norway, an entertainer who obtains an entertainment visa may work for a period of no more than one year, and an applicant for an entertainment visa must submit a written contract specifying the terms of employment.

In Chile, the law requires an explicit authorization from the Ministry of Interior for the approval of an entertainment visa.

In Portugal before the issuance of the entertainment visa, an inquiry is conducted into the criminal record and medical history of the applicant.

The South Korean law requires HIV testing in addition to identity references.

This month, South Korea ceased issuing entertainment visas to Philippine dancers because of the high numbers of women being trafficked to South Korea under the auspices of working as dancers.

However, two issues are of concern to me.

First, in the public awareness campaigns, are we including a warning against the dangers of prostitution as the 1949 convention specifies, or only a warning against the dangers of trafficking as the 2000 Protocol mandates?

Unlike the 1949 Convention that provides for "measures for the prevention of prostitution" in Article 16, which the Convention regarded as "incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community", the Protocol shifts the focus to the "prevention of trafficking" in Article 9.

How about warning about the threat of AIDS?

It is difficult to establish the link between trafficking and AIDS, and that is why I like the Trafficking Victims Protection Reauthorization Act. The TVPRA provides for funding for research that furthers the purpose of the TVPA and address the findings of the TVPA. This research includes:

Looking into the economic causes and consequences of trafficking.

Examining the relationship between trafficking in persons and global health risks.

But trafficking now, for the first time, is recognized as a specific crime.

The second, is what are we doing about demand?

The Protocol mandates that countries must do something about demand. The supply of trafficking is not addressed by the Protocol, which focuses instead on the demand side mandating the states to adopt measures "to discourage the demand that fosters all forms of exploitation of persons especially women and children, that leads to trafficking" (Article 9(5)).

The Swedish law provides that "a person who obtains casual sexual relations in exchange for payment shall be sentenced—unless the act is punishable under the Swedish Penal Code—for the purchase of sexual services to a fine or imprisonment for at most six months. Attempts to purchase sexual services is punishable under Chapter 23 of the Swedish Penal Code."

However, the number of prosecutions under the Swedish law has been low.

The available statistics show that 10 convictions resulted out of 94 cases tried in 1999, 29 convictions out of 92 cases in 2000, and 38 convictions out of 86 cases in 2001.

Nevertheless, similar laws have been enacted in Norway and Finland.

However, both laws only criminalize buying sexual services from a person under the age of 18.

Article 418-a of the Criminal Code of Macedonia provides that "The one that uses or enables another person's usage of sexual services from the persons for whom he knows are victims of human trafficking will be punished with from six months up to five years imprisonment."

Criminalizing the offense of trafficking in persons does not necessarily require any particular legal system to criminalize the act of prostitution.

In fact, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children does not outlaw prostitution, but the exploitation of the prostitution of others.

Article 3a of the Protocol defines "exploitation" to include "the exploitation of the prostitution of others or other forms of sexual exploitation."

As the Protocol's definition might indicate, prostitution itself, in the absence of unlawful means, does not amount to exploitation.

The country of Lebanon represents an example of a system that legalizes prostitution. Women in prostitution must be registered and must undergo examination.

Women in prostitution cannot be virgins and must be older than 21.

Brothels are permitted provided that they are owned by a woman over the age of 25.

However, brothels must be located in specified areas and must be separated from all neighboring buildings.

This is the rule under Law of 2/6/1931, which is still in force.

More recently, the Criminal Code of The Netherlands ended the ban on brothels and legalized any commercial activities involving voluntary prostitution.

According to the new law, a license is required to operate a brothel.

Would we consider massage parlors, strip clubs and other sexually oriented establishments that may be involved in illicit sexual activities as forms of sexual exploitation?

I understand that such adult expressions are protected as free speech under the First Amendment.

I also understand that they are subject to zoning requirements.

However, in many cases sexually oriented establishments have been used as fronts for houses of prostitution.

Women are brought from foreign countries to the U.S. then transferred to various massage parlors and strip clubs across the U.S. where they end up

working as prostitutes.

Massage parlors and strip clubs and other sexually oriented establishments facilitate or create demand for trafficked persons.

In Arizona, many cities in the state have a problem with illegal massage parlors.

In Scottsdale, a major tourist, resort and spa city, as many as 15 to 20 percent of massage facilities offer illegitimate sexual services.

Last May, Arizona passed a new law that entered into force on July 1, 2004 and imposed stricter requirements on the massage industry.



Thus, the new law requires all massage therapists to obtain a license.

Among the requirements for license is that a masseuse or masseur has to be a citizen or legal resident of the United States and to have not been convicted of a felony or other crime involving moral turpitude, or prostitution or solicitation in the past five years.

The law also explicitly prohibits for massage therapists to engage in any kind of sexual activity with a client.

Distinguishing between massage and massage "with a special ending," a grand jury charged Roman Valdma with Importation of Aliens for Immoral Purpose (8 USC §1328), Transportation for Illegal Sexual Activity (18 USC § 2421), Persuading and Enticing Illegal Sexual Activity (18 USC §2422) and visa fraud.

Valdma recruited women from Estonia and induced, enticed and/or coerced them to work in Valdma's erotic massage parlors located in Massachusetts.

While pursuing such establishments through violation of zoning ordinances might be sufficient in some cases, what is more important is that states take steps to curtail the activities of the establishments that might facilitate trafficking.

Demand for sex tourism must also be confronted.

Our research at The Protection Project shows that sex tourism is significant in the following countries: Cambodia, Vietnam, the Philippines, Sri Lanka, Dominican Republic, Costa Rica, Thailand and Cuba.

When the customer is a military man, the law must also intervene.

In the case of Bosnia, for example, the demand for prostitution has risen significantly with the arrival of UN peacekeepers.

Until the mid-1990s, the sex-slave industry barely existed in Bosnia, but after the signing of the Dayton Accord in 1995, and with the arrival of approximately 50,000 male peacekeepers, a sex-trade market has been created and is flourishing. Women from Belarus, Moldova, Ukraine, Romania, Hungary and Albania have been lured to Bosnia by offers of legal work, only to end up enslaved in brothels.

When the customer is a military officer performing his duty as a member

of a UN peacekeeping mission, the law must be enforced on an extraterritorial basis to apply to those who engage in illicit sexual activities.

There are currently 15 UN peacekeeping missions operating around the world. Rule 4 of the UN General Assembly Code of Conduct of 1993 says that UN peacekeepers should "not indulge in immoral acts of sexual, physical, or psychological abuse or exploitation of the local population or United Nations staff, especially women and children."

At the same time, UN peacekeepers fall under the exclusive criminal jurisdiction of their own national authorities and have immunity from local prosecution.

It is up to the UN Board of Inquiry to find reasonable grounds for a charge of serious misconduct with a recommendation that the peacekeeper be repatriated for subsequent disciplinary action in his native country.

However, of only 24 officers repatriated to their countries for misconduct, none have been prosecuted for violating Rule 4 of the UN General Assembly Code of Conduct.

According to the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261-67 2000), criminal jurisdiction is established for acts committed by persons employed by or accompanying military forces outside the United States, including civilian employees of the Department of Defense and its contractors, if such acts would carry prison sentences of over one year within the United States.

Corporations that are involved in such illegal act must be held accountable. We are all familiar with McDonalds' "Happy Meal" toys which were found to be made by children in China, prompting the company to terminate that supplier relationship.

The Trade and Development Act of 2000 prohibits importation of products made, in whole or in part, with the use of convict, forced, or indentured labor under penal sanctions.

The proposed United Nations Code of Conduct for Companies, bans use of "slave and forced or compulsory labor."

It states that "[e]mployees shall be recruited, paid, and subjected to other working conditions so as to avoid debt bondage or other forms of slavery and shall have the option to leave employment and the employer must facilitate such departure by providing all the necessary documentation and facilitation."

For the first time, international treaty law establishes the liability of corporations for illegal activities in connection with organized criminal groups.

Under Article 10 of the United Nations Convention against Transnational Organized Crime, countries must establish liability of the legal person: "Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes..." "the liability of the legal persons may be criminal, civil or administrative," and "shall be without prejudice to the criminal liability of the natural persons who have committed the offenses."

So any effective response to the problem of trafficking must include all the persons involved in the trafficking enterprise.

I would like to draw two basic distinctions regarding the persons involved in or facilitate the act of trafficking.

The first would be to recognize the difference between the private person and the public person.

In many cases of trafficking, the private person is an organized criminal group as two or more people.

This is different than what the United Nations Convention against transnational organized crime tells us.

The United Nations Convention talks about three or more people.

For example, the Dominican Republic Law takes this into consideration.

If the trafficker is an organized group, article 7-c makes the action an aggravating circumstance that enhances the penalty by five more years. While the penalty for trafficking is under article 3 the punishment is between fifteen and twenty years in prison is increased by five more years every time one has an organized criminal group involved in the trafficking.

The Dominican Republic Law also specifically recognized the role not only of organized crime but the public person. This is something that I find fascinating; article 7 again provides the five years enhancement penalty when the perpetrator of the crime is a public official.

I would have liked the issue of corruption not only to be addressed as an aggravating circumstance but also in the definition of trafficking.

The Dominican Republic Law defines illegal means to include the abuse of power. It would have been nice to have also included the abuse of office as a form of illegal means that gives rights to a criminal offense.

This is a really good approach to fighting corruption as it relates to trafficking; few legal systems address corruption as it relates to trafficking, although in my judgment fighting corruption is the most important measure which should be taken to combat trafficking.

We should go after not only the natural person, but the legal person, the corporate person, and if such person is involved in illicit sexual activities and is trafficking women to perform such activities, such person should be fined, his business license revoked, and his business enterprise shut down.

We have to do something about the customer, the client, the one who is buying sexual services.

And we also have to do something about the facilitator:

- travel agencies
- employment agencies
- adoption agencies
- matchmaking organizations
- advertisement agencies
- hotels
- restaurants
- bars
- taxi companies
- and sex operators must all be criminally liable for any illicit activity.

The liability of sex operators including:

- strip clubs,
- massage parlors,
- and escort services should not be limited to compliance with residential zoning regulations.

Instead, nuisance/tort liability should be combined with criminal liability in

examining the legitimacy of sex operators.

Sex operators who abuse their employees or force them to engage in illicit sexual activities should be:

- fined,
- have their business license revoked,
- or be forced to close their business.

According to UNICEF, 75% of minors involved in prostitution are involved in the brothels, discos, restaurants and hotels. These establishments should be subject to criminal liability.

Any adequate and effective legal response must recognize a trafficked person as a victim.

Traditionally, the trafficked person, that is to say the prostitute, is considered a criminal if you apprehend her, detain her, deport her.

This is now changing. A trafficked person is now considered a victim of a crime who is entitled

to basic rights.

- She has the right to shelters.
- She has the right to medical care.
- She has the right to seek residency in the country of destination.

U.S. law allows for 5,000 T-visas for victims of trafficking.

This is a human rights approach, which focuses on victimization more than crime control.

The United States Trafficking Victims Protection Act moved us to recognize a trafficked person as a victim.

Prior to the Act, I am not sure that was the case. But, for the first time, the Act is explicit in establishing the principle of non-criminalization of the conduct of a trafficked person.

So if you are a trafficker and you destroy, conceal, remove, confiscate or possess a travel document to keep the trafficked victim in a condition of servitude, they put you in prison for five years in accordance with the Act.

But this rule does not apply to the conduct of a victim of a severe form of trafficking, if that conduct is caused by or incident to that trafficking. The victim of trafficking is exempted from criminal liability.

Is a trafficked person really a victim?

- The UN Protocol talks about trafficked persons as victims, but the Protocol does not define for us the concept of a victim of trafficking.

- However the concept of a victim of crime has been defined by the U.N. Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, which states:

Victims are "persons who, individually or collectively, have suffered harm including, physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that are violation of criminal laws, operative within member states..."

What does this mean? It means several things.

First it means that trafficked persons, as victims, and as vulnerable victims should not be penalized for immigration law or labor law violations.

This is the principle of non-criminalization of a trafficked person as stated in the UN Regulation on the Prohibition of Trafficking in Persons in Kosovo. The Kosovo regulation states that " a persons is not criminally responsible for prostitution or illegal entry, presence or work in Kosovo, if that person provides evidence that supports a reasonable belief that he or she was

the victim of trafficking."

Treating trafficked persons as victims means that the trafficked person should acquire the status of a victim regardless of whether such person is national or foreigner and irrespective of whether such foreigner a legal or illegal alien.

Victims of trafficking are entitled to the right to seek residence.

Victims of trafficking are entitled to the right to return to their country or origin.

I have proposed "Bill of Rights for Victims of Trafficking."

We, the victims of trafficking in persons, are entitled t

- The right to safety
- The right to privacy
- The right to information
- The right to legal representation
- The right to be heard in court
- The right to compensation for damages
- The right to medical assistance
- The right to social assistance
- The right to seek residence
- The right to return

We are entitled to be treated with dignity, fairness, compassion and respect for our human rights."

These are "basic rights," "fundamental rights,"

A human rights approach to trafficking in persons requires that a trafficked person must be recognized as a victim<sup>[54]</sup> who is entitled to basic human rights under the law and not as a criminal who is subject to the punishment under the law.

In addition, this approach requires an extended definition of who should be considered a trafficking victim.

In particular, this definition should include not only the victim herself, but also derivative victims, i.e., members of the victim's family who should either be covered by the witness protection programs or be granted a residency status.

The definition of a victim of trafficking should also be extended to include the potential victims of trafficking as a group, i.e., the vulnerable population, or the population at risk, especially women and children under the age of 18.

The Trafficking Victims Protection Act tells us that a victim of a severe form of trafficking shall be entitled to a "T-Visa" IF, and this is a big IF, the

victim meets FOUR requirements.

1. The trafficked person must be a victim of a severe form of trafficking.
2. He or she must be physically present in the United States due to trafficking.
3. He or she must comply with any reasonable request to assist in the investigation and prosecution of trafficking, or has reached the age of 15.
4. That such person would suffer extreme hardship upon removal.

The Act was generous. It provided for 5,000 T-Visas during any fiscal year.

The Act was also generous by applying the derivative victim doctrine and extending the right to the T-Visa to the spouses, sons, daughters or parents of such victims of trafficking.

The TVPRA amends the existing T-Visa regulations and allow for trafficking victims under the age of 18 to apply for a T-Visa without the requirement of compliance with reasonable requests to assist in the investigation and prosecution in a trafficking case.

How would you prove "extreme hardship"?

You may have to prove:

-That the medical status of the victim of trafficking, including any physical and/or mental condition, requires medical care not available in her country of origin.

-That denying the victim access to the U.S. legal system would leave her without any remedy.

-That it is most likely that the victim shall be subject to punishment because her country of origin penalizes the trafficked victim.

-That it is most likely that the victim will be re-victimized, especially in the absence of any assistance to her in her country of origin

-And that the victim most probably would become subject to reprisal from her traffickers, and thus her safety is not guaranteed.

The TVPRA allows for a victim of trafficking to file a civil action against their trafficker and

recover damages and attorney's fees.

Not only is a trafficked person a victim, such person is a vulnerable victim.

Whether trafficking is for the purpose of prostitution or other forms of sexual exploitation or labor, a trafficked person must be identified as a vulnerable victim.

It is encouraging that courts applied the Vulnerable Victim Sentence Enhancement doctrine to cases of trafficking under USSG §3A1.1(b)(1) to enhance the penalties in cases of trafficking.

A vulnerable victim is a person who "is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct."

In *U.S. v. Veerapool*, 312 F.3d 1128, 1133 (9th Cir. 2002), the court applied the doctrine in a case involving involuntary servitude where the wife of the Thai ambassador recruited girls from Thailand to work in her home and restaurant in Los Angeles.

Veerapool kept the workers in degrading circumstances and a condition of involuntary servitude.

The court used the vulnerable victim sentencing adjustment, stating that the victim was "vulnerable based on her immigrant status and the circumstances in which the immigrant was exploited [...] from the initial recruitment, and the treatment of the individuals while they were here [in the U.S.]. ...

The victim was a poor uneducated woman, lacking in sophistication, in the knowledge of the United States laws, and [...] that was also exploited."

This vulnerability is illustrated in the recent case of *United States v. Castaneda*, where appellant, a co-owner of the Mood and Music Night Club in Saipan, Northern Mariana Islands, recruited three young women from the Philippines for waiting tables and singing.

They were told at the time of their hiring, that their job included "greeting customers at the door of the club with a kiss, sitting with customers and perhaps holding their hands."

They signed a booklet entitled "Personnel Rules and Policies" which prohibited employees from engaging in prostitution.

However, once hired, they were forced to provide male customers with sexual services in private rooms after being selected by them.

Then a prostitute filed a complaint with the FBI, an arrest was made and the defendant was found guilty.

The defendant was convicted and sentenced to 12 months imprisonment.

In this case, Circuit Judge Silverman in his dissent argued for the application of the vulnerable victim doctrine.

He stated that:

-The victim in this case was tricked into leaving a foreign country on the promise of a



legitimate job.

-As a direct result of this deception, she was stranded in a foreign country and, as found by the district judge, 'couldn't just pack up and go home.'

-Because the victim was an indentured nonresident alien worker under Northern Mariana Islands law, she could not work elsewhere.

-She was forced to participate in the prostitution activity."

This is what we are talking about. Women being trafficked from one country to another.

Deception, fraud and false promises of employment.

AND vulnerable victims who, as the court pointed out, "couldn't just pack up and go home."

Because of the transnational nature of the crime of trafficking, combating trafficking requires further transnational measures. This means that countries of origin, transit, and destination must cooperate in fighting this crime.

And that is why I always add the 3 Exs in any comprehensive response to the problem

- Extradition
- Extraterritoriality
- And Exchange of Information.

· Extradition: The recognition of trafficking in person as an extraditable offense.

· Extraterritoriality: The application of the domestic law regardless of the place where the act was committed.

· Exchange of information between countries of origin and countries of destination.

Let me give you an example of exchange of information.

A collective effort by 12 countries in Southeastern Europe and neighboring regions deserves mentioning in this respect.

In September 2003, these countries participated in a joint operation MIRAGE, which was carried out by the Southeast European Cooperative Initiative Regional Center for Combating Transborder Crime (SECI) with the assistance of the United States.

The ten-day-long operation targeted over 20,000 border crossings, bars, and nightclubs in the region and identified a total of 463 victims of sex trafficking and 595 suspected traffickers.

The operation resulted in launching 319 new criminal investigations, with 207 traffickers charged under the specific anti-trafficking provisions of national legislation.

As of February 2004, a total of 31 traffickers identified during the operation have been convicted

The European Union agreed on arrest warrant to extradite any suspect that is involved in 32

crimes including trafficking in persons. Even if the act is not considered a crime in the place, the suspect is arrested.

Unfortunately, in many countries, the intelligence community fails to share the information with the law enforcement agencies. Sharing information among different agencies in a country is important.

Here are some examples of extraterritoriality.

Article 5 of the Criminal Code of Macau provides that the criminal law is applicable to acts carried outside of Macau when such acts constitutes the crimes of "trafficking in human beings," "trade in slavery" and such acts are committed by a national or resident of the country.

In Thailand, the Penal Code Amendment Act has expanded the territorial jurisdiction of courts to cover "indecent sexual acts" and "trafficking offenses" provided in Section 282 and 283 of the Penal Code, irrespective of where such offenses are committed.

The Crimes (Child Sex Tourism) Amendment Act of 1994 of Australia provide for a similar rule.

Trafficking in persons must be recognized as an extraditable offense. For instance, in Cyprus trafficking in persons and sexual exploitation of children are deemed as extractable offenses under the Extraction of Fugitive Law No

97 of 1970.

Under the United Nations Convention against Transnational Organized Crime, it is interesting to note that in Article 16(4) if a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the Convention the legal basis for extradition in respect of any offence to which this article applies.

Corruption, a challenge especially in the context of trafficking in persons, undermines the effectiveness of government, leads to the misallocation of resources, harms development and thus, it has detrimental effects on the needy.

As recognized by the United States Congress "trafficking [in persons] is often aided by official corruption in countries of origin, transit and destination, thereby threatening the rule of law." [United States Trafficking Victims Protection Act, Section (102)(b)(8)].

Corruption hinders the government from using the countries' resources to implement programs to prevent trafficking or protect victims of trafficking.

The state is responsible for the actions of non-state actors, not only the actions of the state itself, as was the traditional rule.

Thus, according to contemporary principles of international law, a state may be responsible for violation of its international obligations on one of three separate bases: original responsibility, responsibility by endorsement, and vicarious responsibility.

Essentially, where a state is under an international obligation to prevent and punish injurious act committed by private agent within a state's control, failure to do so amounts to a breach of

state's international obligation; in this event, a state may be held responsible for privately committed wrongful act.

Further, "state responsibility is determined by an objective standard.

Thus, whether or not the state intends an act to be harmful or not is largely irrelevant.

Responsibility is imposed because the act or omission was committed."

If a state is found responsible for acts of a non-state actor, it is "deemed to have committed the injurious act, without regard to the identity of the person(s) who actually carried it out "

This implies that the government complicity is not the only circumstance in which a state can be held responsible for trafficking in persons as a human rights violation.

A state is also responsible for its "inaction" or "failure to act" in preventing trafficking or protecting the victims of trafficking

This approach is taken by the TVPA which, in determining "significant efforts" made by a government to bring itself into compliance with the minimum standards for the elimination of trafficking, considers "the extent of noncompliance with the minimum standards by the government...".

Although "[m]ere knowledge of violations perpetrated by non-state actors is insufficient to engage a state's responsibility under the obligation to respect rights ... knowledge coupled with a failure to take action may engage a state's responsibility for failure to ensure rights[.]"

However, it has been emphasized that criminalization or prohibition of violation of human rights of victims of trafficking is, by itself, insufficient to comply with a state's international obligations; a state must also exercise due diligence in effectively enforcing the legal prohibition.

Moreover, if a state is found in violation of its international obligations to combat trafficking, it should be held liable for just compensation for damages caused by its wrongful actions.

A state must be responsible for restitution in cases of failure to investigate and punish the traffickers or prevent the acts of trafficking.

Does this mean intervention in the domestic affairs of a state in violation of the principle of state sovereignty?

The UN Convention provides that "State Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of states and that of non-intervention in the domestic affairs of other states."

Furthermore, "[n]othing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law."

However, it has also been argued that "where the government is not in control or the controlling authority is unable or unwilling to create the conditions necessary to ensure rights, and gross violations of the rights of masses of people result[.]" sovereignty of such

government is forfeited.

Therefore, it may be argued that a government that fails to protect the rights of its people has forfeited its sovereignty, at least temporarily.

This is the theory of "conditional sovereignty", which is also known as "the forfeiture of sovereignty" or the "temporary surrender of sovereignty."

Whether it should apply in the context of trafficking is uncertain.

However, the theory has some validity in cases where the government refuses to recognize the problem of trafficking or lacks the political will to do something about it, and is also complicit in committing the crime of trafficking.

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