

The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

by Kelly E. Hyland*

Trafficking in women has long been a topic of international concern, but it has taken on new meaning in this century. Trafficking is no longer a term reserved only for women and girls forced into prostitution and forced labor is no longer a separate issue. The modern concept of trafficking is a combination of traditional trafficking and slavery definitions. As such, trafficking involves both the enticement and deception elements from traditional trafficking, and the exploitation and slavery-like practices from traditional slavery and forced labor. The emergence of this new concept is in response to the diversity of trafficking practices worldwide. For example, Pakistani boys are sold to become camel jockeys in Dubai, U.A.E.; children locked in dark, dank rooms make bangles all day long in Mumbai, India; teenage Vietnamese girls are sold into prostitution in Bangkok, Thailand; deaf and mute Mexicans are forced to peddle trinkets and beg on the streets of New York, U.S.A., turning in all their profits to their traffickers; Nigerian women are sold to brothels in the Netherlands and Italy; and Thai men and women are held captive, forced to work in sweatshops in the Commonwealth of the Northern Mariana Islands.

To address this growing transnational crime, the United States introduced a resolution on trafficking in women and children at the April 1998 session of the UN Commission for Crime Prevention and Criminal Justice. The proposed resolution called for the development of a protocol on trafficking in women and children under the proposed UN Convention against Transnational Organized Crime (Convention). The resolution was subsequently adopted, and the United States and Argentina introduced a draft protocol at the first negotiation session of the Convention in January 1999. The resulting Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Protocol) promises to be the first comprehensive international anti-trafficking agreement with tough law enforcement and victim protections. Although the Protocol has some weaknesses, it has the potential to be an effective human rights tool if State Parties adopt enhanced victim protection measures.

The Rise of a New International Agreement

Five primary factors contributed to the development of the Protocol. First, nongovernmental organizations (NGOs) worldwide lobbied their governments on behalf of trafficking victims who had suffered egregious human rights violations and exposed the practices of traffickers. Through NGOs—the most vocal advocates—governments learned that traffickers frequently exercise complete control over their victims by seizing travel and identification documents, withholding wages, restricting or banning movement, prohibiting communication with family and friends, taking advantage of language barriers, selling victims to another owner to keep them disoriented, and threatening family members. NGOs also raised awareness about victims' physical trauma of beatings and rapes, forced abortions, starvation, forced drug use, 20-hour workdays, and contraction of HIV/AIDS and sexually transmitted diseases.

Second, it is widely projected that the number of traffick-

ing victims will continue to increase in conjunction with rising migration, and therefore must be curbed. Currently, the International Organization for Migration estimates that 150 million people migrate annually in search of economic opportunity or to escape gender discrimination, armed conflict, political instability, and poverty. According to a U.S. State Department study, approximately 2 million of these migrants are trafficked each year because traffickers take advantage of migration, crisis, and economic and social disadvantages to procure their victims. The pervasiveness of these conditions ensures the number of trafficking victims will continue to increase, thereby creating an impetus to develop an international agreement on trafficking.

Third, nations worldwide view trafficking not only as a human rights issue, but also as an issue of transnational organized crime that requires a global response. Organized crime syndicates have made

trafficking the third most profitable illegal industry, behind drugs and arms, estimated at U.S.\$7 billion by the International Organization for Migration. Profits are high because traffickers keep their costs low by withholding food, wages, adequate shelter, and health care. Moreover, unlike migrant smuggling, where exorbitant fees may be paid to the smuggler for covert transportation and entry, traffickers extract their fees not only from the transportation but also from the prolonged servitude of their victims. Additionally, trafficking in persons requires sophistication and networks, such as those already established by organized crime. Corrupt police, politicians, banks, and criminals worldwide are part of the network that aids in document fraud, border crossings, money laundering, and the return of escaped victims. Therefore, the increased involvement of organized crime in trafficking created a global law enforcement concern that can only be addressed in a global context.

Fourth, governments grapple with prosecuting trafficking cases in the absence of trafficking laws. The United States, for example, relied on the involuntary servitude statute created under the 13th Amendment along with a multitude of criminal charges and civil violations. This changed when former president Clinton signed into law the Victims of Trafficking and Violence Protection Act of 2000 on October 28, 2000. The United States is the first nation to enact comprehensive legislation that includes trafficking prevention measures, prosecution, and protection and reintegration assistance for victims. Thus far, few nations have enacted laws to combat this growing transnational crime, let alone ones that provide as comprehensive a framework as does U.S. law.

Finally, the existing body of international trafficking law is inadequate as a tool to combat trafficking. There are five predecessor trafficking agreements: the International Agreement for the Suppression of White Slave Traffic, International Convention for the Suppression of White Slave Traffic, Convention on the Suppression of Traffic in Women and Children, International Convention of the Suppression of the Traffic in Women of Full Age, and the Convention of the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. These agreements never defined

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continued on next page

trafficking and their scope was limited to the act of enticing or abducting women for prostitution abroad. Trafficking extends, however, not only to sexual exploitation such as prostitution, but also to forced labor in a broad range of contexts including agriculture, domestic servitude, maid service, sweatshops, begging, and marriage. Moreover, a victim can be a man, woman, or child. The focus of trafficking is therefore not limited to certain kinds of labor or victims, but more broadly on the recruitment phase that includes some form of coercion, deception, or fraud, and the slavery phase where severe exploitation and human rights violations occur. This means that the few nations that ratified these early agreements incorporated into their domestic laws a conception of trafficking that is narrow by today's standards. With increasing incidents of trafficking and inadequate laws to combat it, the international environment was ripe for the creation of a new agreement governing trafficking in persons.

The Trafficking Protocol

On November 15, 2000, the UN General Assembly adopted the Organized Crime Convention, which contains a protocol on migrant smuggling and a protocol on trafficking in persons. From December 12–15, 2000, the Convention was opened for signature in Palermo, Italy. The trafficking protocol is the first international instrument to define trafficking, and it does so comprehensively. Under the Protocol, Article 3 defines trafficking as “the 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. 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.” The success of achieving consensus on a definition cannot be understated. The Protocol reflects the first international consensus on the definition of trafficking, which is the first step toward a concerted international effort to combat trafficking.

Beyond the definition, the true force of the document lies in the law enforcement provisions. Article 5 obligates State Parties to criminalize trafficking, attempted trafficking, partici-

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pating as an accomplice, and organizing and directing trafficking. Additionally, Article 10 requires law enforcement training to help identify potential trafficking victims and organized crime methods used to traffic individuals. Article 10 also requires an information exchange among law enforcement and immigration officials of State Parties regarding transportation routes, fraudulent documents, and potential traffickers. Articles 11 and 12 mandate strengthened border control

measures, such as checking travel documents, boarding vehicles for inspection, and increasing the quality of travel documents to reduce fraud.

The mandatory provisions regarding victims are an additional advantage of the Protocol. For example, Article 9 addresses mandatory prevention measures, specifically citing mass media information campaigns, close cooperation with NGOs, and the creation of social and economic incentives. Examples of such incentives include microcredit lending programs, social advancement of women, job training, or tax incentives to start small businesses. In short, such incentives are measures that help alleviate the economic and social pressures that can make people vulnerable to traffickers. State Parties also must undertake measures to alleviate factors that contribute to the vulnerability of women and children to trafficking such as “poverty, underdevelopment and lack of equal opportunity.” Under Article 6, State Parties also are required to include provisions within their domestic legal frameworks regarding victim compensation and information on legal proceedings. Moreover, legal proceedings must be kept confidential. Article 8 requires State Parties to facilitate the repatriation of citizens or nationals with due regard for the safety of the victim by providing necessary travel documentation and a return without unreasonable delay.

Potential Weaknesses of the Protocol

The Protocol outlines victim services that are meant to assist and protect victims of trafficking. Despite this commitment to assisting and protecting trafficking victims, the provisions providing for implementation are weak. Each of these provisions begins with the permissive language that State Parties “shall endeavor to,” “shall consider in appropriate cases,” and “to the extent possible” implement various victim protection measures. For example, Article 6 specifies that for their “physical and psychological recovery,” victims require medical care, housing, mental health counseling, job training, legal assistance, and physical safety. This provision, however, requires that State Parties only “consider implementing” such measures. Article 7 requires State Parties only to consider providing temporary or permanent residence for victims.

Although there were discussions about creating mandatory protection and assistance provisions, there was concern over the cost such mandatory requirements would impose, particularly on developing countries. A reasonable interpretation of the language places the onus on developed countries to provide victim assistance measures, while developing nations must provide assistance to the extent possible. Thus, NGO and development assistance will be critical to assuring victims receive necessary services.

The Protocol contains several additional shortcomings. First, there is no explicit protection from prosecution for the acts victims are forced to perform. Therefore, a victim could be prosecuted for a crime they were coerced into committing, such as prostitution, working without a permit, or having false identification documents. Moreover, it is possible victims will be summarily deported for these violations. Second, because victim assistance is discretionary, victims who remain in a country in order to be witnesses for the prosecution could be detained for months without critical services or employment. Many victims may be unwilling to offer testimony without these provisions, which works to the detriment of the prosecutor and undermines the law enforcement objectives of this Protocol. Victims who are not witnesses are still at risk of physical harm from their traffickers. Third, there is no mention of “reintegration,” or providing services upon repatriation to ensure that a victim is able to re-enter society. The Protocol only refers to cooperation between State Parties to

Colombia Human Rights Network

by Barbara Cochrane Alexander*

In May 1999, the Center for Human Rights and Humanitarian Law (Center) of the Washington College of Law (WCL) at American University partnered with several academic centers in Central and South America to develop the Inter-American Human Rights Academic Network (Inter-American Network). The Inter-American Network, in conjunction with the Center, has conducted multiple human rights training seminars for human rights professors in Central and South America with the goal that these professors will in turn replicate the experience in their home countries and regions, and extend the human rights training opportunities to human rights practitioners as well. To achieve this goal, the Center received a two-year, U.S.\$100,000 grant from the Association Liaison Office for University Cooperation in Development to develop the Columbia Human Rights Network. Currently, the Center is working with the *Universidad Nacional*, a public university, and the *Universidad de Los Andes*, a private university, located in Santa Fé de Bogotá, Colombia. The Columbia Human Rights Network is focused on preparing a diagnostic report on Colombia's human rights legal education, and developing and enhancing the capacity of human rights academicians to provide on-site legal training.

As part of its goals, the diagnostic report, scheduled for completion in spring 2001, seeks to analyze the current status of human rights legal education in Colombia. Six professors—María Fernanda Figueroa, Professor of Law at the *Universidad del Cauca*; Esther Parra Acuña, Professor of Law at the *Universidad Autónoma de Bucaramanga*; Iván Darío Ortiz, Director of the Clinic and Professor of Law at the *Universidad Nacional de Colombia*; Clara Elena Reales, Director of the Juridical Research Department and Professor of Law at the *Universidad de Los Andes*; Nelson Socha, Professor of Law at the *Universidad de Los Andes*; and Luz Marina Tamayo, Professor of International Humanitarian Law in Colombia—are authoring the diagnostic report. This report, which will be available in Spanish, is part of the Columbia Human Rights Network's efforts to promote the role of Colombian law schools as developing institutions of human rights education. One problem scholars have detected is the lack of human rights courses offered in law schools in Colombia. According to Diego Rodríguez-Pinzón, Visiting Professor at WCL and Director of the Human Rights Education Part-

nership-Colombia at the Center, "[i]t is difficult to create a 'culture of respect for human rights,' if lawyers, who are primarily responsible for litigating, adjudicating, teaching, and implementing 'rights' in Colombia are not exposed to 'human rights' in their basic [training] as lawyers."

Additionally, the Colombia Human Rights Network has held training sessions in Bogotá, between April 24–28, 2000, and in Washington, D.C., between December 4–8, 2000, at WCL. At the most recent training session, coordinated by Rodríguez-Pinzón, participants attended various lectures on a wide range of topics, including the Inter-American Human Rights System and its commission and court; economic, social, and cultural rights; international human rights activism; and Plan Colombia, among others. On December 6, 2000, Professor Joseph Eldridge of American University moderated a panel discussion on Plan Colombia. The training session included the following panelists: Reinaldo Botero, Director of the Presidential Program for Human Rights and Humanitarian Law in Colombia; Adam Isaacson, Senior Associate at the Center for International Policy; Michael Shifter, Senior Fellow with the Inter-American Dialogue; and Carlos Salinas, Amnesty International U.S.A.'s Advocacy Director for Latin America. Plan Colombia is a U.S.\$7.5 billion aid package consisting of U.S.\$4 billion of Colombian resources, pledged by Colombian President Andrés Pastrana, and U.S.\$3.5 billion from foreign donors. The U.S. contribution includes U.S.\$122 million for programs to promote human rights, the peace process, and rule of law in Colombia.

The December 2000 training session also included a visit to the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, and visits to the Center for Justice and International Law and the United States Agency for International Development in Washington, D.C. A third training session is planned for the last week of March 2001, in Bogotá, Colombia. To date, the Columbia Human Rights Network has succeeded in reaching an important sector of Colombia's human rights academic community and hopes to continue to build on this accomplishment. 🌐

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Trafficking, continued from page 31

ensure safe repatriation of victims to their countries of origin. The victims are, in effect, then delivered back into the same conditions from which they were trafficked and are at risk of revictimization.

Conclusion

The Protocol is a significant law enforcement accomplishment. It marks the development of a comprehensive definition of trafficking in persons and offers an effective framework for combating it through prevention, law enforcement, protection, and repatriation. It also is the first international agreement to provide some mandatory and many detailed provisions for victims of crime. With 81 signatories,

the Protocol's wide acceptance bodes well for the number of countries that will be drafting and implementing their own trafficking laws. The ultimate judgment of its impact, however, will be determined by the level of victim protections State Parties choose to incorporate into their domestic law. State Parties should recognize that the victim assistance outlined by the Protocol is not exhaustive of the services that victims require. To the contrary, the Protocol establishes minimum requirements that State Parties are free to supplement and augment through their domestic law. Therefore, State Parties must be urged to enhance victim assistance and protection when creating their trafficking laws to better protect trafficking victims' human rights. 🌐

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