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Combating Trafficking of Persons

By Jonathan Todres

Every year, an estimated 700,000 people become victims of trafficking across international borders, including approximately 50,000 women and children who are trafficked into the United States. The number of victims, most of whom are women and children, rises to between two and four million annually if victims of intra-country trafficking are included. Trafficking networks cover all areas of the globe and exploit victims for a range of reasons, including commercial sex purposes, cheap labor (e.g., sweat shops, farm labor, domestic servitude), forced marriages, use in armed conflict, and trade in human organs.

Efforts to combat trafficking face a daunting challenge, as the sex trade industry and forced labor trade are multibillion-dollar enterprises. The money at stake provides significant incentive for criminals to prey on vulnerable populations. However, as international criminal law develops, there is renewed hope that progress can be made in combating trafficking.

Trafficking Defined

International efforts to address trafficking are not new; multilateral treaties prohibiting slavery, slave trade, and trafficking of persons date back to the beginning of the 20th century. Today, the internationally accepted definition of trafficking is contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime

(Trafficking Protocol). The Trafficking Protocol, which the UN adopted in 2001, defines trafficking as follows:

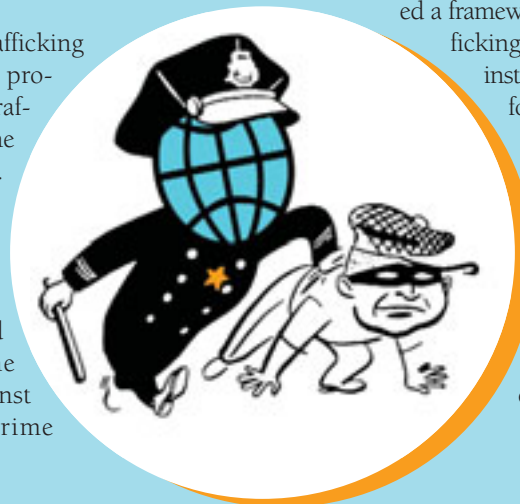
The recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

The effect of this definition is that any individual involved at any stage in the trafficking of a person is in violation of international criminal law. Many countries have utilized this definition as the basis for domestic legislation on trafficking.

International Law on Trafficking of Persons

In recent years, international legal developments have created a framework for addressing the problem of trafficking of human beings. Two international instruments, in particular, form the basis for a global effort to reduce, and ideally eliminate, the trafficking of human beings: the above-mentioned Trafficking Protocol and the Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC Protocol). Both of these treaties contain provisions covering three

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essential aspects of a framework for combating trafficking: (1) criminalization of acts of trafficking, (2) trafficking prevention programs, and (3) aid for victims of trafficking.

Criminalization of Trafficking. The Trafficking Protocol requires states parties to adopt legislation criminalizing any act of trafficking (as defined above), any attempt to commit an act of trafficking, participation as an accomplice in trafficking, and organizing or directing others to commit acts of trafficking. When children under age 18 years are victims of trafficking, the Trafficking Protocol sets forth a lower threshold for prosecution, providing that any “recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in [the definition of trafficking].” Importantly, the Trafficking Protocol establishes that the consent of any victim of trafficking is irrelevant. The Trafficking Protocol applies to all offenses that are “transnational in nature” and “involve an organized criminal group,” which is defined in the underlying UN Convention Against Transnational Organized Crime as three or more individuals acting together to commit one or more serious crimes for financial or other material benefit. Notably, however, the Trafficking Protocol does not apply to intra-country trafficking.

The CRC Protocol requires states parties to pass legislation prohibiting the sale of children, child prostitution, and child pornography or any attempt to commit any prohibited act. With respect to the sale of children (defined in the Convention on the Rights of the Child as individuals below age 18), states parties are obligated to ensure that, as a minimum, their laws criminalize any act or transaction for remuneration or other consideration that involves the offering, delivering, or accepting of a child for purposes of sexual exploitation of the child, transfer of organs of the child for profit, engagement of the child in forced labor, or the improper inducement of consent for the adoption of a child in violation of applicable international law.

In contrast to the Trafficking Protocol, the CRC Protocol requires that states parties criminalize such acts “whether these offences are committed domestically or transnationally or on an individual or organized basis.” This broader jurisdiction follows the recent trend in legal developments related to trafficking and commercial sexual exploitation of women and children. For example, in the context of sex

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tourism, over the past decade many countries—including Australia, Sweden, the United Kingdom, the United States, and others—have passed legislation enabling them to prosecute their citizens who travel abroad for the purpose of engaging in illegal sexual activity.

Responding to the serious nature of the offenses it covers, the CRC Protocol obligates states parties to consider such acts to be extraditable offenses. Further, if a state party will not extradite a suspect on the basis of the nationality of the offender, it must prosecute that individual in its own courts.

The CRC Protocol also requires states parties to adopt measures, but only “where appropriate” and “subject to the provisions of its national law,” to establish penalties for legal persons, whether criminal, civil, or administrative. This clearly makes sense in the context of travel agencies and other businesses that are fronts for trafficking activity and sex tourism. More difficult questions arise when considering the role played by legitimate businesses (e.g., airlines) that are used by trafficking networks. Most human rights advocates believe that airlines and other travel and tourism businesses can play a useful role in helping to raise awareness about trafficking, sex tourism, and related crimes but have stopped short of suggesting that airlines and other businesses be held criminally liable if their businesses are utilized without their knowledge by traffickers.

Finally, under the CRC Protocol, states parties must produce reports within two years of ratification and every five years thereafter detailing the progress they have made in implementing the CRC Protocol. Such reports are submitted to the UN Committee on the Rights of the Child, which then has an opportunity to review and provide recommendations.

Prevention of Trafficking. The Trafficking Protocol obligates states parties to adopt comprehensive trafficking prevention programs; provide training for its law enforcement, immigration, and other officials in prevention of trafficking; and exchange information with other states parties to help identify the means and methods used by international trafficking rings. The Trafficking Protocol recognizes that the mass media, nongovernmental organizations, and other elements of civil society should be included in efforts to prevent trafficking. It also requires states parties to take steps to “alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.”

Similarly, the CRC Protocol contains several provisions mandating that states parties cooperate with each other in investigations into international trafficking rings and provide for the seizure of assets used in or derived from trafficking. In addition, states parties must adopt laws, social policies, and programs aimed at preventing the sale and commercial sexual exploitation of children. States parties

also must act to promote public awareness of these issues and the means available to help protect children from such forms of exploitation. The CRC Protocol also calls on states parties to strengthen international cooperation in efforts to preventing trafficking of children.

Aid for Victims of Trafficking. With millions of victims, it is essential that the legal framework for addressing trafficking also provides some measure of relief for the victims of trafficking. Both the Trafficking Protocol and the CRC Protocol include provisions on aiding victims of trafficking.

The Trafficking Protocol outlines a list of considerations for victims of trafficking to ensure their recovery. It requires states parties to protect the identity of victims when appropriate. It also proposes a number of steps to be taken to “provide for the physical, psychological and social recovery of victims” including “[a]ppropriate housing, [c]ounseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; [m]edical, psychological and material assistance; and [e]mployment, educational and training opportunities.” However, these are not mandatory steps; rather, states parties are required merely to “consider” implementing these measures. The Trafficking Protocol also states that each country should consider adopting legislation allowing victims special consideration in immigration, including the opportunity to remain temporarily or permanently in its territory. Finally, the Trafficking Protocol establishes minimum protections for victims of trafficking during repatriation.

The CRC Protocol obligates states parties to “adopt measures to protect the rights and interest of child victims.” It outlines a number of steps that should be taken to aid children during the disposition of their cases. In addition, the Convention on the Rights of the Child itself also requires states parties to “take all appropriate measures to promote physical and psychological recovery and social reintegration” of child victims of exploitation and abuse.

While both the Trafficking Protocol and the CRC Protocol highlight a number of important steps that should be taken to address the needs of victims of trafficking, these provisions state either that countries only “consider” adopting such measures or that they must take “appropriate measures.” This language leaves open the possibility that governments may allocate insufficient resources to the rehabilitation and reintegration of victims or that they may return victims to environments where they are still at great risk of being exploited. That said, importantly, the two protocols provide a floor, not a ceiling, and states parties can do more to ensure the well-being of victims.

Other International Instruments. While the Trafficking Protocol and the CRC Protocol provide a framework for addressing trafficking, a number of other recent

international treaties also address trafficking. The International Labor Organization’s Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (known as ILO Convention No. 182) obligates states to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency” including “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children.” The Convention on the Rights of the Child contains several provisions addressing trafficking and related exploitation of children, as well as provisions requiring action to help rehabilitate and reintegrate child victims. The Convention on the Elimination of All Forms of Discrimination Against Women requires states parties to take steps to “suppress all forms of traffic in women.” The Rome Statute of the International Criminal Court includes “enslavement” in its definition of “crimes against humanity” and defines enslavement as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.” In other words, there is extensive evidence in international law of a consensus as to the grave nature of the crime of trafficking and the urgent need to combat it globally.

Cooperation Needed for Success

International law—primarily in the form of the two protocols but including many other human rights conventions—has established a legal framework for combating the trafficking of human beings. Despite having been adopted only within the past five years, the Trafficking Protocol and the CRC Protocol have received widespread support. Ninety-four countries have ratified the CRC Protocol (111 countries are signatories), and 81 countries have ratified the Trafficking Protocol (117 countries are signatories) (figures as of April 11, 2005). The United States has ratified the CRC Protocol, although it has not ratified the Convention on the Rights of the Child. In addition, the United States has signed the Trafficking Protocol and the UN Convention Against Transnational Organized Crime, but it has not ratified either instrument.

The legal framework established by the Trafficking Protocol and the CRC Protocol is an instrumental first step and provides essential tools to governments, international organizations, nongovernmental organizations, and human rights advocates working to eliminate trafficking. The next steps are to ensure that all countries ratify and implement the key international law on trafficking, cooperate with one another to crack international trafficking networks, and strengthen programs to help victims of these horrible crimes recover and reintegrate into society. ♦