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## Extraterritorial Jurisdiction: A Step Towards Eradicating The Trafficking Of Women Into Greece For Forced Prostitution

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# COMMENT

## EXTRATERRITORIAL JURISDICTION: A STEP TOWARDS ERADICATING THE TRAFFICKING OF WOMEN INTO GREECE FOR FORCED PROSTITUTION

### I. INTRODUCTION

I paid a man 350 German marks (approximately US \$162) to go to Greece since I had no papers. Instead, he brought me to Greece and sold me to a bar. He told me he would kill me if I left. We could not leave the house. There were twelve women, all of us from fifteen to twenty years old . . . . We slept with a lot of men, ten men a day. We were beaten if we tried to leave, I was beaten with a belt. I was hurt. The others, too.<sup>1</sup>

-Marjana Valkova

Lena<sup>2</sup> was recruited by a woman who said her daughter was working in Greece and making a lot of money. When Lena arrived in Greece, her passport was taken away and she was put into a small room in a brothel, guarded by two dogs. She was sold in prostitution each night from 9 in the evening until

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<sup>1</sup> TRAFFICKING OF MIGRANT WOMEN FOR FORCED PROSTITUTION INTO GREECE, HUM. RTS. WATCH 10 (July 2001), available at <http://www.hrw.org/europe/greece.php>.

<sup>2</sup> A twenty-one year old Mykolayivian woman. Donna M. Hughes, *The Natasha Trade: Transnational Sex Trafficking*, NAT'L INST. OF JUST. J., 9, 11 (Jan. 2001).

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6 in the morning. When she escaped and returned to Mykolayiv, she had US \$55.<sup>3</sup>

Recent stories from a local newspaper in Greece report the following:

Police arrested two men employed at the Ladies Club (a strip club) who were allegedly holding six Romanian women captive in an apartment in the northern Athens suburb of Halandri. The men reportedly forced the women to strip and have sex with clients at the club.<sup>4</sup>

Police arrested five suspects from Greece, Ukraine, Bulgaria, and Albania, accused of running an international forced prostitution ring . . . . The arrests were made after a police raid on a basement apartment in a central Athens area, where two Bulgarian women were being held captive.<sup>5</sup>

Police raided a Patissia apartment last Tuesday night and rescued a 13-year-old girl who had been kidnapped from Albania, forced into prostitution, raped and regularly beaten by her 46-year-old captor<sup>6</sup>. Vassili Lila was arrested. . . . when police raided his Athens apartment and found the girl, who exhibited signs of frequent physical abuse, cigarette burns on her face and arms and scars from knife wounds.<sup>7</sup>

One reads the accounts depicted above, and wonders how this is possible. Slavery has been abolished – has it?<sup>8</sup> Women

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<sup>3</sup> Hughes, *supra* note 2.

<sup>4</sup> *Vigilantes Pledge to Avenge Sexual Exploitation of Immigrant Women*, ATHENSNEWS, June 8, 2000, at A04, available at [http://www.athensnews.gr/athweb/nathens.index\\_htm?e=C](http://www.athensnews.gr/athweb/nathens.index_htm?e=C).

<sup>5</sup> *Prostitution Ring Suspects Charged with Kidnapping*, ATHENSNEWS, Aug. 17, 2001, at A06, available at [http://www.athensnews.gr/athweb/nathens.index\\_htm?e=C](http://www.athensnews.gr/athweb/nathens.index_htm?e=C).

<sup>6</sup> *Group Seeks State Support in Fighting Child Exploitation*, ATHENSNEWS, May 17, 2000, at A01, available at [http://www.athensnews.gr/athweb/nathens.index\\_htm?e=C](http://www.athensnews.gr/athweb/nathens.index_htm?e=C).

<sup>7</sup> ATHENSNEWS, May 11, 2000 at A01, available at [http://www.athensnews.gr/athweb/nathens.index\\_htm?e=C](http://www.athensnews.gr/athweb/nathens.index_htm?e=C). See generally Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989) (prohibiting all forms of sexual exploitation and sexual abuse of children through its article 34.) See also Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, G.A. Res. 54/263, U.N. GAOR, 54th Sess., Supp. No. 49, at \_\_, U.N. Doc. A/54/49 (2000) (addressing the use of children for purposes of commercial sexual exploitation.)

<sup>8</sup> See generally Slavery Convention, 46 Stat. 2183, T.S. No. 778, 60 L.N.T.S. 253.

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have made incredible progress toward equality – have they?<sup>9</sup>  
Men don't exploit women or children in such barbaric ways – do they?<sup>10</sup>

## A. PURPOSE

The purpose of this article is to provide a survey of the international law instruments presently in existence to combat trafficking of women for forced prostitution. This article will develop suggestions for more effective implementation of existing international obligations. Specifically, this article proposes extraterritorial jurisdiction as an opportunity for international cooperation.

A candid discussion of this problem should not be viewed as a means to criticize Greece, but rather a means to advance more effective solutions. No country is immune from the appalling effects of the trafficking of women for forced prostitution. Whether a country is classified as a country of origin, transit, or destination the burden it suffers from this practice is profound. Trafficking of women for forced prostitution is a horrific human rights violation. Its practice penetrates the core of inhumanity, exploitation, and maltreatment. It is a form of gender discrimination. It is a form of class discrimination. It is an example of forced labor at its worst. It is modern-day slavery.<sup>11</sup>

## B. DEFINING THE TERMS

An obstacle in the fight against trafficking of women has been the lack of unity among nations in defining what conduct constitutes "trafficking." This obstacle was recently remedied via a treaty adopted by the General Assembly of the United Nations, the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*,<sup>12</sup>

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<sup>9</sup> See generally Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46 at 193, U.N. Doc A/34/46 (1979).

<sup>10</sup> See generally Convention on the Rights of the Child, G.A. Res. 44/25, *supra* note 7.

<sup>11</sup> See generally Slavery Convention, *supra* note 8, at art. 1 § 1.

<sup>12</sup> See, e.g., Convention on the Rights of the Child, G.A. Res 44/25, *supra* note 7, at art. 34. See also Optional Protocol to the Convention on the Rights of the Child on the

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*Supplementing the United Nations Convention Against Transnational Organized Crime.*<sup>13</sup> This Protocol is the first treaty to provide a comprehensive description of the offending conduct.

The *Protocol* defines “trafficking in persons” as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>14</sup>

The *Protocol* provides further clarity by defining “exploitation” as follows:

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>15</sup>

The *Protocol* also addresses a commonly held, yet restrictive, view among nations that liability for trafficking is contingent upon the exertion of physical control over the victim. The *Protocol* dismisses this contention by emphasizing that victim consent is immaterial, if any of the means set forth in the prior definition have been used.<sup>16</sup>

### C. METHOD

This Comment will apply an international law perspective to the situation of trafficking of women into Greece for forced prostitution. Specifically, it will consider *The Convention Against Transnational Organized Crime*<sup>17</sup> (hereinafter

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sale of children, child prostitution, and child pornography, G.A. Res. 54/263, *supra* note 7.

<sup>13</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, U.N. GAOR., 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (2001).

<sup>14</sup> *Id.* at art. 3(a).

<sup>15</sup> *Id.* at art. 3(a).

<sup>16</sup> *See id.* at art. 3(b).

<sup>17</sup> Convention Against Transnational Organized Crime, G.A. Res. 55/25, U.N.

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"Convention") and *The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*<sup>18</sup> (hereinafter "Protocol"). The Convention was developed to address general measures to prevent and combat transnational organized crime. The Protocol was formulated as a complementary tool to the Convention to deal with the specific crime of human trafficking.

## II. BACKGROUND

The trafficking of women across international borders has reached epidemic proportions. Conservative estimates of human trafficking, especially of women and children, place the figure at 700,000 persons per year.<sup>19</sup> Some sources report that figure to be significantly higher, at over one million persons per year.<sup>20</sup> Profits earned from this horrific enterprise total \$9 billion per year.<sup>21</sup> The global economy is flourishing from proceeds of the sex trade.

The trafficking of women into Greece for forced prostitution reflects the worldwide trend. Greece is believed to employ 10,500 prostitutes on any given day.<sup>22</sup> More than 3,000 children<sup>23</sup> were forced into prostitution between September 1995 and March 1997.<sup>24</sup> The revenue generated from this venture is estimated at 35 billion drachmas per year,<sup>25</sup> resulting in 20 billion drachmas in net profits.<sup>26</sup>

Traditionally, women trafficked to Greece for forced prostitution came from countries such as the Philippines,

GAOR. 55th Sess., Supp. No. 49, at 44, UN Doc. A/45/49 (2001).

<sup>18</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, *supra* note 13.

<sup>19</sup> U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2001).

<sup>20</sup> *World faces deluge of human trafficking*, Aug. 31, 2000, at 1, available at <http://www.cnn.com/2000/WORLD/europe/08/31/slavery.world.reut/index.html>.

<sup>21</sup> *US grapples with 'modern-day slavery'*, Aug. 31, 2000, at 2, available at <http://www.cnn.com/2000/US/08/31/slavery.us.reut/index.html>.

<sup>22</sup> ATHENSNEWS, Oct. 23, 1996, at A01, available at <http://www.athensnews.gr/athweb/nathens.index.htm?e=C>.

<sup>23</sup> See generally Convention on the Rights of the Child, G.A. Res. 44/25, *supra* note 7.

<sup>24</sup> ATHENSNEWS, May 28, 1997, at A01, available at <http://www.athensnews.gr/athweb/nathens.index.htm?e=C>.

<sup>25</sup> As of 12/1/01, the current exchange rate was 326 drachmas to one US dollar.

<sup>26</sup> ATHENSNEWS, Oct. 23, 1996, at A02, available at <http://www.athensnews.gr/athweb/nathens.index.htm?e=C>.

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Thailand, Ethiopia, Eritrea, Sri Lanka, and the Dominican Republic.<sup>27</sup> A prevailing trend, however, has seen the procurement of women from Eastern European countries, including Albania, Bulgaria, Romania, and the countries of the former Soviet Union, such as Russia, Ukraine, and Moldova.<sup>28</sup>

Greece is losing its battle against the sex trade. For the most part, the measures taken to put an end to this thriving, yet illegal, enterprise have been insufficient. In a recent report released by The United States Department of State, Greece received poor ratings on its efforts to combat trafficking.<sup>29</sup> The report placed Greece on Tier 3, the lowest possible tier,<sup>30</sup> an indication that Greece does not meet the minimum standards,

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<sup>27</sup> COMMERCIAL SEXUAL EXPLOITATION OF WOMEN AND CHILDREN: A HUMAN RIGHTS REPORT, THE PROTECTION PROJECT 1 (Jan. 2001), available at <http://209.190.246.239/protection/project/HrrPDF/Greece.pdf>; *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of all forms of Discrimination Against Women: Second and third periodic reports of States parties - Greece*, The Committee on the Elimination of Discrimination Against Women 36 (Nov. 11, 1996), available at <http://www.un.org/womenwatch/daw/cedaw/greece.htm>.

<sup>28</sup> See *TRAFFICKING OF MIGRANT WOMEN FOR FORCED PROSTITUTION INTO GREECE*, *supra* note 1, at 8. See also U.S. DEP'T OF STATE, *supra* note 19, at 3; *TRAFFICKING IN MIGRANTS: QUARTERLY BULLETIN 2*, INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM) (Apr. 2001). (indicating that although data from Greece are limited, an existing study reports that "slightly over half of trafficked women are from Russia and Ukraine, with about one-third from the Balkans and just a few percent from Asia and Africa.")

<sup>29</sup> See U.S. DEP'T OF STATE, *supra* note 19, at 2. This report evaluates a country's performance in combating human trafficking. *Id.* It includes in its definition of human trafficking the trafficking of women, children, and men for purposes of "commercial sexual exploitation" and other forms of forced labor, such as "forced labor in agriculture, domestic service, construction work and sweatshops." *Id.*

<sup>30</sup> See *id.* at 3-4. Ratings are based on the extent to which a country's government complies with the following minimum standards for the elimination of trafficking: prohibiting trafficking and punishing acts of trafficking; prescribing punishment commensurate for grave crimes; prescribing punishment sufficiently stringent to deter and adequately reflect the offense's heinous nature; and making serious and sustained efforts to eliminate trafficking. *Id.* Serious and sustained efforts to eliminate trafficking include: investigating and prosecuting acts of trafficking within its territory, protecting victims, preventing trafficking, cooperating with other governments in the investigation and prosecution of offenders, extraditing traffickers, monitoring immigration and emigration patterns, and investigating and prosecuting complicit public officials. *Id.* Each country is evaluated and placed either on Tier 1, Tier 2, or Tier 3. *Id.* Tier 1 countries are those whose governments fully comply with the minimum standards; Tier 2 countries are those whose governments do not fully comply with the minimum standards, but are making efforts to bring themselves into compliance; and Tier 3 countries are those whose governments do not fully comply with the minimum standards and are not making significant efforts to bring themselves into compliance. *Id.*

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and has not yet made significant efforts to eliminate trafficking.<sup>31</sup>

Greece must fight harder against the atrocities inherent in the trafficking of women by immersing itself wholeheartedly in this battle. Greece cannot afford to be passive. Rather, it must devise and implement pro-active measures if it hopes to claim victory over the traffickers. The Department of State has threatened economic sanctions against Tier 3 countries<sup>32</sup> by the year 2003 should they fail to demonstrate improvements.<sup>33</sup> Further, as the only member of the European Union to score so poorly,<sup>34</sup> Greece, on its own, must be experiencing pressures to improve its status. Greece is bound by international treaties, as well as by international customary law, to acknowledge and address allegations of trafficking, slavery, and forced labor occurring on its lands.<sup>35</sup>

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<sup>31</sup> See *id.* at 3. The report finds that most trafficking victims in Greece are women trafficked for purposes of sexual exploitation. *Id.* The report's criticisms include the following: the Greek Government has not yet publicly acknowledged that trafficking is a problem, the Greek Penal Code does not address all forms of severe trafficking, prosecutors rarely bring trafficking cases to trial and sentences are light, the corruption among Greek police and border controls is a major problem, and the Government has not sponsored any significant protection or prevention efforts. *Id.*

<sup>32</sup> See *id.* at 1. Countries ranking at Tier 3 are: Albania, Bahrain, Belarus, Bosnia-Herzegovina, Burma, Democratic Republic of Congo, Gabon, Indonesia, Israel, Kazakhstan, Lebanon, Malaysia, Pakistan, Qatar, Romania, Russia, Saudi Arabia, South Korea, Sudan, Turkey, United Arab Emirates, and the Federal Republic of Yugoslavia. *Id.*

<sup>33</sup> See *id.* at 5. Countries remaining at Tier 3 will be subject to "termination of non-humanitarian, non-trade-related assistance. *Id.* Such countries will also face U.S. opposition to assistance (except for humanitarian, trade-related, and certain development-related assistance) from international financial institutions, specifically the International Monetary Fund and multilateral development banks such as the World Bank." *Id.*

<sup>34</sup> See U.S. DEP'T OF STATE, *supra* note 19, at 1. The following Member States of the European Union received a Tier 1 rating: Austria, Belgium, Germany, Italy, The Netherlands, Spain, and the United Kingdom. *Id.* Both France and Sweden were placed on Tier 2. *Id.* The following Member States did not appear in the report: Luxembourg, Denmark, Ireland, Portugal, and Finland. *Id.* The State Department indicates that a country's exclusion from the report may be due either to: an insignificant number of trafficking victims in that country, a country's failure to accurately report incidents of trafficking, or the limited availability of information from the reporting country on incidents of trafficking. *Id.*

<sup>35</sup> See generally Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3rd Sess., U.N. Doc. A/810 (1948) (prohibiting slavery, servitude and the slave trade in all forms through its article 4 and prohibiting torture, cruel, inhuman or degrading treatment, or punishment through its article 5.) See also HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT* 132-148 (1996). The Universal Declaration of Human Rights (of which Greece is a signatory) is a legally binding document. Because this document is so widely recognized, it has become



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## III. HISTORICAL MEASURES TAKEN BY THE INTERNATIONAL COMMUNITY TO ADDRESS THE TRAFFICKING OF WOMEN FOR FORCED PROSTITUTION

The international community has attempted to address the problem of trafficking in women through treaty law for nearly one hundred years.<sup>36</sup> In the past century, the international community has adopted a plethora of treaties, aimed either directly or indirectly, at combating human trafficking, particularly of women and children.<sup>37</sup> Because this issue touches all areas of human life, it has been addressed in conventions dealing with women, children, slavery, labor, and crime. Unfortunately, the effectiveness of these international treaties in eradicating the problem is wanting. Each successive treaty, however, builds upon the prior writing, hoping to advance a more comprehensive approach to the problem.

Since its inception in 1945, the United Nations has promulgated international efforts to combat the trafficking of

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customary law.

<sup>36</sup> Beginning in 1904 with The International Agreement for the Suppression of the White Slave Traffic, 35 Stat. 426, 1 L.N.T.S. 83.

<sup>37</sup> See International Agreement for the Suppression of the White Slave Traffic, *supra* note 36; International Convention for the Suppression of White Slave Traffic, III L.N.T.S. 278; International Convention for the Suppression of the Traffic in Women and Children, 9 L.N.T.S. 415; Slavery Convention, *supra* note 8; Convention concerning Forced or Compulsory Labor, (ILO No. 29), 39 U.N.T.S. 55; International Convention on the Suppression of the Traffic in Women of Full Age, 150 L.N.T.S. 431; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 U.N.T.S. 271; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3; Abolition of Forced Labor Convention, (ILO No. 105), 320 U.N.T.S. 291; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171; Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, *supra* note 9; Convention on the Rights of the Child, G.A. Res. 44/25, *supra* note 7; Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, (ILO No. 182), 38 I.L.M. 1207 (1999); Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res. 54/263, *supra* note 7; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 54/4, annex, U.N. GAOR, 54th Sess., Supp. No. 49 at 5, U.N. Doc. A/54/49 (2000); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, annex, U.N. GAOR, 45th Sess., Supp. No. 49A at 262, U.N. Doc. A/45/49 (1990), Convention Against Transnational Organized Crime, G.A. Res. 55/25, *supra* note 17; Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the Convention Against Transnational Organized Crime, G.A. Res. 55/25, *supra* note 13.

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women. In 1951, through *The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*,<sup>38</sup> the United Nations consolidated four previously adopted international treaties dealing with human trafficking and prostitution.<sup>39</sup> *The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* attempted to provide a comprehensive approach to human trafficking by emphasizing the need to punish traffickers, rehabilitate victims, increase law enforcement efforts, and develop prevention and education services.<sup>40</sup>

The *Convention* created a governing body in the Secretary-General of the United Nations, by which member States<sup>41</sup> were required to provide periodic reports.<sup>42</sup> While clearly the most thorough document on human trafficking to date, it failed to provide States Parties<sup>43</sup> with clear and specific ways to implement these goals. The treaty also failed to provide States Parties with a precise definition of what conduct constituted

<sup>38</sup> *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, *supra* note 37.

<sup>39</sup> *See* International Agreement for the Suppression of the White Slave Traffic, *supra* note 36. *See also* Michelle O.P. Dunbar, *The Past, Present, and Future of International Trafficking in Women for Prostitution*, 8 *BUFF. WOMEN'S L.J.* 103 (1999/2000). This treaty was created solely for the protection of white European women who were being forced into prostitution because of severe economic conditions. *Id.* at 108. While innovative for its time, the treaty was limited in that it focused only on protection of the victim, while ignoring punishment of the perpetrator; *Id.* at 109. *International Convention for the Suppression of White Slave Traffic*, *supra* note 37. *See also* Dunbar, *supra*. This treaty's provisions called for the severe punishment of anyone who "[H]ired, abducted or enticed for immoral purposes any woman under the age of twenty-one, or used violence, threats, fraud or any compulsion on a woman over twenty-one to accomplish the same purpose. . . ."; *Id.* at 109. *International Convention for the Suppression of the Traffic in Women and Children*, *supra* note 37. *See also* Dunbar, *supra*. This treaty extended protections to immigrating and emigrating women and children; *Id.* at 110. *International Convention on the Suppression of the Traffic in Women of Full Age*, *supra* note 37. *See also* Dunbar, *supra*. This treaty was distinct from prior treaties in that it advocated for the prohibition of consent as a valid defense to charges of trafficking. *Id.* at 110. It focused on punishing perpetrators who trafficked in women of full age. *Id.* at 110.

<sup>40</sup> *See generally* *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, *supra* note 37.

<sup>41</sup> The term member States is used to refer to those countries that are members of the United Nations. There are currently 189 countries comprising membership in the United Nations.

<sup>42</sup> *See* *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, *supra* note 37 at art. 21.

<sup>43</sup> The term States Parties is used to refer to those countries that are parties to a treaty.

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“traffic in persons” and “exploitation of the prostitution of others.”<sup>44</sup>

In 1957, the General Assembly of the United Nations adopted *The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*<sup>45</sup> to augment the *Slavery Convention*<sup>46</sup> and its *Protocol*.<sup>47</sup> This Convention identified specific acts to constitute slavery. It banned the practice of debt bondage, as well as “. . . all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery . . . by whatever conveyance.”<sup>48</sup> This conduct is similar to that of traffickers in the sex-trade industry.

In 1957, the General Assembly of the United Nations also adopted *The Abolition of Forced Labour Convention*.<sup>49</sup> This Convention sought to expand on previous international labor treaties.<sup>50</sup> Although not speaking directly on the issue of trafficking of women, “forced labor,” as defined in the previous treaty,<sup>51</sup> encompassed the very acts reflected in trafficking. This Convention specifically prohibited the use of forced labor as a “means of labour discipline” or “as a means of racial, social, national, or religious discrimination.”<sup>52</sup>

In 1966, the General Assembly of the United Nations adopted *The International Covenant on Civil and Political*

<sup>44</sup> See generally Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 37.

<sup>45</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *supra* note 37.

<sup>46</sup> Slavery Convention, *supra* note 8. The Slavery Convention took an affirmative stance against all forms of slavery. *Id.* at art. 2. It emphasized the necessity of preventing forced labor from “developing into conditions analogous to slavery.” *Id.* at art. 5. Its objective was to prevent, suppress, and abolish the “embarkation, disembarkation, and transport of slaves.” *Id.* at art. 3. It called for cooperation among States Parties in reaching these goals. *Id.* at art. 4. It further called for States Parties to revise or expand its laws to allot for the severe punishment of violators. *Id.* at art. 6.

<sup>47</sup> Protocol amending the Slavery Convention, 182 U.N.T.S. 51.

<sup>48</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *supra* note 37 at art. 7 (c).

<sup>49</sup> Abolition of Forced Labour Convention, *supra* note 37.

<sup>50</sup> See Abolition of Forced Labour Convention, *supra* note 37 citing Convention concerning Forced or Compulsory Labour, *supra* note 37; Slavery Convention, *supra* note 8; and Protection of Wages Convention (1949).

<sup>51</sup> Convention concerning Forced or Compulsory Labour, *supra* note 37 at art. 2 (defining forced labor as “[A]ll work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”)

<sup>52</sup> Abolition of Forced Labour Convention, *supra* note 37, at art. 1(c) and 1(e).

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*Rights*.<sup>53</sup> The Covenant, entered into force in 1976, addressed human rights concerns applicable to the trafficking of women for forced prostitution. Article 7 of the Covenant prohibited maltreatment of individuals, specifically torture and extreme forms of punishment.<sup>54</sup> Article 8 called for an end to slavery, the slave trade, servitude, and forced or compulsory labor.<sup>55</sup> The Covenant has been interpreted as applying equally to both citizens and aliens present on the States Parties' land.<sup>56</sup>

#### IV. SOCIAL CONDITIONS FOR TRAFFICKING OF WOMEN FOR FORCED PROSTITUTION

##### A. HOW WOMEN BECOME SUSCEPTIBLE TO VICTIMIZATION

The current trend of trafficking of women from Eastern European countries to Greece for forced prostitution is due, primarily, to the turbulent political climate and economic repression of Eastern European countries. The women of these post-Cold War countries often find themselves in dire straits. These women, having never been given a tremendous amount of opportunity, now find themselves with no opportunity. They are, literally, scrambling to escape acute poverty conditions. As a result, these women are, understandably, easy prey for luring opportunists. Often young, desperate, and impressionable, they are persuaded that opportunity awaits them across their borders. They are promised a financial security unknown to them in their own land. They are told by their "escorts" that legal employment as waitresses, domestics, dancers, and models is readily available in the destination country. What these women are not told is that they will soon be stripped of their identity, their humanity, and their freedom.<sup>57</sup>

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<sup>53</sup> International Covenant on Civil and Political Rights, *supra* note 37.

<sup>54</sup> *Id.* at art. 7.

<sup>55</sup> *Id.* at art. 8.

<sup>56</sup> See KINSEY DINAN, HUMAN RIGHTS WATCH/ASIA, OWED JUSTICE: THAI WOMEN TRAFFICKED INTO DEBT BONDAGE IN JAPAN 47 (Sept. 2000).

<sup>57</sup> See TRAFFICKING OF MIGRANT WOMEN FOR FORCED PROSTITUTION INTO GREECE, *supra* note 1, at 5. See also Kathy Tzilivakis, *Migrant females blackmailed, used for profitable 'sex market.'* *Smugglers cheat women into prostitution by promising decent jobs in Greece.* ATHENSNEWS, available at [http://www.athensnews.gr/athweb/nathens.index\\_htm?e=C](http://www.athensnews.gr/athweb/nathens.index_htm?e=C).

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Upon reaching the destination country, these women are first robbed of their passports and travel documents by their "captors," then sold to local criminals and forced into prostitution. The captor maintains control over his goods by physical, psychological, and sexual violence. These women are tormented by frequent beatings; they are often raped; they are deprived of food and drink. They are threatened with prison or immediate deportation at the hands of authorities. They are warned that their families back home will be told of their exploits. In a very real way, they are at the mercy of their captors.<sup>58</sup>

#### B. THE ROLE OF ORGANIZED CRIME IN THE TRAFFICKING INDUSTRY

At the helm of this industry is a ruthless underground of organized crime. The perpetrators behind the enterprise are believed to have ties to international mafia cartels. These international networks are highly organized and hierarchically structured.<sup>59</sup> Each member of the cartel is assigned a specialized task, either as procurer, document forger, document provider, escort, or organizer.<sup>60</sup> These crime groups enjoy further support from financiers, corrupt officials, and brothel operators in the destination country.<sup>61</sup> The business-like approach in managing these crime syndicates ensures an optimally functioning operation. All participants in this conglomeration, from the kingpin, to the middleman, to the low-level criminal stand to profit from their endeavors. This is evidenced in that human trafficking ranks third, only behind drug running and selling illicit firearms, in terms of unlawful moneymaking ventures.<sup>62</sup>

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<sup>58</sup> *See Id.*

<sup>59</sup> AMY O'NEILL RICHARD, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME 55 (Nov. 1999), available at <http://www.odci.gov/csi/monograph/women/trafficking.pdf>.

<sup>60</sup> *Id.* at 55.

<sup>61</sup> *Id.*

<sup>62</sup> Richard Boudreaux, *Journey Into Sex Slavery; Traffickers are luring migrant women and girls fleeing poverty into forced prostitution in Europe. Italy is enlisting the victims to fight back against the pimps*. L.A. TIMES, Aug. 17, 2001, at 5.

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In Greece, the majority of accounts place the Albanian and Russian Mafia at the core of its trafficking industry.<sup>63</sup> Reports indicate that Russian criminals are trafficking women through Bulgaria to Turkey, Greece, and other Western European countries.<sup>64</sup> Further studies suggest that Albanian gangs sell women and girls to criminal organizations in both Italy and Greece.<sup>65</sup> The successful influx of Mafia clans in regulating the trafficking industry in Greece, and other European countries, is likely influenced by their use of barbaric tactics in enforcing compliance from confederates.

Signature to these cartels is the brutality with which they regulate their operations. In a recent murder investigation, Greek police implicated a Russian national as responsible for the “mafia-style execution” of two city officials in the island town of Thasos. The victims were believed to have been involved in the smuggling of foreign women into Greece for prostitution.<sup>66</sup> The crime gangs behind this industry are a force not to be reckoned with. They intimidate, bribe, and coerce – all in the name of business.

### C. QUESTIONING A SOCIETY THAT PERMITS TRAFFICKING IN WOMEN

A traditional patriarchal society adopts a male-privileged view on gender roles. The man is the breadwinner, the provider-- the superior. The woman is the caregiver, the homemaker-- the inferior. A hierarchical order, with men on top and women on the bottom, becomes engrained in the social structure. Boy and girl children are taught early on that such classifications are the norm. They are trained to adhere to, comply with, and never challenge, these conventional, yet intensely sexist, gender roles.<sup>67</sup>

This attitude of male superiority and female inferiority lays the foundation by which men shut off from their conscious

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<sup>63</sup> *Id.* at 7. See also ATHENSNEWS, May 28, 1997, at A01, available at <http://www.athensnews.gr/athweb/nathens.index.htm?e=C>.

<sup>64</sup> RICHARD, *supra* note 59, at 58.

<sup>65</sup> *Id.* at 61.

<sup>66</sup> *Prostitution Link in Thasos Killing?*, KATHIMERINI, June 21, 2001 at 1, available at <http://www.ekathimerini.com/>.

<sup>67</sup> See generally Maria Grahn-Farley, *Not For Sale! Race & Gender Identity In Post-Colonial Europe*, 17 N.Y.L. SCH. J. HUM. RTS. 271 (2001).

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the deplorable effects of trafficking on the female victims. The traffickers are able to detach themselves from the devastating impact of their behavior because they have come to view women as commodities; things to buy, sell, market, play with, abuse, and control. Objectification of women serves to reinforce men's violence. Women, whose bodies are exploited and minds tormented, are not daughters, wives, or mothers. They are whores, sex objects, bad girls. The male savages are thus justified in their captivity and torture of the female sex slaves.<sup>68</sup> Women learn that in order to survive in a male-dominated society they must submit, conform, and become that which they have been defined.

Although gender inequality runs deep within a societal structure, it can be penetrated. Individual societies can take steps toward eliminating the disparate status of women. The political and economic climate of the society will either limit or enhance its ability to attain this goal.<sup>69</sup> A society must first reject sexist practices if it hopes to eradicate forms of gender violence, such as the trafficking of women.

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<sup>68</sup> See generally Andrea Dworkin, *Against the Male Flood: Censorship, Pornography, and Equality*, 8 HARV. WOMEN'S L.J. (1985).

<sup>69</sup> See generally *World Factbook: Greece*, available at <http://education.yahoo.com/index.html>. Greece has only recently established itself as a democracy. *Id.* From 1967 to 1974, Greece was ruled by a military dictatorship. *Id.* Consequently, many restrictions were placed on its citizen's political liberties. *Id.* This dictatorship was overthrown in 1974, and democratic elections resulted in a parliamentary republic. *Id.* Greece joined the European Union in 1981. *Id.* In 1997, the European Union provided Greece with \$5.4 billion US dollars in economic aid. *Id.* See also *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Greece, 20th Sess., Agenda Items 187 and 188, at 2-8, U.N. Doc. A/54/38 (1999)*. The CEDAW Committee noted with concern that "the prevailing patriarchal structures and societal attitudes concerning the roles of women and men" (in Greece) "perpetuate discrimination against women in all spheres of public and private life and constitute an obstacle to achieving equality." *Id.* The Committee further noted that "the impact of the prevailing global and regional economic policies and trends is an impediment to the implementation of the Convention" (referring to the Convention on the Elimination of All Forms of Discrimination against Women). *Id.*

## V. PRESENT INTERNATIONAL EFFORTS TO ADDRESS TRAFFICKING OF WOMEN

### A. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

*The Convention on the Elimination of All Forms of Discrimination Against Women*<sup>70</sup> (hereinafter “CEDAW”) was adopted by the General Assembly of the United Nations in 1979, and entered into force in 1981. The treaty acknowledges that despite the vast array of existing treaties, women continue to suffer from discriminatory practices in economic, social, cultural, civil and political arenas. Based on the premise that inequality between men and women severely impairs a country’s development, CEDAW calls for the implementation of measures to eradicate all forms of gender discrimination. The treaty specifically addresses the concern of trafficking in women through its Article 6, which urges States Parties to: “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”<sup>71</sup>

A unique aspect of CEDAW is its creation of an all-female governing body to monitor the implementation of its provisions.<sup>72</sup> The CEDAW Committee is presently comprised of twenty-three women from a wide range of professional backgrounds.<sup>73</sup> Its role is to review reports submitted by States Parties, and provide recommendations based on its evaluations.<sup>74</sup>

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<sup>70</sup> Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, *supra* note 9.

<sup>71</sup> *Id.* at art. 6.

<sup>72</sup> Mara R. Bustelo, *The Committee on the Elimination of Discrimination Against Women at the Crossroads*, in *THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING*, at 80 (Philip Alston and James Crawford eds., 2001). An exception occurred from 1982-1984, when the governing body included one male member. *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*, See also *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Greece*, *supra* note 69, Agenda Items 175, 190, and 210. In responding to Greece’s most recent state report, the CEDAW Committee pointed out that forced prostitution and trafficking had become “a serious problem” in that country. *Id.* It suggested a need for improvement in areas of data collection, legislative and policy measures addressing violence against women and collaborative efforts with women migrants’ countries of origin to ensure women’s rights and safety. *Id.*



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B. WEAKNESSES OF CEDAW IN ADDRESSING TRAFFICKING OF WOMEN FOR FORCED PROSTITUTION

Although not intended to focus solely on the problem of trafficking in women, *CEDAW* is the most current United Nations treaty, in force, to speak on the issue. It has had little impact, however. Deficiencies can be found in the drafting of Article 6 and in the reporting procedures implemented to monitor compliance by States Parties.

The wording of Article 6 is incomplete in many respects.<sup>75</sup> It fails to specifically define the terms “traffic” and “exploitation.” It fails to delineate precise measures that States Parties should undertake to satisfy adherence to this provision. It fails to establish affirmative minimum criteria by which States Parties’ efforts can be properly evaluated. Its lack of clarity and specificity leave a wide gap, to be filled at the discretion of each individual State Party.

Further, the reporting procedure, as evidenced by its colossal delays, is problematic. A State Party is mandated to submit its initial report to the governing body within one year after it has ratified or acceded to the Convention. Subsequent reports are required every four years.<sup>76</sup> Few States Parties have so complied. As of October 1993, approximately two thirds of all States Parties had not provided the Committee with its report on its designated due date.<sup>77</sup>

Due to a considerable backlog, there is an average lapse of three years from the date a report is submitted to the date it is considered by the Committee.<sup>78</sup> The material in the submitted reports is likely stale by the time it reaches the evaluative stage. The problem of trafficking in women for forced

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<sup>75</sup> See Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, *supra* note 9, at art. 6.

<sup>76</sup> U.N. Fact Sheet No. 22: Discrimination against Women: The Convention and the Committee, at 27, *available at* <http://www.unhchr.ch/html/menu6/2/fs22.htm>.

<sup>77</sup> See U.N. Treaty Body Database, *available at* <http://www.unhchr.ch/tbs/doc.nsf/>. Although Greece ratified the Convention on June 17, 1983, it did not submit its first report until April 4, 1985, nearly one year after its designated due date. *Id.* Further, Greece failed to submit a combined second and third periodic report in a timely manner. *Id.* The report was due on July 7, 1988, and submitted on March 1, 1996, nearly eight years after its due date. *Id.* Greece’s combined fourth and fifth periodic report, due on July 7, 1996, was submitted on April 19, 2001. *Id.* This latter report has yet to be reviewed by the Committee. *Id.*

<sup>78</sup> *Id.* at 32.

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prostitution requires urgency and immediate interventions. It cannot withstand a long-drawn-out assessment process. Timeliness is imperative in effectively combating this social ill. The failure to act promptly is a likely contributor to the current plight of trafficking victims.

### C. MORE EFFECTIVE TOOLS

Promising to fill the gaps left open by the countless treaties formulated to eradicate human trafficking, are two recent international documents: *The Convention Against Transnational Organized Crime*<sup>79</sup> and *The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the Convention Against Transnational Organized Crime*.<sup>80</sup> The *Convention* and the *Protocol* pledge to be the most complete codification of international law in the areas of transnational organized crime and human trafficking.

The *Convention* calls for international cooperation in preventing and combating transnational organized crime.<sup>81</sup> It aims to harmonize existing efforts to prosecute offenders, with the hope that multi-lateral collaboration will enhance prosecutorial success.<sup>82</sup> The *Protocol* supplements the *Convention* by focusing on the specific transnational crime of human trafficking. It advocates for States Parties to adopt a triad of legal, protective, and preventative measures to combat the trafficking of women and children.<sup>83</sup> The belief is that a multi-disciplinary approach is the most effective means to address this multi-faceted problem.

As the *Protocol* speaks directly to trafficking of women, its provisions designed to eradicate the problem will be carefully discussed below. Similarly, the provisions of the *Convention*

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<sup>79</sup> Convention Against Transnational Organized Crime, G.A. Res. 55/25, *supra* note 17.

<sup>80</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, *supra* note 13.

<sup>81</sup> See generally Convention Against Transnational Organized Crime, G.A. Res. 55/25, *supra* note 17.

<sup>82</sup> See *id.*

<sup>83</sup> See generally Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, *supra* note 13.

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dealing with international legal cooperation will be equally considered.

1. *The Protocol*

a. Legal Measures

The Protocol calls for States Parties to criminalize trafficking in persons as defined in its Article 3.<sup>84</sup> It proposes to criminalize the attempted act,<sup>85</sup> complicity in the act,<sup>86</sup> and the organizing or directing of others to commit the act.<sup>87</sup>

b. Protective Measures

The *Protocol* calls for States Parties to provide extensive humanitarian services to victims of trafficking. It emphasizes the critical role of non-governmental organizations (NGOs) in ensuring that these services are implemented. The *Protocol* encourages States Parties to establish confidential legal proceedings in order to guarantee victim anonymity.<sup>88</sup> It promotes availability of advocacy services to inform victims about the legal process and enable them to voice their concerns.<sup>89</sup> It recommends that States Parties provide victims with housing services, legal advice, medical care, psychological counseling, material assistance, employment referrals, and educational opportunities.<sup>90</sup> It supports measures by States Parties to assure victim safety within its lands.<sup>91</sup> It advocates restoration of the victim via compensation for damage suffered.<sup>92</sup>

The *Protocol* calls for States Parties, through their immigration policy, to permit trafficking victims to remain on its lands, either temporarily or permanently.<sup>93</sup> Moreover, it directs receiving States Parties to facilitate the safe and timely

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<sup>84</sup> *Id.* at art. 5(1).

<sup>85</sup> *Id.* at art. 5(2)(a).

<sup>86</sup> *Id.* at art. 5(2)(b).

<sup>87</sup> *Id.* at art. 5(2)(c).

<sup>88</sup> *Id.* at art. 6(1).

<sup>89</sup> *Id.* at art. 6(2).

<sup>90</sup> *Id.* at art. 6(3).

<sup>91</sup> *Id.* at art. 6(5).

<sup>92</sup> *Id.* at art. 6(6).

<sup>93</sup> *Id.* at art. 7(1).

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return of trafficking victims to their homeland.<sup>94</sup> It calls for cooperation between the State Party of destination and the receiving State Party in procuring the necessary travel documents for trafficking victims to return home.<sup>95</sup>

c. Preventative Measures

The *Protocol* calls for States Parties to develop a research base, informational services, and media campaigns with the aim of curbing new incidents of human trafficking and preventing further exploitation of the victims.<sup>96</sup> Again, an emphasis is placed on collaborating with NGOs to advance these goals. The *Protocol* calls for States Parties to utilize both bilateral and multilateral efforts to develop and foster measures to alleviate factors at the core of human trafficking, such as poverty, underdevelopment, and lack of equal opportunity. It supports the adoption of legislative, educational, social, and cultural measures to discourage the demand for trafficking.<sup>97</sup>

The *Protocol* encourages cooperation amongst law enforcement personnel, immigration officials, and other authorities in the exchange of information pertaining to cross-border travel. Specifically, it asks States Parties to monitor cross-border travel to identify individuals traveling without documentation, as well as those traveling with false documentation.<sup>98</sup> It further asks States Parties to identify and gather information on the practices of organized crime groups to aid in their detection.<sup>99</sup> States Parties are required to offer, or expand, training for law enforcement, immigration, and other authorities in the areas of prevention, prosecution, and victim protection. These training materials are to incorporate a gender-sensitive and human rights approach. Again, the role of NGOs in facilitating this requirement is emphasized.<sup>100</sup>

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<sup>94</sup> *Id.* at art. 8(1), (2).

<sup>95</sup> *Id.* at art. 8(3), (4).

<sup>96</sup> *Id.* at art. 9.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at art. 10.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

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The *Protocol* also calls on States Parties to tighten security measures at their borders.<sup>101</sup> It authorizes States Parties to require commercial carriers to ensure that passengers possess the proper travel documentation.<sup>102</sup> Commercial carriers found to be in violation may be punished.<sup>103</sup> States Parties may deny entry or revoke the visa of persons implicated in human trafficking.<sup>104</sup>

Additionally, States Parties are required to regulate the manufacture of travel documents to prevent their falsification, alteration, or replication.<sup>105</sup> States Parties are to respond in a timely manner to inquiries from other States Parties as to the validity of travel documents.<sup>106</sup>

## 2. *The Convention*

### a. International Legal Cooperation

Article 4(1) of the *Convention* establishes the dominant rule with respect to state sovereignty. It guarantees a State Party “sovereign equality,” “territorial integrity” and “non-intervention” by other States Parties.<sup>107</sup> It supports international customary law by safeguarding the presumption of state sovereignty. In regards to the trafficking of women, it limits a State Party’s prosecutorial authority to situations where either the victim or perpetrator is a State national, or the offense was committed on State land.

Article 4(2) of the *Convention* provides a small gap, allowing a State Party to stretch the restrictive boundaries imposed by the sovereignty provision. This section indicates that a State Party is not “entitled” to exercise jurisdiction over another State on matters that fall within the “exclusive authority” of the opposing State’s domestic law.<sup>108</sup> Thus, one State cannot cross the boundary of another State in enforcing prohibitions against trafficking. This provision, however, will

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<sup>101</sup> *Id.* at art. 11.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at art. 12.

<sup>106</sup> *Id.* at art. 13.

<sup>107</sup> Convention Against Transnational Organized Crime, G.A. Res. 55/25, *supra* note 17, at art. 4(1).

<sup>108</sup> *Id.* at art. 4(2)

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permit two States to create a space for the use of joint jurisdiction in combating trans-border offenses. A country of origin might be encouraged, through this provision, to welcome cooperative efforts with a country of destination in addressing such trans-border crimes as human trafficking, drug smuggling, and arms trafficking. This provision allows room to apply less constrictive and more creative measures to combat the trafficking of women for forced prostitution.

Therefore, although Article 4 of the *Convention* advocates for sovereignty of state, it permits a flexibility through which States Parties might be permitted to implement extraterritorial jurisdiction. Specifically, States Parties can use Article 15 of the *Convention* to advance the notion of extraterritorial jurisdiction in prosecuting these offenses. Article 15 of the *Convention* identifies exceptions to the general rule as set forth in Article 4(1).

#### b. Assertion of Jurisdiction

Article 15(1) of the *Convention* calls on each State Party to take such measures as may be necessary to establish jurisdiction over “participation in organized criminal groups,”<sup>109</sup> “money-laundering,”<sup>110</sup> “corruption,”<sup>111</sup> and “obstruction of justice.”<sup>112</sup> The State Party must criminalize such conduct in order to assert jurisdiction over the conduct.

Although Article 15(1)(a) requires that the offense be committed on the State Party’s land,<sup>113</sup> this provision should not be viewed as limiting the exercise of extraterritorial jurisdiction. By definition, the trafficking of women and the involvement of the organized criminal is transnational in nature. When a State Party criminalizes participation in an organized crime group, and the crime group participates in acts that transcend borders, the State’s jurisdiction should then reach across those borders. One such way is for a State Party to establish extraterritorial jurisdiction.

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<sup>109</sup> *Id.* at art. 5.

<sup>110</sup> *Id.* at art. 6.

<sup>111</sup> *Id.* at art. 8.

<sup>112</sup> *Id.* at art. 23.

<sup>113</sup> *Id.* at art. 15(1)(a).

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In the alternative, per Article 15(1)(b), the offense may also have been committed on board a vessel flying the State Party flag or an aircraft registered under the State Party laws.<sup>114</sup> A showing of intent is required to successfully charge the offense. Article 15(1)(b) should be viewed as advancing extraterritorial jurisdiction in cases where the mode of transport is by means of a State Party vessel or aircraft. The goal here is to criminalize the transport of women across State borders for prostitution. This interpretation would permit prosecution in, and by, the destination country.

According to Article 15(2)(c)(i), a State Party may assert jurisdiction over the participation in an organized crime group if the offense is “committed outside its territory with a view to the commission of a serious crime within its territory.”<sup>115</sup> Again, the element of intent is required to establish the offense. Under the guise of this provision, the country of destination may assert jurisdiction over a foreign national, even if the acts are committed in the country of origin. The reasoning is that since the criminal’s objective is to complete the offense in the destination country, jurisdictional requirements are satisfied.

Based on Article 15(3), a State Party that chooses not to extradite one of its nationals, who is believed by another State Party to be in violation of Article 15(1) conduct, must assert jurisdiction over such conduct.<sup>116</sup> In other words, if the country of origin will not extradite its national to the country of destination to face charges, then the country of origin must establish, as punishable, the offenses for which the criminal would have been charged in the destination country. Additionally, the country of origin must initiate criminal proceedings against the perpetrator.

The language of Article 15(5) calls for international cooperation among States Parties. This provision makes clear that in situations where investigation, prosecution, or judicial proceedings are overlapping, the States Parties shall “consult one another with a view to coordinating their actions.”<sup>117</sup> This call for international cooperation is the window through which extraterritorial jurisdiction may enter.

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<sup>114</sup> *Id* at art. 15(1)(b).

<sup>115</sup> *Id* at art. 15(2)(c)(i).

<sup>116</sup> *Id* at art. 15(3).

<sup>117</sup> *Id* at art. 15(5).

## VI. RECOMMENDATIONS

To ensure a comprehensive approach in the fight against trafficking, both the *Convention* and the *Protocol* must be effectively implemented. What follows is a discussion of proposed measures essential to this outcome. Although this article advances the notion of international legal cooperation as the dominant force behind a successful intervention, brief mention will be made of other proposals as well.

## A. PROPOSAL FOR EFFECTIVE IMPLEMENTATION OF THE PROTOCOL

The measures proposed in the *Protocol*, to deal with the trafficking of women, require a State Party to implement changes in both its penal law and immigration law. Additionally, a State Party is expected to collaborate with NGOs to increase resources to trafficking victims.<sup>118</sup> Human rights groups support such changes.<sup>119</sup>

First, a State Party's penal law must thoroughly criminalize the trafficking of women for forced prostitution. The acts of the procurer, document forger, document provider, escort, organizer, brothel owner, and consumer must be viewed in terms of the broader conspiracy. The individual acts of each party must be criminalized, as must their complicity in the overall offense. The justice system must spare no participant in the punishment for this vile crime. Presently, few States Parties have incorporated specific anti-trafficking laws in their criminal code that encompass the broad range of punishable conduct.<sup>120</sup> Thus, the offenses under which the traffickers are charged are often lesser offenses, carrying relatively lenient

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<sup>118</sup> See generally *TRAFFICKING OF MIGRANT WOMEN FOR FORCED PROSTITUTION INTO GREECE*, *supra* note 1.

<sup>119</sup> See *Id.*

<sup>120</sup> *TRAFFICKING IN HUMAN BEINGS: IMPLICATIONS FOR THE OSCE, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE) REVIEW CONFERENCE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (ODIHR) 18-19* (Sept. 1999), available at <http://www.osce.org/odihr/documents/background/trafficking/>. (indicating that "[F]ew States have specific anti-trafficking laws. Most rely instead on a variety of existing criminal statutes, usually associated with prostitution." These statutes typically "will not reach many of the actors involved in trafficking, . . ." and do not "carry penalties reflecting the serious and often brutal nature of trafficking crimes.")



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penalties.<sup>121</sup> Moreover, the provisions describing the criminal conduct are often too narrow to apply to trafficking situations. The perpetrators comprising the trafficking network are often able to escape punishment because their specific part in the chain is not considered criminal.<sup>122</sup> Further, trafficking offenders, when prosecuted at all, tend to receive light sentences.<sup>123</sup> This practice must change.

The punishment of offenders must be substantial. Any level of involvement, no matter how miniscule the participant's role, must be met with extreme severity. The punishment should be commensurate with the gravity of the offense. A clear message must be sent to those who show, through their conduct, that the exploitation, abuse, and dehumanization of women are permissible.

Secondly, a change in immigration policy is necessary. Immigration laws must be altered to extend immunity to trafficking victims who originate from other countries. This immunity may be either permanent or temporary, at least until criminal proceedings have been completed. Currently, many countries initiate immediate deportation proceedings of trafficked victims lacking proper documentation.<sup>124</sup> This practice fails to protect the victim from re-victimization and hampers prosecution efforts.<sup>125</sup>

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<sup>121</sup> See *Greece National Report on the Implementation of the Beijing Platform For Action*, General Secretariat for Equality, Ministry of Interior, Public Administration and Decentralization (June 1999). See also *TRAFFICKING OF MIGRANT WOMEN FOR FORCED PROSTITUTION INTO GREECE*, *supra* note 1, at 18-19. Under the Greek Penal Code the following offenses are available with which to charge traffickers: assisting in the corruption of others, procuring, pimping, the exploitation of prostitutes, and slave trade. *Id.* Punishments range from a fine, to imprisonment for nine months to three years. *Id.*

<sup>122</sup> *TRAFFICKING IN HUMAN BEINGS: IMPLICATIONS FOR THE OSCE, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE) REVIEW CONFERENCE*, *supra* note 120.

<sup>123</sup> *Id.* at 20.

<sup>124</sup> *Id.* at 20. See also, *TRAFFICKING OF MIGRANT WOMEN FOR FORCED PROSTITUTION INTO GREECE*, *supra* note 1, at 14. According to this report, "undocumented persons in Greece who are apprehended by the police are often treated like criminals, and detained and deported despite being trafficking victims." *Id.* Further, trafficked migrant women in Greece "usually end up in detention pending deportation, or in prison for working illegally . . ." *Id.*

<sup>125</sup> *TRAFFICKING IN HUMAN BEINGS: IMPLICATIONS FOR THE OSCE, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE) REVIEW CONFERENCE*, *supra* note 120, at 20.

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Finally, a State Party must realize the invaluable contribution by NGOs in the fight against trafficking. A State Party must coordinate efforts with NGOs through increased communication, consultation, and funding. A holistic approach to the problem requires the involvement of these agencies. A State Party should make direct social services available to victims as a means of reparation. NGOs will be instrumental in providing victims with such services. A State Party should provide NGOs with the needed support to establish shelter, medical and psychological services, educational services, and emergency services to victims.

#### B. PROPOSAL FOR EFFECTIVE IMPLEMENTATION OF THE CONVENTION

Extraterritorial jurisdiction is likely the missing link in the successful prosecution of trafficking cases. Prosecutorial efforts will be enhanced by expanding the reach of jurisdiction. The use of extraterritorial jurisdiction permits a country to prosecute either its own national or a foreign national for acts committed abroad or trans-nationally.<sup>126</sup> By expanding on traditional notions of territorial jurisdiction, it increases two-fold the opportunity to prosecute offenders for their wrongdoings.

##### *1. Bases on Which Extraterritorial Jurisdiction May Be Exercised*

The three bases under which extraterritorial jurisdiction may be asserted include the personality principle, protective principle, and universality principle.<sup>127</sup> The personality principle consists of two components – passive personality and active personality.<sup>128</sup> Under the passive personality, a State may assert jurisdiction on the basis of the victim's nationality.<sup>129</sup> Thus, although the act is perpetrated outside the state's boundaries, the State may assume jurisdiction so long

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<sup>126</sup> REBECCA M.M. WALLACE, *INTERNATIONAL LAW* 101-106 (1986).

<sup>127</sup> EXTRATERRITORIAL LEGISLATION AS A TOOL TO COMBAT SEXUAL EXPLOITATION OF CHILDREN, END CHILD PROSTITUTION IN TOURISM (ECPAT) EUROPE LAW ENFORCEMENT GROUP, AMSTERDAM 14 (Apr. 1999).

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

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as the victim is a national.<sup>130</sup> Similarly, the active personality principle allows for State jurisdiction of acts committed outwith its boundaries, as long as the perpetrator is a national.<sup>131</sup>

The protective principle extends jurisdiction to a State for offenses committed abroad, by non-nationals, if the conduct is considered a threat to State security. Traditionally, this principle has been applied to assert prosecutorial jurisdiction over crimes such as treason or counterfeit of currency.<sup>132</sup>

Under the universality principle, a State agrees to prosecute certain crimes, irrespective of where they are committed, or by whom, because these crimes are denounced by the international community. The State accepts jurisdiction under the auspice that it is obligated to protect humankind from such criminal atrocities. This form of universal jurisdiction has been applied in instances of piracy, genocide, and war crimes.<sup>133</sup> These offenses are considered to fall under rules of *jus cogens*, and to thus be governed by peremptory norms of general international law.<sup>134</sup>

The principles most relevant to the application of extraterritorial jurisdiction in the trafficking of women are the protective principle and the universality principle. If the trafficking of women is considered in the context of its accompanying social ills, then the protective principle applies. The procurement of women from the country of origin, whether by means of trickery, coercion, or consent poses a fierce threat to a State's security, at both the local and national levels. The trafficking of women implicates additional issues, such as extreme incidents of violence,<sup>135</sup> drug use,<sup>136</sup> health concerns,<sup>137</sup>

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<sup>130</sup> *Id.*

<sup>131</sup> *See id.* (discussing how extraterritorial jurisdiction has been applied to the prosecution of child sex tourism offenders).

<sup>132</sup> WALLACE, *supra* note 126, at 103-104.

<sup>133</sup> *Id.* at 104-106

<sup>134</sup> STEINER & ALSTON, *supra* note 35, at 133. (indicating that rules of *jus cogens*, as defined in Article 53 of the Vienna Convention on the Law of Treaties 1969, are "norms 'accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character'.")

<sup>135</sup> *See* DINAN, *supra* note 56, at 96. Traffickers use "physical violence and threats of violence to frighten their victims into submission." *Id.* Trafficking victims are "beaten for failing to please their clients, for failing to prevent a coworker's escape, or for other acts of disobedience." *Id.*

*See* Hughes, *supra* note 2, at 12. "Women are mutilated and murdered as warnings to competing traffickers and pimps and as punishment for refusing to engage in

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and further crime.<sup>138</sup> It places insurmountable burdens on local police forces, the court system, penal institutions, immigration authorities, NGOs, and other social service agencies. Not only does it lower the quality of life in the country of destination, it actually places local residents at risk.

If the trafficking of women is viewed as a form of modern-day slavery, then the principle of universality will clearly apply. Documentation suggests that victims of trafficking are exposed to repeated physical and emotional torture; are often held captive by their "owners"; and are routinely sold as commodities. An analogy to the practice of slavery is not far fetched.<sup>139</sup> In fact, it is right on target, perhaps uncomfortably so. Trafficking of women should be considered an offense *jus cogens*. As such, jurisdiction to prosecute this offense should be available to any, and all, governments comprising the international community. One need only consider the impact of the sex trade on trafficking victims to find support for this position.<sup>140</sup> Based on this analysis, it follows that the

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prostitution." *Id.* This article further reports that in Italy a woman is murdered monthly due to involvement in prostitution. *Id.* Additionally, this article cites the following cases: "In Istanbul, Turkey, two Ukrainian women were thrown off a balcony and killed while six of their Russian friends watched. In Serbia, a Ukrainian woman who resisted was beheaded in public." *Id.*

<sup>136</sup> See *TRAFFICKING IN WOMEN AND CHILDREN: MEKONG SUB-REGION*, UNITED NATIONS DEVELOPMENT FUND FOR WOMEN – EAST AND SOUTH EAST ASIA 7 (Jan. 1998), available at <http://www.unifem-eseasia.org/Resources/Traffick2.html>. Trafficking victims are at risk for drug and other addictions. *Id.*

<sup>137</sup> See *id.* Trafficked women risk pregnancy, maternal mortality, sexually transmitted diseases, and HIV/AIDS. They also experience psychological trauma and serious emotional scars. *Id.*

See also RICHARD, *supra* note 59, at 1. "Some trafficked women are required to engage in unprotected sex." *Id.* In one case, a "trafficker was purchasing HIV-positive females because he found them to be cheap labor" and "he believed they had nothing to live for." *Id.*

<sup>138</sup> SEE *TRAFFICKING IN MIGRANTS: QUARTERLY BULLETIN 1-2*, INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM) (June 1996). This article identifies a variety of interlinked criminal activities, including: stealing, forging and altering travel documents and work and residence permits. *Id.* "Once in the country of destination, migrants may have to turn to crime in order to repay the debts owed to the trafficking network, sometimes this may involve transporting or selling drugs for the organization." *Id.*

See also RICHARD, *supra* note 59. This report identifies the following criminal activities as "closely intertwined" with the trafficking industry: extortion, racketeering, money laundering, bribery of public officials, drug use, gambling, conspiracy, document forgery, visa, mail, and wire fraud. *Id.*

<sup>139</sup> See Slavery Convention, *supra* note 8, at art. 1(1).

<sup>140</sup> See RICHARD, *supra* note 59, at 40. "Trafficking victims also have commonly experienced the most extreme forms of exploitation ranging from forced prostitution,

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international community should be obligated to protect all citizens from such treatment.

## 2. Scales of Extraterritorial Jurisdiction

The next step is to determine what level of extraterritorial jurisdiction should apply. Traditionally, there are three scales of extraterritorial jurisdiction available to a State in establishing its legislation. They include intent, double criminality, and absence of double criminality. Each scale dictates the range of a State's authoritative reach over the criminal offense.

A State may require that the perpetrator possess the "intent" to commit the proscribed act in order for extraterritorial jurisdiction to apply.<sup>141</sup> This issue is raised in instances where the criminal conduct commences abroad but continues across borders.<sup>142</sup> The perpetrator, traveling from the country of origin to the country of destination, must be shown to possess the requisite intent to partake in the acts comprising the criminal offense.<sup>143</sup> The country of destination can only secure jurisdiction if it proves that the actor intended to facilitate the harm before leaving the country of origin. The criminal behavior lies in the act of traveling with the intent to partake in the offense.<sup>144</sup> There is no requirement that the crime be completed.<sup>145</sup>

A State may establish a double criminality requisite in its extraterritorial jurisdiction laws.<sup>146</sup> This requires that an

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involuntary confinement, rape, and torture." *Id.*

<sup>141</sup> Margaret A. Healy, *Prosecuting Child Sex Tourists At Home: Do Laws In Sweden, Australia, And The United States Safeguard The Rights Of Children As Mandated By International Law?*, 18 FORDHAM INT'L L.J., 1852, (1995). This article provides a discussion on criminalizing the intent of U.S. citizens or permanent residents who engage in the sexual exploitation of children abroad as called for by the Violent Crime Control and Law Enforcement Act of 1994, also referred to as the Crime Bill. *Id.* The Crime Bill amends the Mann Act of 1986 which prohibits the transportation of individuals under age 18 in interstate or foreign commerce with the intent that the child engage in prostitution or any sexual activity. *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> EXTRATERRITORIAL LEGISLATION AS A TOOL TO COMBAT SEXUAL EXPLOITATION OF CHILDREN, *supra* note 127, at 199. This study provides a discussion of the double criminality requisite in a country's application of extraterritorial jurisdiction. *Id.* It provides as an example the successful prosecution in Sweden of a Swedish resident for

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offense be designated as criminal in both the State where it occurred and in the State seeking to assert jurisdiction.<sup>147</sup> A State is only permitted to prosecute one of its nationals for an offense committed abroad if the offense is criminal in the State where it was executed. While this approach requires bilateral cooperation, such cooperation does not address problems arising from differences in legal systems of the involved States. These differences often provide a loophole by which the trafficker escapes prosecution. Further, if both states are lackadaisical in their efforts to enforce anti-trafficking laws, the offender may find himself immune from punishment.

Finally, a state may do away with the need for double criminality as a basis for asserting extraterritorial jurisdiction.<sup>148</sup> In such instances, as long as the conduct is criminal in the state seeking to prosecute, it is immaterial whether it is also criminal in the state where it occurred.<sup>149</sup> This is the most liberal, and far-reaching of the three scales of extraterritorial jurisdiction.

### C. THE IMPORTANCE OF A MULTI-LATERAL TREATY TO FACILITATE THE IMPLEMENTATION OF EXTRATERRITORIAL JURISDICTION IN THE TRAFFICKING OF WOMEN

This article proposes an expansion of conventional interventions in the fight against trafficking of women for forced prostitution. To enhance prosecutorial efforts aimed at traffickers, this article proposes the formation of a multi-lateral treaty calling for extraterritorial jurisdiction without the requirement of double criminality. The European Union (EU) plays a critical role in advancing this aim. The EU could assist in such efforts by initiating a multi-lateral treaty between its member States<sup>150</sup> by which jurisdiction over traffickers will be

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the sexual abuse of a thirteen-year-old Thai boy, the acts of which occurred in Thailand. *Id.* The Swedish Criminal Code requires double criminality in order to prosecute such offenders. *Id.*

<sup>147</sup> *Id.* at 15.

<sup>148</sup> *Id.* at 70. This study provides an example from the German Criminal Law where certain offenses (such as child abuse in a foreign country and distribution of pornographic material with children), even if committed abroad, can be prosecuted in Germany irrespective of whether the offending conduct is deemed criminal in the country where it occurred. *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> Member States of the European Union are: Belgium, Germany, France, Italy,

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shared by all member States. Further, the EU could assert its influence over candidate States<sup>151</sup> by requiring them to adopt this agreement as an illustration of their commitment to join the association.

The support for this type of intervention has been recognized in official international documents. The European Council,<sup>152</sup> the European Commission,<sup>153</sup> and the European Parliament<sup>154</sup> have officially acknowledged that the trafficking of women for forced prostitution within the EU has reached a level of grave concern. Existing documents emphasize the importance of judicial cooperation between member States, as well as such cooperation with third countries (non-member States) in tackling this problem.<sup>155</sup> While legislation currently in force at the EU level permits member States to exercise extraterritorial jurisdiction, it does not so require.<sup>156</sup> Further, recent proposals, not yet adopted, by both the European Commission<sup>157</sup> and the European Parliament<sup>158</sup> also stress the

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Luxembourg, the Netherlands, Denmark, Ireland, the United Kingdom, Greece, Spain, Portugal, Austria, Finland, and Sweden.

<sup>151</sup> Presently the following countries are potential candidates for European Union membership: Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovak Republic, and Turkey.

<sup>152</sup> See generally Joint Action of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children, 1997 O.J. (L 063) 0002-0006, available at [http://www.europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397E0154.html](http://www.europa.eu.int/eur-lex/en/lif/dat/1997/en_397E0154.html) [hereinafter Joint Action].

<sup>153</sup> See generally Communication from the Commission to the Council and the European Parliament, Combating trafficking in human beings and combating the sexual exploitation of children and child pornography; two proposals for framework decisions, COM (00) 854 final [hereinafter Combating Trafficking].

<sup>154</sup> See generally Report on the communication from the Commission to the Council and the European Parliament 'For further actions in the fight against trafficking in women', EUR. PARL. DOC. COM (00) 726 final [hereinafter Further Actions].

<sup>155</sup> See Joint Action, *supra* note 152; Combating Trafficking, *supra* note 153; Further Actions, *supra* note 154.

<sup>156</sup> See generally Joint Action, *supra* note 152. This legislation, adopted by the Council, addresses issues of jurisdiction, criminal procedure, assistance to victims, and police and judicial cooperation. *Id.* It authorizes Member States to assert jurisdiction in cases where "the offense is committed, wholly or partly, on its territory" or "the person committing the offense is a national or a habitual resident of that Member State." *Id.* It permits a Member State to require double criminality in cases where the offense was committed abroad by its national. *Id.*

<sup>157</sup> See Combating Trafficking, *supra* note 153, art. 7, at 17. The European Commission proposes that each Member State take the necessary measures to establish its jurisdiction over human trafficking in instances where the "offense is committed in whole or in part within its territory" (irrespective of the status or nationality of the person involved), "the offender is one of its nationals" (thus a Member

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critical role of extraterritorial jurisdiction in solving this crisis. Moreover, in a working paper published by the European Parliament, the author asserts:

Rules must be introduced to permit extraterritorial judicial action, to enable the prosecution, extradition and sentencing of nationals who have committed crimes relating to trafficking in women, irrespective of the country in which the crime was committed, and to allow crimes committed in different countries to be punished jointly. Enlargement to the east should be taken as an opportunity to enable the countries of origin, as prospective EU member States, to cooperate with the countries of destination with a view to the effective application of the third pillar in this field.<sup>159</sup>

A multi-lateral, cooperative effort, as proposed in these documents, is vital for the proper handling of this offense. Due to the clandestine nature of its operations, trafficking for forced prostitution is a difficult illegality to penetrate. As such, a more comprehensive and unrestricted approach to its eradication is necessary. The EU is in the position, through the development of treaty law, to oversee the implementation of extraterritorial jurisdiction in trafficking cases. By classifying the offense, within its membership, in such a way so it will fall under the protective and universality principles, the EU can call for the use of extraterritorial jurisdiction among member States, as well as candidate States. By adopting a multi-lateral treaty speaking specifically on this issue, the EU can promote the use of extraterritorial jurisdiction in prosecuting this offense.

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State can prosecute for offenses committed abroad), or "the offense is committed for the benefit of a legal person established in the territory of that Member State." *Id.* A Member State that does not extradite its own nationals must "take the necessary measures to establish its jurisdiction over and to prosecute" traffickers when the offense is committed by its own nationals outside its territory. *Id.*

<sup>158</sup> See Further Actions, *supra* note 154 at 9. The European Parliament proposes "harmonization of national laws and methods of detection and prosecution, with a view to ensuring . . . extraterritoriality jurisdiction and extradition for the crime of trafficking in human beings. . . ." *Id.*

<sup>159</sup> Carmen Galiana, Trafficking in Women, PARL. EUR. DOC. CIVIL LIBERTIES SERIES 18 (2000), available at <http://www.europarl.eu.int/workingpapers/libe/pdf/109-en.pdf>.



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VII. CONCLUSION

The use of extraterritorial jurisdiction, coupled with changes in penal law, immigration law, and increased collaboration with NGOs, are the means by which a State Party can effectively curtail the incidence of trafficking in women for forced prostitution. A multi-disciplinary approach is needed to deconstruct this social ill. The proposals set forth in this article touch upon criminal law, immigration law, international law, as well as social service intervention. A country's ability to prevail over this atrocity is contingent both upon its unreserved commitment to implement the proposed changes and its willingness to cooperate with other States in tackling this issue.

Thus, the EU is in a prime position to promote a collaborative solution to the problem. The creation of a multi-lateral treaty would facilitate the implementation of extraterritorial jurisdiction in prosecuting this offense. After nearly a century of failed attempts to put an end to this horrific human rights abuse, it is time to employ more expansive interventions. The application of extraterritorial jurisdiction in the enforcement of anti-trafficking laws is vital to the successful prosecution, and eventual eradication, of the trafficking of women for forced prostitution.

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