

HEINONLINE

Citation: 23 T. Jefferson L. Rev. 199 2000-2001

Provided by:

Sponsored By: Thomas Jefferson School of Law



Content downloaded/printed from [HeinOnline](#)

Thu Dec 8 14:17:28 2016

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[Copyright Information](#)

ARTICLES

SEX SELLS BUT DRUGS DON'T TALK: TRAFFICKING OF WOMEN SEX WORKERS

Susan W. Tiefenbrun

I. INTRODUCTION

Sex trafficking is a lucrative international business, second only in profits to the drug trade.¹ More than 2,000,000² women around the world are bought and sold each year for the purpose of sexual exploitation,³ and 50,000 of these women are trafficked into the United States in a modern-day form of slavery called non-consensual⁴ sex work. The purpose of this article is twofold: to raise the public's awareness of this widespread, heinous crime perpetrated both in the United States and abroad, and to probe into some of the economic, social, cultural, and political reasons why this crime continues to spread like an uncontrollable disease,

* Associate Professor, Thomas Jefferson School of Law. This paper was presented at Thomas Jefferson School of Law on February 15, 2001 for the Women and the Law Conference: Women as Workers co-sponsored by the ABA Commission on Women in the Legal Profession. This is part of a larger study in progress. I would like to thank Dorothy Hampton for her research assistance and Professors Julie Greenberg and Susan Bisom-Rapp for reading early drafts of this article.

1. "Traffic in human beings was estimated to generate some 6 billion dollars annually, according to a report of the International Organization of Migration." *U.N. Economic Alternatives to Illicit Drug Cultivation, Trafficking Must be Created*, M2 PRESSWIRE, Feb. 19, 1998 (Statement of Pino Arlacchi, Executive Director of the United Nations Office for Drug Control and Crime Prevention).

2. These numbers are difficult to verify, and some have reported as many as 4,000,000 women trafficked each year. See Becky Young, *Trafficking of Humans Across United States Borders: How United States Laws Can be Used to Punish Traffickers and Protect Victims*, 13 GEO. IMMIGR. L.J. 73 (1998). The statistics that seem most closely documented are reported in a CIA Report. Amy O'Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*, DCI Exceptional Intelligence Analyst Program: An Intelligence Monograph, November 1999 (April 2000), at 3. [hereinafter CIA Report]

3. Statement of Pino Arlacchi, Executive Director of the United Nations Office for Drug Control and Crime Prevention, *supra* note 2.

4. See text accompanying footnotes 20-24 for a discussion of "consent." Non-consensual sex work is performed when the work conditions imposed on the sex worker are unanticipated or not agreed to before the woman leaves her country to do sex work abroad, or when the woman is duped into performing sex work against her will. Both forms of sex work are "non-consensual."

impervious to the plethora of international and domestic laws prohibiting slave trade.⁵

This paper is organized in three parts. The first part will describe the problem of trafficking of sex workers. The second part will analyze the efficacy of legal solutions adopted in the past, which have been unsuccessful in deterring or eradicating the problem. The third part will examine a recently enacted U.S. law, the long-awaited Victims of Trafficking and Violence Protection

5. Numerous international conventions have attempted, without much success, to eradicate sex trafficking. *See, e.g.*, International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 35 Stat. 426, 1 L.N.T.S. 83 (amended 1910, 1949, 1997); International Convention for the Suppression of Traffic in Women and Children, Sept. 30, 1921, 9 L.N.T.S. 416; International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431; Convention to Suppress the Slave Trade and Slavery, Sept. 24, 1926, 46 Stat. 2183; Forced Labor Convention. *Adopted* on June 28, 1930 by the General Conference of International Labor Organization at its fourteenth session; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institution and Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3201; 266 U.N.T.S. 3; U.N. CHARTER (as amended) June 26, 1945, 59 Stat. 1031, T.S. No. 933, 3 Bevans 1153; Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3rd Sess. U.N. Doc A/810 (1948). *Adopted and opened for signature, ratification and accession* by General Assembly Resolution 217A (III) of Dec. 10, 1948; International Covenant on Civil and Political Rights. *Adopted and opened for signature, ratification and accession* by General Assembly Resolution 2200A (XXI) of Dec. 16, 1966; Convention on the Rights of the Child. General Assembly Resolution 44/25 of Nov. 20, 1989, *entered into force* Sept. 2, 1990; Convention on the Elimination of All Forms of Discrimination Against Women. *Adopted and opened for signature, ratification and accession* Mar. 1, 1980, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46), U.N. Doc. A/34/36 (Dec. 18, 1979)[hereinafter CEDAW]; Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment 1984, GA Res. 39/46, Annex, A/39/51.

The international community has condemned slavery, involuntary servitude, violence against women and other elements of trafficking in the form of declarations, treaties, and United Nations resolutions and reports. These include the Universal Declaration of Human Rights of 1948; the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 1948 American Declaration on the Rights and Duties of Man; the 1957 Abolition of Forced Labor Convention; the International Covenant on Civil and Political Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; United Nations General Assembly Resolutions 50/67, 51/66, and 52/98; the Final Report of the World Congress Against Sexual Exploitation of Children (Stockholm, 1996); the Fourth World Conference on Women (Beijing, 1995); the 1991 Moscow Document of the Organization for Security and Cooperation in Europe; the U.N. Convention Against Transnational Organized Crime: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol Against Smuggling of Migrants by Land, Sea and Air (November 15, 2000).

Act of 2000 (Victims Protection Act),⁶ which criminalizes sex trafficking, offers enhanced benefits to sex worker victims, and severely punishes the perpetrators of sex trafficking. But will it work? It is my contention that unless the problem of sex trafficking is addressed from an *economic* perspective by increasing the cost of doing the business of sex trafficking and by decreasing the economic benefits of this widespread and lucrative industry, the Victims Protection Act, like the more than twenty international treaties and U.N. Resolutions that preceded it, will probably do very little in the short run to change the deplorable conditions of immigrant women sex workers.

Currently the economic advantage of sexual exploitation seems to outweigh the moral and legal commitment to equality of the sexes and to the protection of women's rights.⁷ The Victims Protection Act does increase the penalty for sex trafficking, which may have the economic effect of increasing the risk and thereby the cost of engaging in this criminal activity. The severe penalty should provide a disincentive to commit the crime of trafficking. In other words, if traffickers lose more than they gain by risking a life sentence in prison, the severe penalty should decrease the incentive of commercial gain and dissuade traffickers from the temptation to engage in the sex work industry. This adjustment to the cost/benefit analysis for sex trafficking will happen only if law enforcement and immigration officials cooperate. Moreover, the courts must enforce the penalty provisions of the new Victims Protection Act which places trafficking on a par with rape and which provides 20 years to life imprisonment for perpetrators.⁸ Cooperation must extend internationally because trafficking of women "is an evil requiring concerted and vigorous action by countries of origin, transit or destination, and by international organizations."⁹

There is no doubt that The Victims Protection Act constitutes a milestone in women's rights. The law provides the means to effectuate laudable goals of preventing and prohibiting sex trafficking by the establishment of a coordinated effort between

6. The Victims of Trafficking and Violence Protection Act of 2000, Pub.L. No. 106-386, 114 Stat. 1464 (2000)(H.R.3244)[hereinafter Victims Protection Act].

7. Elizabeth F. Defeis, *Draft Convention Against Sexual Exploitation (CASE)*, 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 319 (Kelly D. Askin & Dorean M. Koenig eds., 2000 [hereinafter 2 ASKIN & KOENIG]).

8. Victims Protection Act, *supra* note 7, § 112.

9. *Id.* at § 102(21).

destination countries, like the United States, and source countries in order to modify customs and values that marginalize women and to severely punish perpetrators who disenfranchise women. The coordinated effort required for the effective enforcement of the U.S. law is not a disguised form of American imperialism; rather, it is an important two-pronged international and grassroots attempt to arrive at a consensus for the protection of women's fundamental human rights.

II. WHAT IS TRAFFICKING OF SEX WORKERS?

A. *A NARRATIVE*

Women are typically trafficked from relatively poor, war-torn or transitional countries of origin through a country of transit having relaxed immigration laws and finally into a relatively rich destination country where the women are duped into believing they will find a better life. These young, impoverished, refugee and migratory women are sometimes sold to traffickers by their own parents for money.

To best describe the process of sex trafficking, let me tell you a story about a young girl named Susanna.¹⁰ Susanna is a pretty, poor, unemployed and desperate young woman aged 22, who is barely surviving in Albania. She lives with her parents and has been unemployed for two years. She is a librarian by training. One day she is introduced to the services of a loan shark by a friendly woman in her town who speaks Susanna's native language, compliments Susanna, tells her she is pretty, offers her a drink, some gifts, and a nice dinner in her home. This friendly woman, who is well dressed and prosperous looking, makes false promises of a good life to Susanna, and like a guardian angel, seems to answer the victim's prayers for prosperity. Then, in the privacy of the guardian angel's home, the woman agent drugs Susanna, hands her over to another agent who drives her, unconscious, across the border where Susanna awakens only to find herself in a foreign land, unable to speak the language of the

10. This story is a variation of Lydia's story told by Dr. Laura Lederer in her testimony to the House of Representatives Subcommittee on International Operations and Human Rights on Sept. 14, 1999, 1999 WL 717872, and in *The Sex Trade: Trafficking of Women and Children in Europe and the United States*, Hearing Before the Comm. on Security and Cooperation in Europe, 106th Cong., 1st Sess. (1999) [hereinafter, the Sex Trade Hearing] (statement of Dr. Laura Lederer, at 20, 21) [hereinafter Dr. Laura Lederer's Statement].

country. Susanna is now owned by a man who forces her to work off a debt to his agency, which he claims to be in the amount of \$35,000. The trafficker tells Susanna she must work off the debt by sexually servicing 10 to 20 men a day in a brothel.¹¹

If and when Susanna contracts venereal disease or AIDS, she is deprived of medical treatment. Susanna is held captive and under constant surveillance in the brothel, often drugged to be kept more controllable, tied to her bed at night, and deprived of the right to learn the language of the destination country in order to be kept defenseless and as dependent as possible on her trafficker, who continuously threatens her with beatings, escalation of debt, and violence to her family back home. Susanna is held by her captor in debt bondage, and she must work inhumane hours under terrible labor conditions in order to pay off a \$35,000 debt, which seems to mount rather than decline as the years go by. If Susanna is rebellious, the trafficker will beat her, rape her, send friends in to gang rape her, and/or force her to be left in a room alone for days without food and water in order to frighten and break her rebellious spirit. Here Susanna remains unprotected in an alien land, without hope of escape.¹²

If Susanna tries to escape, her family at home is threatened with violence and death. If she does successfully escape, she finds herself alone on the street as an illegal alien, without proper documents, because, typically, immediately upon her arrival in the destination country, the trafficker will forcibly confiscate the visa and passport that he has obtained for the sex worker for a relatively small sum of money. He claims that he will return the visa and passport to Susanna when he is fully compensated for his generous loan. If Susanna seeks the help of the police, she is then confronted with the harsh reality that some of the police are often protective not of the victim, but rather of the organized crime network and the traffickers who have paid off the police. There is documented proof of corruption and complicity by law enforcement officials throughout the sex trafficking process in countries of origin, transit and destination.¹³ Bribes and payoffs are given to local visa officials, to border patrol officers, and to local police who keep the brothels running. Sadly, Susanna is without protection in the destination country, and the traffickers

11. *Id.*

12. *Id.*

13. *Id.* at 22.

have bought their own protection from the organized crime networks. Weak laws and light penalties for this crime aid the traffickers further.¹⁴ The police rarely attempt to arrest the brothel owners or to identify the traffickers.¹⁵ If Susanna is caught by her trafficker, her life will become a living hell.

B. TRAGIC IRONIES OF TRAFFICKED SEX WORKERS

The plight of the woman caught up in sex trafficking is fraught with many tragic ironies. The vulnerable, defenseless victim, not the villain, is severely penalized by immigration officials and by society. When the woman tries to escape from her captors, she may be desperate enough to seek help from the authorities. But once she finds herself in the hands of the police or the immigration officers, she is not protected by them but arrested, detained pending deportation, and locked up for long periods of time because she is considered an illegal alien without a passport or visa. Another possible scenario is that the victim is arrested in a brothel raid and then deported to her home country,¹⁶ where she suffers the further humiliation of being treated as a common criminal or a social pariah—simply because she was duped into believing she could escape her wretched life of poverty and unemployment at home by finding legitimate work in the United States or elsewhere. It is the victim of the crime of sex trafficking who eventually suffers serious legal punishment while the well-protected perpetrator is charged, if at all, with a minor immigration law violation.

C. DEFINITION OF SEX TRAFFICKING AS SLAVERY, THE ROLE OF CONSENT, AND THE PROBLEM OF CULTURAL RELATIVISM

Sex trafficking is defined in the Victims Protection Act¹⁷ as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”¹⁸ “Severe forms of trafficking in persons,” which enable the victim

14. *Id.*

15. *Id.* at 21.

16. The Sex Trade: Trafficking of Women and Children in Europe and the United States, Hearing Before the Comm. On Security and Cooperation in Europe, 106th Cong., 1st Sess.(1999)[hereinafter the Sex Trade Hearing]. Opening Statement of Hon.Christopher H. Smith, at 1 [hereinafter Christopher Smith Opening Statement].

17. Victims Protection Act, *supra* note 7, at § 103.

18. *Id.* at § 103(9).

to qualify for enhanced benefits and services, is defined as “sex trafficking . . . for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”¹⁹ Many of the women are trafficked into the international sex trade by force, coercion or fraud,²⁰ and compelled through physical violence or deception to engage in sex acts or perform slavery-like labor.²¹

There are two categories of non-consensual workers that fall under the definition of victims of sex trafficking. Many of the women who are trafficked into sex work are duped, drugged, and forced into doing sex work against their will. This form of non-consensual sex work is called “forced prostitution” and constitutes violence against women and the deprivation of their fundamental right to self-determination.²² The second category of non-consensual sex workers includes the women who willingly migrate to destination countries where they have consented to, and expect to do, sex work. However, upon arrival the women are forced to do sex work under conditions they did not agree to, anticipate, or even contemplate. This second category described above is also a form of non-consensual sex work, and is included in the definition of sex trafficking for purposes of this paper.

Feminist legal scholars writing about sex trafficking typically fall into two distinct categories that reflect these two different types of non-consensual sex workers. One group of feminist scholars, called neo-abolitionists,²³ condemns both voluntary and involuntary prostitution or sex work on the theory that prostitu-

19. *Id.* at § 103(8).

20. *Id.* at § 102 (2).

21. *Id.* at § 102 (6).

22. Jo Doezeema, *Loose Women or Lost Women: The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women*, <https://www.cc.columbia.edu/sec/dlc/ciao/isa/doj>, at 9 (Dec. 20, 2000), citing GAATW, A Proposal to Replace the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Utrecht: GAATW Bulletin, 1994. The GAATW is a group of feminists that does not place value judgements on a woman's career choice of sex work.

23. E.G. Kathleen Barry, founder of The Coalition Against Trafficking in Women (CATW) and author of *FEMALE SEXUAL SLAVERY* (1979), is of the neo-abolitionist belief that prostitution is violence against women, sexual exploitation, and an institution that victimizes all women. The neo-abolitionists claim that prostitution justifies the sale of women and reduces all women to sex (CATW 1998:2). The other feminist school draws a distinction between “forced prostitution” and “voluntary prostitution” and does not seek to place a value judgment on women who choose prostitution or sex work for their livelihood. The Global Alliance Against Trafficking in Women (GAATW) is the primary exponent of this other feminist position.

tion is never really entirely consensual and reduces all women to nothing more than pure sex commodities. The other group of feminist scholars accepts the right of women to choose sex work as a career and condemns sex trafficking only when the career choice is non-consensual or when the conditions imposed on a consensual sex worker are inhuman and unanticipated. These feminists argue that to condemn the right of consensual sex workers to engage in their career of choice is to buy into a myth of the purity and innocence of women as dependent victims. This paper focuses on the necessity to alter the economic benefits of sex trafficking in order to eradicate the deplorable conditions imposed on non-consensual sex workers who fit into both of these categories of women workers.

It is arguable that consent is not a probative issue in the definition of sex trafficking because one cannot legally consent to slavery, and sex trafficking is clearly a variant of slavery. The Thirteenth Amendment to the United States Constitution outlaws slavery and prohibits an individual from selling himself or herself into bondage.²⁴ Multilateral treaties and customary international law²⁵ condemn slavery. Since its inception, the United Nations has always been committed to the abolition or elimination of slavery.²⁶ On November 15, 2000, one month after the enactment of the Victims Protection Act, the United Nations General Assembly adopted the U.N. Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children and a Protocol Against the Smuggling of Migrants by Land, Sea and Air.²⁷ This U.N. Convention and two Protocols directly link sex trafficking to international organized crime. But despite a multitude of U.N. recommendations, decisions, and other pro-

24. CIA Report, *supra* note 3, at VI.

25. A. Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT'L L. 303 (1999)[hereinafter Rassam].

26. *Id.* at 304.

27. The text of the Convention and Protocols may be obtained from the U.N. Office for Drug Control and Crime Prevention's website (The texts of the Convention and the Protocols are annexed to the Draft Resolution contained in the November 2, 2000 Report by the Ad Hoc Committee (U.N. Doc. A/55/383) to the U.N. General Assembly.

nouncements, slavery is not dead, and the trafficking and sale of human beings for sexual exploitation are flourishing.²⁸

Some critical race theorists²⁹ and feminists have focused on the difficult question of cultural relativism. Western countries need to respect cultural norms practiced in certain developing countries, even if those norms differ from those of developed countries. However, if sex trafficking is understood as being a variant form of slave trade, it is not defensible to argue that sex trafficking is a cultural norm accepted in certain countries and which must be respected as such under the theory of cultural relativism.³⁰ Sex trafficking, like slave trade, is a *universal* crime prohibited by the principle of *jus cogens* provided in Articles 53 and 64 of the Vienna Convention on the Law of Treaties.³¹ Sex trafficking, like slave trade, is a peremptory norm of general international law, which is accepted and recognized by the international community as a whole, and from which no derogation is permitted.³² Viewed as a variant of the universal crime of slave trade, sex trafficking can not be justified as a “cultural” relative norm practiced in certain third world countries, like the practice of female genital mutilation,³³ which is a difficult case, or murdering girl babies.³⁴ Sex trafficking simply does not fall into the category of cultural relativism because it is an easy case of a universal crime that is universally abhorred. The parents who sell their girl babies for money into the sex work industry and the traffickers who by loan sharking snare the poverty-stricken women into a network of forced prostitution are perceived in their

28. United Nations, Economic and Social Council, Commission on Human Rights, Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Forty-Seventh Session, U.N. Doc. E/CN.4/1996/85.

29. E.g. Hope Lewis, *Between Irua and “Female Genital Mutilation”*: *Feminist Human Rights Discourse and the Cultural Divide*, CRITICAL RACE FEMINISM, 361 (Adrien Katherine Wing, ed. 1997).

30. See Isabelle R. Gunning, *Arrogant Perception, World Traveling, and Multicultural Feminism: The Case of Female Genital Surgeries*, CRITICAL RACE FEMINISM, *supra* note 30, at 352, 357 [hereinafter Isabelle Gunning].

31. Vienna Convention on the Law of Treaties (with annex). Arts.53 and 64. Concluded at Vienna, 23 May 1969. Entered into force, 27 January 1988. 1155 U.N.T.S. 331; 1969 U.N.J.Y.B. 140; 1980 U.K.T.S. 58, Cmnd. 7964; *reprinted in* 8 I.L.M. 679 (1969) & 1 Weston I.E.I.

32. CHERIF BASSIOUNI, *THE PROTECTION OF HUMAN RIGHTS IN THE ADMINISTRATION OF CRIMINAL JUSTICE XXIV* (1994).

33. See Isabelle Gunning, *supra* note 30, at 352.

34. Sharon K. Hom, *Female Infanticide in China: The Human Rights Specter and Thoughts Toward (An)Other Vision*, GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER 251 (Adrien Katherine Wing, ed., 2000).

own countries as abhorrent criminals.³⁵ Sex trafficking cannot be viewed as a cultural practice but rather as a universal crime linked to slave trade.

That is not to say that legal scholars should disregard the cultural, social, economic and political causes of the worldwide practice of sex trafficking. Traffickers successfully lure women into sex work because these women are victims of poverty, of the social practice of marginalizing women, of the failure of some cultures and societies to place a value on traditional women's work, and of the lack of education and employment opportunities for women in developing and transition countries. Women lured into sex work are victims of a myriad of complex social, cultural, and political factors which feminists have discussed persuasively in an ongoing critical discourse in order to explain some of the underlying causes of sex trafficking. In this paper, I stress the causative economic factors of sex trafficking and, by incorporating economic theory, propose a solution to the eradication of sex trafficking.

D. STATISTICS ON TRAFFICKING

Statistics on trafficking are admittedly not very reliable because of the clandestine nature of the crime and the social stigma attached to sex worker activity. There are many documented reports claiming that 2,000,000 women are trafficked each year around the world, but other reports cite as many as 4,000,000. Failure to obtain accurate statistics should not in any way justify the view that sex trafficking is a "cultural myth."³⁶ This is an untenable position, reminiscent of the argument that the Holocaust and the annihilation of 6,000,000 Jews simply never happened. The many horrifying stories these women tell of their

35. Violence against women, such as forced prostitution, female circumcision, dowry deaths, and honor killings, are cultural practices that are not always viewed as a source of cultural pride. They may even be frowned upon. See Yasmeen Hassan, *Stove Burning, Acid Throwing, and Honor Killings*, 2 ASKIN & HOENIG, *supra* note 8 at 587 fn. 1.

36. Joe Doezema, *supra* note 23, at 8. Professor Doezema calls "White Slavery" a racist concept. *Id.* at 7. He calls sex trafficking in women a "cultural myth." Professor Doezema does frequently state that he is not trying to infer that sex trafficking doesn't exist. He only means to underline that many women choose to do sex work willingly and, therefore, they should not be condemned for that choice. From this fact Professor Doezema concludes, without proof, that the majority of sex trafficked women go into sex work willingly! This view does serious damage to the cause of eradicating sex trafficking.

enslavement³⁷ are documented in the voluminous body of literature on sex trafficking and constitute vivid evidence that this crime is real and not a cultural myth. The numbers of women and children trafficked today for the purpose of prostitution may soon be as high as those of the African slave trade of the 1700s.³⁸

Statistics about the profits earned from sex trafficking also vary. Traffickers in some countries can buy a woman for \$15,000, and traffickers in other countries charge as much as \$40,000.³⁹ In Japan, for example, the usual pay received for the sale of a woman is 2 million yen, or approximately \$14,000 to \$15,000.⁴⁰ Traffic in human beings designated for sex work is estimated to generate somewhere between \$7 to \$12 billion dollars annually.⁴¹

E. COUNTRIES ENGAGING IN THE CRIME OF TRAFFICKING SEX WORKERS

The United States is one of the primary destination points for trafficked women, especially from war torn countries and the former Soviet Union.⁴² Other popular destination countries include Israel, Japan, Holland, Germany, and Italy.⁴³ Trafficking instances were reported in at least 20 different states in the United States, with most cases occurring in New York, California, and Florida.⁴⁴ The Immigration and Naturalization Service (I.N.S.) has discovered over 250 brothels likely to be involved in trafficking in 26 different cities of the United States.⁴⁵ The primary source countries for sex trafficking in the United States are Thailand, Vietnam, China, Mexico, Russia, Ukraine, and the

37. See e.g. Timothy Pratt, *UN Moves to Slay Human Trafficking 'Beast,'* SUN-DAY HERALD, December 31, 2000, at 12. "Viviana still remembers the night she fell "into the jaws of a beast." It is a monster which snares as many as 35,000 women out of her native Colombia every year . . . and leads to untold misery, disease and death. The "beast" is the sex slave trade, a growing international crime with profits second only to drugs and arms." The article goes on to describe the plight of Viviana, a Colombian woman of 23, who successfully escaped a bordello in Spain, where she was kept in bondage until she paid off her \$4000 debt to her trafficker.

38. Dr. Laura Lederer's Statement, *supra* note 11, at 24.

39. *Id.* at 57.

40. CIA Report, *supra* note 3, at 56.

41. John Daniszewski, *Russian Coalition Fights Sex Slavery*, L.A. TIMES (May 17, 2001) at A3.

42. Christopher Smith Opening Statement, *supra* note 17, at 2.

43. Sex Trad Hearing, *supra* note 11, at 4.

44. CIA Report, *supra* note 3, at 3.

45. *Id.*

Czech Republic.⁴⁶ But women have also been trafficked to the U.S. from the Philippines, Korea, Malaysia, Latvia, Hungary, Poland, Brazil, and Honduras, among other countries.⁴⁷ Examples of sex trafficking in the United States abound: Latvian women were threatened and forced to dance nude in Chicago; Thai women were brought to the United States for the sex industry, and then forced to be virtual sex slaves; ethnically Korean-Chinese women were held as indentured servants in the Commonwealth of the Northern Mariana Islands, which is governed by U.S. law;⁴⁸ and hearing-impaired and mute Mexicans brought to the United States, were enslaved, beaten, and forced to peddle trinkets in New York City.⁴⁹

F. ROLE OF INTERNATIONAL CRIME ORGANIZATIONS IN TRAFFICKING AND RELATED CRIMES

International crime organizations⁵⁰ are allegedly running the sex trafficking industry through powerful networks that trade and traffic impoverished women by the use of force,⁵¹ fraud and coercion for commercial gain.⁵² Profits earned from sex trafficking are often applied to the illegal narcotics industry, which is also protected by international crime organizations. Thus, there is a direct link between sex trafficking and drugs. The trafficking industry is also closely intertwined with other related criminal activities, such as extortion, racketeering, money laundering, bribery of public officials, drug use, gambling, smuggling, loan sharking, conspiracy, document forgery, visa, mail, and wire

46. *Id.*

47. *Id.*

48. See Marybeth Herald, *The Northern Mariana Islands: A Changing Course Under Its Covenant with the United States*, 71 OREGON L.R. 127 (1992).

49. CIA Report, *supra* note 3, at v.

50. International criminal organization is defined in the CIA Report. "An organized criminal group is a structured group of three or more persons existing for a period of time and having the aim of committing a serious crime in order to, directly or indirectly, obtain a financial or other material benefit." *Id.* at vii.

51. Victims Protection Act, *supra* note 7, at § 102(6): "Such force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse and coercion."

52. For example, in China, the Sun Yee On, the 14K, the Big Circle Boys, and Wo On Lok Triads have been linked repeatedly to smuggling illegal immigrants and prostitution rackets. CIA Report, *supra* note 3, at 55. Japanese organized crime or the Yakuza are involved in trafficking in women and in the adult entertainment industry. CIA Report, *supra* note 3, at 55.

fraud.⁵³ Other industries related to trafficking include mail order bride companies, maid schemes, domestic servant schemes, and illicit foreign adoptions.⁵⁴

International organized crime networks engage in sex trafficking all over the world, but the source of the criminal activity is usually in poor, war-torn, or transition countries that send women to richer, developed countries.⁵⁵ The involvement of the organized crime networks in the sex trafficking industry is extensive because the sex work industry is lucrative. Profits from sex trafficking are second only to drugs and arms.⁵⁶ At least seven “families” in Bangkok, Thailand recruit, sell, and smuggle Asian women throughout the world, including the U.S., to serve as prostitutes.⁵⁷ Russian organized crime is widespread and provides “the roof,” or cover for trafficking operations, while lower-level Russian criminals manage recruitment and logistics.⁵⁸ Russian criminals often operate behind the disguise of employment, travel, modeling, or matchmaking agencies⁵⁹ sometimes listed on the Internet to reach a global market.⁶⁰ Ukrainian criminal syndicates typically buy the favors of domestic immigration officials. Bribery makes enforcement of immigration laws weak in the Ukraine and in other Eastern European and Asian areas of the world. Immigration officials are paid off handsomely to look the other way or facilitate the illegal entry or exit of undocumented or improperly documented women.⁶¹ In Poland traffickers sink huge profits from their prostitution rings into illegal narcotics, weapons, or stolen cars.⁶² Albanian criminal groups include prostitution rings that operate in northern Italy.⁶³ Albanian criminals are also taking advantage of war-torn Eastern Europe, the migration of women and children, broken-up families and confusion in the refugee camps in neighboring countries to target

53. *Id.* at 14, 57.

54. *Id.* at 27-31.

55. *Id.* at 1.

56. Danszewski, *supra* note 42.

57. CIA Report, *supra* note 3, at 57.

58. *Id.*

59. *Id.*

60. The Sex Trade Hearing, *supra* note 11, at 20. *See also* Danszewski, *supra* note 42.

61. CIA Report, *supra* note 3, at 57.

62. *Id.* at 60.

63. *Id.*

and traffic Kosovo women into the sex industry.⁶⁴ These girls end up in prostitution and child exploitation rings in northern Italy, especially Turin and Milan. There is evidence of torture and terror by the Albanian criminals in order to keep these girls in line. Some uncooperative girls have reportedly been tortured by burning or tattooing the crime group's symbols on their body. Some less lucky girls have been killed by Albanian crime organizations.⁶⁵

The composition of the international crime organizations varies from country to country. In the United States, the sex trafficking perpetrators tend to be smaller crime groups, smuggling rings, gangs, loosely linked criminal networks, and corrupt individuals.⁶⁶ In contrast, European and Asian trafficking involves large, hierarchical structures of the criminal group.⁶⁷ Asian and Russian organized crime groups and large criminal syndicates are also present in the U.S., involved in alien smuggling and/or prostitution, and are likely to become more immersed in trafficking to the U.S. given the industry's extensive profits.⁶⁸

G. PROFITS FROM THE INDUSTRY OF TRAFFICKING SEX WORKERS

"Profit . . . is at the root of the whole business" of sex trafficking.⁶⁹ Profits from the trafficking industry contribute to the expansion of organized crime in the United States and worldwide.⁷⁰ Women are cheap products that can be used and reused. The mantra in the trafficking industry is that women provide good cheap labor for the slave trade industry because selling a woman is no great loss to society. By contrast, in the drug trafficking industry, the high priced and highly sought after narcotics product can be sold only once, but when you commodify a human being she can be sold over and over again; thus, the potential profits in the sex trade industry are high and the risk for the perpetrators is low. To the traffickers women are expendable.

64. *Id.*

65. *Id.* at 61.

66. *Id.* at vii.

67. *Id.*

68. *Id.*

69. *Id.* at 22.

70. Victims Protection Act, *supra* note 7, at § 102(8).

ble, reusable, and resalable cheap commodities who offer a highly desirable service of sex work.⁷¹

People know and understand that there are big profits in the illegal drugs and arms industries, but few understand that sex trafficking is almost as profitable. Traffickers make anywhere from one to eight million dollars in a period ranging from one to six years.⁷² Thai traffickers who enslaved Thai women in a New York brothel made \$1.5 million over roughly a year and three months, and the women were made to pay debts ranging from \$30,000 to \$50,000.⁷³ In order to eradicate sex trafficking, it will be necessary to reduce the lure of big profits which only the heads of organized crime, not the traffickers, earn in a complex network known as the sex work industry.

III. PAST LEGAL SOLUTIONS TO THE PROBLEM OF TRAFFICKING SEX WORKERS

A. INTERNATIONAL LAWS PROHIBITING SEX TRAFFICKING

Trafficking is an international problem, and, from 1909 to the present, many international laws have been enacted in an attempt to eradicate or reduce the crime.⁷⁴ Unfortunately, there are “virtually no international laws with enforcement capability”⁷⁵ to adequately prevent and prohibit sex trafficking.

International humanitarian law applies in wartime, in contrast to international human rights law, which applies in peacetime. The American military’s Lieber Code of 1863 codified existing legal proscriptions, prohibited “all rape” in times of war under either the penalty of death or other severe punishment,⁷⁶ but Lieber’s Code did not separately list sex trafficking or forced prostitution.⁷⁷

During World War II, the Japanese and the Germans forced thousands of women into brothels.⁷⁸ Nevertheless, forced prosti-

71. CIA Report, *supra* note 3, at 1.

72. *Id.* at 19.

73. *Id.*

74. *See infra* Exhibit A.

75. Dr. Laura Lederer’s Statement, *supra* note 11, at 23.

76. Theodor Meron, *Shakespeare’s Henry the Fifth and the Law of War*, 86 AM. J. INT’L L. 1, 30 (1992)[hereinafter Meron, *Henry the Fifth*]

77. *See generally*, Richard Shelly Hartigan, *Lieber’s Code and the Law of War* 48 (1983).

78. Meron, *supra* note 77, at 30.

tution was not an issue either during the Nuremberg War Crimes Trials or the trials conducted in the Pacific in the late 1940s. Foreign women are now using the United States courts to sue for forced prostitution and slave labor in Japan during World War II. Whereas the Japanese courts have rejected suits by former so-called "comfort women" who were forced to work as sex slaves for Japanese military officers during and before World War II,⁷⁹ 15 women from South Korea, China, Taiwan, and the Philippines successfully filed a class-action lawsuit against the Japanese government in the United States.⁸⁰

B. DOMESTIC LAWS PROHIBITING SEX TRAFFICKING AND WIDE RANGE OF PENALTIES

International treaties and conventions cannot enforce norms by themselves. Countries must draft and enact national penal code statutes. More than 154 countries currently have legislation that targets the prosecution of traffickers by prohibiting the procurement of women for the purposes of prostitution.⁸¹ But procurement laws are often ignored and rarely invoked. That is why women end up in jail and traffickers go free.⁸²

There are 176 countries that have some kind of legislation that can be used to prosecute trafficking.⁸³ These are usually Procurement Statutes. Most of the Procurement and Procurement with Coercion laws around the world provide a wide range of penalties but do not recognize the severity of the offense.⁸⁴

79. *Tokyo Court Rejects Suit By Former 'Comfort Woman,'* KYODO NEWS INTERNATIONAL, INC., October 1, 1999.

80. *Ex-comfort Women Sue Japan in U.S. over Sex Slavery,* KYODO NEWS INTERNATIONAL, INC., Sept. 18, 2000. *See also Abused Thai Women 'trafficked' to Japan Need Help,* KYODO NEWS INTERNATIONAL, INC., September 25, 2000, citing a 227-page study of the Human Rights Watch which made a plea for the justice owed to Thai women trafficked into debt bondage in Japan. *See Owed Justice: Thai Women Trafficked into Debt Bondage in Japan,* HUMAN RIGHTS WATCH <<http://www.hrw.org/reports/2000/japan/>>.

81. Dr. Laura Lederer's Statement, *supra* note 11, at 23.

82. *Id.*

83. *Id.* at 58.

84. *Id.*

C. PENALTIES FOR TRAFFICKERS COMPARED TO DRUG DEALERS

Sex trafficking in the United States and abroad is likely to increase because current domestic laws implementing international treaties are weak, non-existent in certain countries, and not enforced. It is precisely because the penalty for sex trafficking is light that the sex trade industry has become particularly attractive to the powerful networks of international organized crime. Unless specific enforceable laws which impose severe penalties on the perpetrators and which are aimed at prevention, protection and prosecution are enacted on the national level, this serious human rights violation is likely to continue globally.

Countries around the world vary widely in their approach to penalties for the crimes of trafficking, procurement,⁸⁵ (the act of procuring women for lewd purposes, mainly prostitution) and procurement with coercion.⁸⁶ France, for example, punishes procurement with 5 years imprisonment and a fine of \$1 million francs, and coercion increases the penalty to 10 years and \$10 million francs. Prostitution is legal in France, but procurement is a crime. Russia does not punish procurement at all unless there is an element of coercion and then the penalty is no greater than 4 years in prison and a fine.⁸⁷

In the United States the Victims Protection Act sets up a coordinated effort to criminalize the conduct of traffickers, to penalize sex trafficking as if this were a crime as serious as rape, and to provide the immigrant victims with enhanced benefits like permanent residency status in the United States, if the victim agrees to assist in the prosecution of the perpetrators.⁸⁸ However, the question remains whether this new U.S. law will be effective enough to reach the interlocking rings of businessmen, modern mafias, and corrupt government officials working together behind this egregious but very lucrative human rights vio-

85. *The Sex Trade Hearing*, *supra* note 11, at 54, 59 (written submission of Dr. Laura J. Lederer, Director, The Protection Project (Monday June 28, 1999), [hereinafter Lederer Protection Project]). Procurement is "the act or offence of procuring women for lewd purposes." Procurement statutes cover sex trafficking in many countries, and the cases that use these statutes involve obtaining and moving human beings from one place to another for the purpose of commercial sexual exploitation.

86. *Id.* at 54.

87. *Id.* at 65.

88. See *infra* notes 116-118 and accompanying text.

lation, and whether the women witnesses and their families back home will be adequately protected.

A review of the trafficking cases in the United States shows that penalties are light in comparison to heavy sentences given to drug dealers. The statutory maximum sentence for involuntary servitude is only ten years per count in the United States.⁸⁹ In contrast, the statutory maximum for dealing in ten grams of LSD or distributing a kilo of heroin is a life sentence.⁹⁰ Since the general perception is that punishment for trafficking in women is less than the punishment for trafficking in drugs, sex trafficking, which is an industry that reaps enormous profits, is becoming the crime of choice among international organized crime rings.

U.S. prosecutors contend that they do use all the legal tools at their disposal to convict and sentence sex traffickers, but the high standards of proof in current involuntary servitude prosecutions prevent them from inflicting harsher sentences. Some prosecutors prefer to enter plea agreements in order to avoid having the victims testify at trial against their traffickers out of concern for the trauma that would result from public testimony and cross-examination.

D. UNITED STATES LEGISLATION ON SEX TRAFFICKING OF WOMEN BEFORE THE VICTIMS PROTECTION ACT

Before President William Clinton signed the Victims Protection Act into law, the United States did not have one comprehensive trafficking law. Law enforcement relied upon a number of criminal, labor, and immigration laws to address activities in trafficking schemes. Trafficking in women cases were prosecuted under Title 18 sections such as the Mann Act⁹¹ (frequently referred to as the White Slavery law), involuntary servitude and slavery,⁹² and extortionate collection of extension of credit.⁹³ Sex trafficking cases were also prosecuted under Title 8 sections, such as recruiting, smuggling, and transporting aliens⁹⁴ or harbor-

89. CIA Report, *supra* note 3, at 33.

90. *Id.* at 33.

91. 18 U.S.C. § 2421 (2000).

92. *Id.* at § 1581.

93. *Id.* at § 894.

94. 8 U.S.C. § 1324 (2000).

ing for prostitution.⁹⁵ Once uncovered, trafficking and slavery cases in the United States usually take about a year and a half to investigate and prosecute.⁹⁶

E. IMMIGRATION CONSTRAINTS IN THE U.S. TRAFFICKING PROBLEM

Immigration law puts serious constraints on the fair treatment of sex trafficking victims in the United States. I.N.S. agents claim that these victims are in the U.S. illegally and must be treated in the same manner as other undocumented workers because they have broken the law. I.N.S. agents say it is unfair to “play favorites,” claiming that there are other illegal aliens who are also exploited by unscrupulous employers. The I.N.S. currently houses over 60 percent of its detainees in local jails throughout the country, according to a 1998 report from Human Rights Watch.⁹⁷ I.N.S. officers rarely attempt to properly identify a sex trafficking victim or distinguish her from other illegal aliens. Training of immigration officials in this kind of identification is absolutely necessary in order to properly protect and fairly treat sex trafficking victims.

Zealous enforcement of immigration laws should not be practiced in the destination countries but only in the source countries. Once the victim arrives in the destination country, she should be protected and not treated as a criminal by immigration officials. Zealous enforcement of immigration law in the destination country does considerable damage to victims of sex trafficking.

IV. A CURRENT SOLUTION TO THE PROBLEM OF TRAFFICKING: THE VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000

A. STRENGTHS OF THE LAW

In early October 2000, the House and Senate overwhelmingly approved⁹⁸ and the President signed into law a new bill called the “Victims of Trafficking and Violence Protection Act of

95. *Id.* at § 1328.

96. CIA Report *supra* note 3 at 3.

97. *Id.* at 39.

98. Eric Schmitt and Joel Brinkley, *House Passes Bill to Toughen Laws on Forced Labor: Acts Against Traffickers*, NY TIMES (October 7, 2000), at 1.

2000.”⁹⁹ This new law is very tough on sex traffickers and aims to prevent trafficking, protect the victims, and effectively prosecute the perpetrators by establishing an entirely different approach to the problem of trafficking. It punishes the traffickers, not the victim, prevents the crime from spreading by establishing international programs to educate women about traffickers, and protects the victims who are willing to cooperate with the prosecution of the perpetrators in exchange for permanent residency status in the United States and the right to work during the woman’s stay in the United States.

The Victims Protection Act clearly defines trafficking as a crime that includes all the elements of forcible rape.¹⁰⁰ Sex trafficking involves violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion.¹⁰¹

The Victims Protection Act increases the penalty for the crime of sex trafficking.¹⁰² Violators are sentenced to prison for from twenty years to life, depending on the severity of the crime. Traffickers may also be forced to make full restitution¹⁰³ to their victims, paying them the salary they would have earned for their months or years of involuntary service.

The Victims Protection Act enhances protection to women who are victims of violence,¹⁰⁴ and allocates funds to increase financing for shelters to protect victims of domestic violence.¹⁰⁵ Victims of sex trafficking violence who come from foreign lands may use these shelters for their own protection. As admittedly inadequate as battered women shelters may be, a shelter properly financed is much better than a prison cell where victims of sex trafficking have typically been detained pending deportation.

The Victims Protection Act also addresses the immigration concerns of sex trafficked women. In a separate category, victims of “severe forms of trafficking” are eligible for a special new T visa permitting them to stay in the country at least through the duration of their captors’ prosecution and, perhaps, even perma-

99. Victims Protection Act, *supra* note 7.

100. *Id.* at § 102 (9).

101. *Id.* at § 102 (10).

102. *Id.* at § 112.

103. *Id.* at §§ 112, 1593.

104. *Id.* at §§ 1101, 1201.

105. *Id.* at § 1203.

nently.¹⁰⁶ Five thousand T visas,¹⁰⁷ which provide permanent residency status, may be issued yearly to aliens or non-immigrants who are victims of severe abuse, who choose to remain in the United States, and who are willing to assist in the prosecution of their perpetrators.¹⁰⁸ The Interagency Task Force will also provide effective assistance to victims in the United States who are eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency.¹⁰⁹ These victims, who are sometimes illegal aliens, are nonetheless eligible for these benefits and services to the same extent as an alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act.¹¹⁰

In addition, victims are eligible to receive expanded and enhanced benefits and services if they are victims of “severe forms of trafficking.”¹¹¹ For example, while they are in the custody of the Federal Government victims of severe forms of trafficking shall not be detained in facilities inappropriate to their status as crime victims.¹¹² Therefore, the victims are treated like victims and not criminals or illegal aliens. They shall receive necessary medical care, other assistance, and protection if the victim’s safety is at risk or if there is danger of recapture by a trafficker. Other assistance includes taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals from traffickers, as well as ensuring that the names of trafficked persons and their family members are not disclosed to the public.¹¹³ Victims of severe forms of trafficking shall have access to information about their rights and shall be provided with translation services.¹¹⁴ These enhanced benefits are provided to sex trafficking victims without regard to their immigration status. Therefore, whether or not the victim is a legal or illegal alien will not matter with respect to her receipt of ordinary and enhanced benefits.

106. *Id.* at § 107(c)(3).

107. *Id.* at § 107(c)(4)(e)(2)(B)(2).

108. *Id.* at § 107(c)(3).

109. *Id.* at § 107(b)(1)(A).

110. *Id.* at § 107(b)(1)(B).

111. *Id.* at § 107(b)(1)(B).

112. *Id.* at § 107(c)(1)(A).

113. *Id.* at Sec. 107 (c)(1)(C) (i), and (ii).

114. *Id.* at Sec. 107 (c)(2).

Federal law enforcement officials may permit an alien continued presence in the United States, if after an assessment, it is determined that this individual is a victim of a severe form of trafficking and a potential witness to such trafficking.¹¹⁵ Witnesses and their families must be assured of adequate protection. Failure to provide adequate witness protection has been a serious problem both in the United States and in foreign fora, such as the International Criminal Tribunal for Crimes Committed in the Former Yugoslavia. Unless adequate protection is provided to the witness in the United States and to her family abroad, the Victims Protection Act is likely to fail. This enhanced benefit of continued presence in the United States is given to the victim in order to effectuate prosecution of the traffickers. During the period the alien is in lawful temporary resident status in the United States, the alien will be granted authorization to engage in employment in the United States and be provided with an employment authorized endorsement or appropriate work permit.¹¹⁶ In order to accomplish these important goals and provide enhanced benefits, certain sections of the Immigration and Nationality Act will be amended.¹¹⁷

The Victims Protection Act also provides for the training of government personnel to identify victims of severe forms of trafficking and to provide for the protection rather than the punishment of victims.¹¹⁸ This training of immigration officials is an essential part of the solution and protection of women sex workers.

Finally, the Victims Protection Act reaches out to foreign nations in its aim to eradicate the global problem of sex trafficking. The law codifies the establishment of an Interagency Task Force¹¹⁹ chaired by the Secretary of State and designed to monitor and combat worldwide human trafficking.¹²⁰ The Interagency Task Force seeks to establish minimum standards for the elimination of trafficking¹²¹ and to provide assistance to the foreign

115. *Id.* at Sec. 107 (c)(3).

116. *Id.* at § 107(c)(4)(2).

117. Section 101(a)(15) of the Immigration and Nationality Act is amended. 8 U.S.C. § 1101(a)(15). Section 214 of the Immigration and Nationality Act is amended. 8 U.S.C. § 1184.

118. Victims Protection Act, *supra* note 7, at § 107(c)(4).

119. *Id.* at § 105(a).

120. *Id.* at § 105.

121. *Id.* at § 108 (a).

countries to meet those minimum standards.¹²² This assistance includes the drafting of laws to prohibit and punish acts of trafficking; the investigation and prosecution of traffickers; the creation and maintenance of facilities, programs, projects, and activities for the protection of victims; and the expansion of exchange programs and international visitor programs for governmental and non-governmental personnel to combat trafficking.¹²³ Funding shall be made available to carry out these laudable goals. The purpose of the international programs is to build consensus abroad about the dangers of sex trafficking and to try to change deep-seated anti-feminist values which have developed in countries plagued by poverty and faulty or absent education. This consensus-building is a long and arduous process in the re-building of cultural and social values, but it is necessary to the overall goal of eradicating sex trafficking.

The Interagency Task Force provides assistance not only to foreign nations but to women in foreign countries as well as to women in the United States. Assistance to victims in other countries is provided in order to insure their safe integration, reintegration, or resettlement.¹²⁴

The Interagency Task Force is dedicated to the prevention of trafficking by dealing with the problem from an economic perspective. It will establish international programs that enhance economic opportunity for potential victims of trafficking.¹²⁵ These initiatives include the establishment of micro-credit lending programs, training in business development, skills training, job counseling, programs to promote women's participation in economic decision-making; programs to keep girls in elementary and secondary schools and to educate persons who have been victims of trafficking; the development of educational curricula regarding the dangers of trafficking; the provision of grants to non-governmental organizations to accelerate and advance the political, economic, social, and educational roles and capacities of women in their countries; and a specific effort to increase public awareness of the dangers of trafficking.

The Interagency Task Force also prevents trafficking by imposing political as well as economic consequences on foreign na-

122. *Id.* at § 109.

123. *Id.*

124. *Id.* at § 107(a).

125. *Id.* at § 106.

tions engaging in trafficking. The Interagency Task Force is required to write annual reports on the status of other nations' efforts to curb human trafficking.¹²⁶ The publication of these reports may have a political and social impact on the countries, which must suffer the humiliation of being cited as non-compliant. The United States has tried to combat other crimes like piracy of intellectual property by writing and posting annual reports on pirates, but this approach has not proven to be very effective to reduce piracy.¹²⁷

To add teeth to the reports of non-compliant nations, the President of the United States is empowered, but not required, to impose economic sanctions against countries that fail to meet these minimum standards. Notwithstanding the cautionary language of the Victims Protection Act regarding vulnerable populations and the negative effects of sanctions on women,¹²⁸ to withhold non-humanitarian and non-trade related assistance¹²⁹ or to withhold funds for educational and cultural exchange programs¹³⁰ are drastic solutions which are fraught with many problems directly affecting the very women who are seeking protection. Sanctions may be effective in reducing criminal activity, but the negative side effects of this remedy may not be worth it. It is well-known that sanctions reportedly oppress women, children and poor people in the sanctioned country.

The very special feature of the Victims Protection Act, which indirectly proposes an economic solution to the crime of sex trafficking, is the establishment of a severe penalty in order to strengthen the prosecution and punishment of traffickers.¹³¹ The law increases the penalties for involuntary servitude, peonage and other existing crimes from 10 to 20 years and provides for life imprisonment if the violations include kidnapping, aggravated sexual abuse or an attempt to kill.¹³² The Victims Protection Act directs the Sentencing Commission to amend the

126. Victims Protection Act, *supra* note 7, at § 104.

127. See Susan Teifenbrun, *Piracy of Intellectual Property in China and the Former Soviet Union and its Effects Upon International Trade: A Comparison*, 46 *BUFF. L.R.* 1, 41 (1998).

128. Victims Protection Act *supra* note 7, at § 110(d)(5)(B): "The President shall exercise the authority. . .to avoid significant adverse effects on vulnerable populations, including women and children."

129. *Id.* at § 110(d)(1)(A)(i).

130. *Id.* at § 110(d)(1)(A)(ii).

131. *Id.* at § 112.

132. *Id.* at § 112(a)(1)(A) and (B).

Sentencing Guidelines applicable to sex trafficking so that they are sufficiently stringent to deter and adequately reflect the heinous nature of the offense.¹³³

Why is this law better than the others that have preceded it? The Victims Protection Act offers permanent residency to victims who testify. By imposing 20 years to life as a penalty the new law makes sex trafficking much more risky than the trafficking of illegal drugs. The victim of sex trafficking can identify their trafficker, but a drug cannot. Sex sells but drugs don't talk. The permanent residency feature in exchange for testifying will greatly increase the cost of engaging in the sex slave trade industry and decrease the benefit.

B. *WEAKNESS OF THE VICTIMS PROTECTION ACT*

There is no guarantee that the law will be enforced. There is no guarantee that the victims who agree to assist in the prosecution of the perpetrators will be adequately protected, nor will their families abroad. The far-reaching international programs for cooperation and re-education are numerous, high-minded, and difficult to administer. The funding allocated for these programs may be inadequate for the laudable goals to be accomplished. The administration of these many programs is not described in any detail, and one wonders how the programs will ever be accomplished given the differences in cultures and societies involved in this international, coordinated effort. The main problem with the law is that it really doesn't set up a direct, economic solution. Prosecution of the sex trafficker and the international crime organizations should result in more significant financial burdens on both. Making a claim for tax evasion for undeclared income might be a greater disincentive to the leaders of international organized crime and their agents than the threat of 20 years in prison.

V. CONCLUSION

The Victims Protection Act, a milestone in the protection of women's human rights, seeks to accomplish three purposes: to prevent sex trafficking, which is a modern day form of slavery; to protect the victims; and to prosecute severely the trafficker. The challenge is to determine whether this law will be enforced effectively in the United States, whether the American legislative ex-

133. *Id.* at §§ 112, 1594.

ample will persuade other countries to severely punish perpetrators in the countries of source and transit, and whether this law can actually crack the underground international organized crime networks supporting the traffickers of sex workers. Can this law provide adequate witness protection to the victim in the United States and to her threatened family abroad? If effective witness protection is not provided for the victim's family in the foreign land, not even the lure of permanent residency in the United States will persuade the victim to assist in the prosecution of the sex trafficking perpetrator.

Sex trafficking is an international evil that can only be eradicated by changing the economics of the criminal activity with a multi-pronged effort and interdisciplinary cooperation of the participating countries. Countries, unfortunately, benefit financially from the industry of sexual exploitation of women. By effective enforcement of the Victims Protection Act, the United States can help sociologically, educationally, legally, and economically, with the cooperation of participating nations, to provide the safe reentry of victims wherever possible; to establish a systematic reeducation program which offers instruction to women in a policy endeavor to change society's values regarding women's worth; and to impose economic consequences on countries and individuals that do not comply with minimum standards of law enforcement with respect to human rights violations and sex trafficking of women. If traffickers and the international crime organizations that protect them lose more than they gain by the risk of spending twenty years to life in prison, the severe penalty risk should decrease the incentive of commercial gain and dissuade traffickers from the temptation to engage in the sex trade industry. But is this indirect economic consequence of the Victims Protection Act sufficient to deter the crime of sex trafficking, which is increasing exponentially? Probably not. A more direct economic burden must be found which might necessitate the legalization of prostitution and the regulation of brothels in order to keep accurate accounts of sex work activity. Legalization of prostitution will not by itself reduce the sex trafficking problem. It will help to link the perpetrators to tax evasion. By following the money trail in the sex trade industry and by identifying a failure of traffickers to declare income earned, it might be possible through regulation of brothels to add a significant direct economic burden to the crime of sex trafficking.

APPENDIX I

INTERNATIONAL CONVENTIONS TO ERADICATE
SEX TRAFFICKING

1. International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 35 Stat. 426, 1 L.N.T.S. 83 (amended 1910, 1949, 1997);
2. International Convention for the Suppression of Traffic in Women and Children, Sept. 30, 1921, 9 L.N.T.S. 416;
3. Convention to Suppress the Slave Trade and Slavery, Sept. 24, 1926, 46 Stat. 2183;
4. Forced Labor Convention. *Adopted* on June 28, 1930 by the General Conference of International Labor Organization at its fourteenth session;
5. International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431;
6. U.N. CHARTER (as amended) June 26, 1945, 59 Stat. 1031, T.S. No. 933, 3 Bevans 1153;
7. Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3rd Sess. U.N. Doc. A/810 (1948) *Adopted and opened for signature, ratification and accession* by General Assembly Resolution 217A (III) of Dec. 10, 1948;
8. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institution and Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3201; 266 U.N.T.S. 3;
9. International Covenant on Civil and Political Rights. *Adopted and opened for signature, ratification and accession* by General Assembly Resolution 2200A (XXI) of Dec. 16, 1966;
10. Convention on the Elimination of All Forms of Discrimination Against Women. *Adopted and opened for signature, ratification and accession* Mar. 1, 1980, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46), U.N. Doc. A/34/36 (Dec. 18, 1979)[hereinafter CEDAW];
11. Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment 1984, GA Res. 39/46, Annex, A/39/51;
12. Convention on the Rights of the Child. General Assembly Resolution 44/25 of Nov. 20, 1989, *entered into force* Sept. 2, 1990.

APPENDIX II

DECLARATIONS, TREATIES, U.N. RESOLUTIONS AND REPORTS
CONDEMNING SLAVERY, VIOLENCE AGAINST WOMEN,
AND OTHER ELEMENTS OF TRAFFICKING

13. The Universal Declaration of Human Rights of 1948;
14. American Declaration on the Rights and Duties of Man of 1948;
15. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956;
16. Abolition of Forced Labor Convention of 1957;
17. The International Covenant on Civil and Political Rights of 1966;
18. United Nations General Assembly Resolutions 50/67, 51/66, and 52/98;
19. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984;
20. The Moscow Document of the Organization for Security and Cooperation in Europe of 1991;
21. The Fourth World Conference on Women (Beijing, 1995);
22. Final Report of the World Congress Against Sexual Exploitation of Children (1996);
23. The U.N. Convention Against Transnational Organized Crime: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol Against Smuggling of Migrants by Land, Sea and Air (November 15, 2000).