

## Trafficking in Human Beings: Perspectives on US Policy and the OSCE Context

The United States has played a leading role in the worldwide fight against trafficking, highlighting the magnitude of the problem and the need for concerted policy action. US initiatives are rooted in Congressional legislation and related domestic and international efforts. At the same time, the US has played an important part in international negotiations in the United Nations, and particularly in the OSCE – which has adopted the most comprehensive plan of action to combat trafficking of any international organization.<sup>1</sup> In these multilateral arenas, the US has focused part of its efforts on helping to bridge competing interpretations of anti-trafficking commitments, which have often pitted abolitionists – who seek to outlaw prostitution and link to it trafficking – against those who advocate sex workers' rights. The US has also engaged in its own efforts to monitor trafficking around the globe, while providing targeted funding to countries with particularly severe trafficking problems.

US activism on anti-trafficking emerges from the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), which Congress re-authorized and further developed in 2003. This legislation calls for annual reports on trafficking in countries around the world based on monitoring and a three-tier classification system, and the threat of sanctions against countries falling in the lowest tier. New Jersey Republican Congressman Christopher Smith, chief sponsor of this legislation, has also served as the Chairman of the US Helsinki Commission – a primary vehicle through which many US concerns on trafficking in persons have been introduced into the OSCE context. Indeed, in recognition of his considerable leadership against human trafficking, the OSCE's Parliamentary Assembly President Bruce George appointed Chairman Smith as his Special Representative on Human Trafficking Issues in 2004. Smith is charged with serving as the Assembly's point person for gathering information on trafficking in humans in the OSCE region, as well as promoting dialogue among participating States, and advising the Assembly on new policy initiatives to combat trafficking.<sup>2</sup>

Human trafficking, and the criminal networks that support it, present policy makers with many dilemmas. In this chapter we will touch on some

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1 OSCE, Permanent Council, Decision No. 557 on the OSCE Action Plan to Combat Trafficking in Human Beings, PC.DEC/557, 24 July 2003, Annex: OSCE Action Plan to Combat Trafficking in Human Beings (hereafter: OSCE Action Plan; most of the OSCE Documents are available at: <http://www.osce.org>).

2 Cf., Commission on Security and Cooperation in Europe/United States Helsinki Commission, Chairman Smith Appointed as OSCE PA Special Representative on Human Trafficking, press release, 2 March 2004.

key aspects of them. The first concerns the role of the state and the international community in a social sphere that has traditionally been considered private, and beyond the reach of the state.<sup>3</sup> However, the issue of violence against women in general, and trafficking in particular, calls for co-ordination of *both* domestic and transnational policies.<sup>4</sup> A second dilemma concerns differing state approaches to the legality or criminality of prostitution and whether and how it fuels trafficking. Despite considerable evidence of the linkage, key international instruments against trafficking, including the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (adopted by the General Assembly in 2000 under the Convention on Transnational Crime), the OSCE's Action Plan 2003,<sup>5</sup> and the US VTVPA use ambiguous language to paper over differences between the position of abolitionists and that of advocates of sex workers' rights.<sup>6</sup> But this ambiguity gives rise to competing perspectives on the linkage between trafficking and prostitution. This division in the campaign against trafficking can undermine domestic and transnational efforts to prevent trafficking. Cultural assumptions and traditions that create permissive conditions for violence against women have also to be addressed.

Finally, there is the question of focus: Should efforts be directed at rescuing victims, or ensuring that consumers of the sex trade/trafficking industry cannot act with impunity, along with the traffickers? In addition, as the anti-trafficking campaign has become more multifaceted in its approach, there is mounting pressure to ensure that no country or citizens of a country will be beyond scrutiny and prosecution – whether they are engaging in sex tourism (especially with minors) or serving on international peacekeeping or policing missions.<sup>7</sup> Thus, the question of immunity is also on the table.

We will examine these dilemmas below first by considering the competing definitions and policy frameworks used to address the trafficking problem. Second, we will look at how the United States frames its approach to the problem. As we shall see, the US emphasizes a “victim-centred” approach,

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3 Cf. Commission on Security and Cooperation in Europe/United States Helsinki Commission, Helsinki Commission Releases U.S. Statement on Equality of Opportunity for Women and Men at OSCE Human Dimension Implementation Meeting, press release, 20 September 2001.

4 Indeed, the OSCE Action Plan, under the section on “Prevention of Trafficking in Human Beings”, calls for a number of measures at the national level and in both countries of origin and destination to eliminate discrimination against women, and encourage “gender sensitization and education on equal and respectful relationships between the sexes, thus preventing violence against women”, OSCE Action Plan, cited above (Note 1), p. 10.

5 The OSCE Action Plan 2003 incorporates the UN Protocol's definition of trafficking; cf. *ibid.*, pp. 1-2.

6 Cf. Barbara Sullivan, Trafficking in Women: Feminism and New International Law, in: *International Feminist Journal of Politics* 1/2003, pp. 67-91.

7 Cf. Martina Vandenburg, Testimony on Trafficking of Women and Girls to Bosnia and Herzegovina for Forced Prostitution. Testimony of Martina E. Vandenberg, J.D., Europe Researcher, Women's Rights Division, Human Rights Watch, House Committee on International Relations, Subcommittee on International Operations and Human Rights, 24 April 2002.

but also places the campaign against trafficking in a framework of moral and religious beliefs, as well as transnational threats to security. Third, we will examine US anti-trafficking legislation, giving particular attention to the State Department's annual reports on trafficking, and criticisms of its methodology and assumptions. In the final section, we turn to US funding of anti-trafficking programmes in the OSCE context. As we shall see, most US efforts are aimed at strengthening law enforcement and supporting victim assistance. There are some programmes that address root causes of trafficking through media awareness campaigns, for example, or economic aid to women in at-risk regions. The latter remain the exception, however, rather than the rule.

### *Dilemmas of Defining Trafficking and Framing Policy Responses*

Human trafficking is a multifaceted and multilevel phenomenon. It is often linked to such factors as domestic violence, abuse of women, and other human rights violations; transitional economies and the feminization of poverty; the feminization of migration; the unequal effects of globalization; the emergence of new security threats in the context of transnational organized crime; and the plethora of challenges arising from post-conflict situations.<sup>8</sup> Trafficking involves not only "push factors" from the states that are the origins of human trafficking, but also "pull factors" from the destination countries. We can even speak of the political economy of sex trafficking encompassing not only origin and destination but also transit countries.<sup>9</sup> Taking account of these structural conditions of human trafficking requires thoroughgoing, wide-ranging, and concerted policy efforts, which OSCE officials have advocated with strong support from the United States, along with the leadership of the OSCE under the recent Romanian and Dutch chairmanships.<sup>10</sup>

Because of this complexity, the trafficking issue lends itself to a number of different definitions of the "problem" and a variety of policy responses.

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8 Cf. Nicole Lindstrom, Regional Sex Trafficking in the Balkans: Transnational Networks in an Enlarged Europe, in: *Problems of Post-Communism* 4/2004, pp. 45-52; Nicole Lindstrom, *Regional Sex Trafficking Networks and International Intervention in the Balkans*, paper prepared for the 45th Annual International Studies Association Convention, Montreal, Canada, 17-20 March 2004; Daan Everts, Human Trafficking: The Ruthless Trade in Human Misery, in: *Brown Journal of World Affairs* 1/2003, pp. 149-158.

9 Cf. Donna Hughes/Tatyana A. Denisova, The Transnational Political Criminal Nexus of Trafficking in Women from Ukraine, in: *Trends in Organized Crime* 3-4/2001, available at: <http://www.uri.edu/artsci/wms/hughes>; Leyla Gülçür/Pinar Ilkcaracan, The "Natasha" Experience: Migrant Sex Workers From the Former Soviet Union and Eastern Europe in Turkey, in: *Women Studies International Forum* 4/2002, pp. 411-421.

10 Cf. Everts, cited above (Note 8); see also: United States, Congress, Commission on Security and Cooperation in Europe, *The Dutch Leadership of the OSCE*. Hearing before the Commission on Security and Cooperation in Europe, One Hundred Eighth Congress, First Session, 3 September 2003, Washington 2003; United States, Congress, Commission on Security and Cooperation in Europe, *Romania's Chairmanship of the OSCE*. Hearing before the Commission on Security and Cooperation in Europe, One Hundred Seventh Congress, First Session, 31 October 2001, Washington 2001.

These range from areas such as migration, law enforcement, and human rights to the deeper, structural dimensions. The human-rights-based approach to trafficking calls for renewed international attention to the way states respond to violence against women.<sup>11</sup> However, deeply rooted cultural assumptions and practices regarding violence against women place impediments not only on effective intervention on matters of domestic violence, but also shape or limit the responsiveness of state and international authorities to trafficking.<sup>12</sup> Trafficking, as the campaign led by women at the 1993 World Conference on Human Rights in Vienna stressed, challenges “the traditional framing of human rights protection as the responsibility of state parties in *only the public sphere*, because violations of women’s rights are often perpetuated by *private actors in the home*”.<sup>13</sup> The recent trend of sex traffickers eluding officials by moving their operations from bars and clubs into private premises underscores the importance of stepping outside these traditional mindsets that limit state intervention.<sup>14</sup>

The origins of anti-trafficking legislation in the US Congress are found in House and Senate resolutions passed in 1998 that called on the Justice Department to prepare a report on trafficking to the US. At that time the Clinton administration pursued a course, with support in the Senate from the liberal Democrat Paul Wellstone and Democrat Louis Slaughter, that aimed at ensuring the protection of victims while also addressing the concerns of sex workers and sex worker advocacy groups, including the International Human Rights Law Group (IHLRG). However, this approach provoked opposition from the radical feminist lobby, including 13 NGOs such as the radical feminist Coalition Against Traffic in Women (CATW), Equality Now, Feminist Majority, the Protection Project, and the National Organization of Women. In an unusual move in the American political context, this coalition turned to the conservative side of Congress to form an alliance with the Moral Majority and others, such as the Family Research Council, the Religious Action Center of Reformed Judaism, and the National Association of Evangelicals.<sup>15</sup>

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11 Cf. Commission on Security and Cooperation in Europe/United States Helsinki Commission, cited above (Note 3).

12 Cf. OSCE, Supplementary Human Dimension Meeting: Prevention and Combating Violence against Women, Vienna, 18-19 March 2002, Final Report, Vienna 2002, p. 3.

13 Elisabeth Jay Friedman, Gendering the Agenda: The Impact of the Transitional Women’s Rights Movement at the U.N. Conferences of the 1990s, in: *Women Studies International Forum* 4/2003, pp. 313-331, p. 12 (emphasis added).

14 Cf. UNDP (ed.), UNICEF, UNOHCHR, OSCE/ODIHR, *Trafficking in Human Beings in South Eastern Europe*, s.l. 2003, at: <http://www.unhchr.ch/women/trafficking.pdf>; Human Rights Watch, *Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution*, s.l. 2002, at: [http://www.hrw.org/reports/2002/bosnia/#P121\\_3636](http://www.hrw.org/reports/2002/bosnia/#P121_3636); Stability Pact for South Eastern Europe (Task Force on Trafficking in Human Beings), *First Annual Report on Victims of Trafficking in South Eastern Europe*, Regional Clearing Point Report, s.l. 2003, at: <http://www.iom.int/iomwebsite/Publication/ServletSearchPublication?event=detail&id=2831>.

15 Cf. Leslie Ann Jeffrey, *U.S. Anti-Trafficking Policy and Neo-Imperial Masculinity: The Right Man for the Job*, paper prepared for the 45th Annual International Studies Association Convention, Montreal, Canada, 17-20 March 2004, pp. 8-9; see also Conference Re-

This novel coalition found a ready advocate in Congress in Republican Representative Christopher Smith, Chairman of the Helsinki Commission and a key figure in the OSCE Parliamentary Assembly. Smith, for example, played a leading role in the drafting of the comprehensive declaration on trafficking adopted at the OSCE Parliamentary Assembly in St. Petersburg, Russia, in July 1999, which laid the groundwork for the anti-trafficking initiatives of the Charter for European Security adopted by the OSCE Summit in Istanbul, Turkey, in November 1999.<sup>16</sup>

Thus, parallel to his OSCE role, Smith became the key sponsor of the Victims of Trafficking and Violence Protection Act of 2000 in the US Congress. This legislation defines “severe forms of trafficking in persons” as follows: “(A) sex trafficking in which a commercial act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”<sup>17</sup> This definition is not as explicit about the element of exploitation as the language in the UN Protocol on trafficking.

Abolitionists who argue sex trafficking and prostitution are *inherently linked*, tend to see the US approach (as well as the UN Protocol) as consistent with their position.<sup>18</sup> Thus, the CATW claims that “the wording of the Protocol means that the ideals of the 1949 Trafficking Convention have been upheld, that ‘the exploitation of prostitution and trafficking cannot be separated’ and that consent to trafficking or the ‘sexual exploitation’ of prostitution is impossible”.<sup>19</sup> In contrast, Global Alliance Against Trafficking in Women (GAATW) maintains that the “Trafficking Protocol represents a clear departure from the approach to trafficking adopted in the 1949 Convention because it ‘expressly permits states to focus only on forced prostitution and [...] does not require governments to treat all adult participation in prostitution as trafficking’”.<sup>20</sup> GAATW also frames the problem of trafficking in the larger context of economic issues and works to legalize sex work to provide workers

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port on H.R. 3244, Victims of Trafficking and Violence Protection Act of 2000, Hon. Christopher H. Smith of New Jersey, Congressional Record No. 123, Washington, D.C., 5 October 2000.

16 Cf. Commission on Security and Cooperation in Europe/United States Helsinki Commission, Helsinki Commission Efforts Reflected in Istanbul Charter, press release, 19 November 1999.

17 Department of State, Victims of Trafficking and Violence Protection Act 2000: Trafficking in Persons Report 2002, Washington, D.C., June 2002, p. 3.

18 Cf. Jeffrey, cited above (Note 15), citing Melissa Ditmore; cf. also Donna Hughes, *The 2002 Trafficking in Persons Report: Lost Opportunity for Progress*, Testimony on “Foreign Government Complicity in Human Trafficking: A Review of the State Department’s 2002 Trafficking in Persons Report”, US House Committee on International Relations, Washington, D.C., 19 June 2002, at: <http://www.uri.edu/artsci/wms/hughes/pubtrftalks.htm>.

19 Sullivan, cited above (Note 6), p. 82.

20 Ibid.

rights for the women involved. As Lindstrom notes, in the Balkans, for example, these divisions play themselves out at the grassroots level: “Some local NGOs, such as the network of La Strada chapters, work more closely with IOM [International Organization for Migration] to assist and repatriate victims of trafficking to their countries of origin. Other local NGOs, such as the Belgrade-based ASTRA, fall closer to GAATW’s approach to trafficking.”<sup>21</sup> ASTRA, which stands for Anti Sex Trafficking Action, seeks to decriminalize prostitution and provide services to women to assimilate them into the legitimate local economy as an alternative to the repatriation model favoured by the IOM.<sup>22</sup>

### *Forging a Normative Consensus on Anti-trafficking*

Normative change in international relations is a slow process, but it can also gain momentum when a sufficient number of countries get behind a norm and propel it to the tipping point of widespread acceptance.<sup>23</sup> Central to the process is intellectual leadership. This requires knowledge, expertise, time, and commitment from states and NGOs in the international community to raise awareness, educate, promote new policy initiatives, and demonstrate through their own efforts that change is possible.

George W. Bush’s administration has made combating trafficking a key dimension of US foreign policy in bilateral relations with other countries, as well as in regional organizations and at the UN.<sup>24</sup> In his 2003 address to the UN General Assembly, one of the principle elements of the President’s agenda was the campaign against trafficking in persons. Bush argued, “There’s a special evil in the abuse and exploitation of the most innocent and vulnerable. The victims of sex trade see little of life before they see the very worst of life – an underground of brutality and lonely fear.” At a recent conference on trafficking, Bush again stated that “human life is the gift of our Creator – and it should never be for sale. It takes a special kind of depravity

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21 Lindstrom, *Regional Sex Trafficking in the Balkans*, cited above (Note 8), p. 49.

22 Cf. *ibid.*

23 Cf. Martha Finnemore/Kathryn Sikkink, *International Norm Dynamics and Political Change*, in: *International Organization* 4/1998, p. 887-917.

24 The Bush administration’s emphasis on fighting violence against women may seem surprising, given the great attention it has placed on the war on terrorism. However, the two campaigns are, in fact, linked. The strategic use of human rights and women’s rights (or women’s “issues” as has become more typical of the Bush rhetoric) is really part of the administration’s attempt to find justification for the war on terrorism, and military interventions in Afghanistan and Iraq. See Krista Hunt, who treats this as “strategic co-optation”, and also Julie Mertus, who criticizes the Bush emphasis on human rights as a “bait and switch” tactic; Krista Hunt, *The Strategic Co-optation of Women’s Rights: Discourse in the “War on Terrorism”*, in: *International Feminist Journal of Politics* 1/2002, pp. 116-121; Julie A. Mertus, *Bait and Switch? Human Rights and U.S. Foreign Policy*, *FPIF Policy Report 2004*, at: [http://www.fpif.org/papers/2004rights\\_body.html](http://www.fpif.org/papers/2004rights_body.html).

to exploit and hurt the most vulnerable members of society.”<sup>25</sup> Thus, the Bush administration’s approach to anti-trafficking initiatives falls clearly within what some critics call a “victim’s frame”,<sup>26</sup> although the administration has moved increasingly to view trafficking also within the context of organized crime and grave security threats such as drug and weapons trafficking.<sup>27</sup>

The State Department’s annual Trafficking in Persons Report (TIP Report) is the key mechanism the United States uses to leverage normative and policy change on trafficking in the OSCE context and worldwide.<sup>28</sup> The Office to Monitor and Combat Trafficking in Persons – set up by the State Department in 2001 to lead the development and implementation of US anti-trafficking initiatives – employs a three-tier classification system in evaluating government measures to eradicate trafficking. Information is culled from US embassies, as well as in consultation with host governments, local non-governmental organizations, officials, police, journalists, and victims, and from NGO reports. Information is also drawn from other sources such as UNICEF, the UNHCR, the IOM, Human Rights Watch, Amnesty International, the Protection Project, media reports, and information and assistance received from other US governmental agencies, including the State Department’s Bureau of Democracy, Human Rights and Labor, and the Bureau of Population, Refugees and Migration.<sup>29</sup>

The methodology of the TIP Report as first carried out in 2001 called for the identification, wherever information was sufficient and reliable, of those countries with a significant number of trafficking victims. In practice, this meant in the hundreds or higher. Those countries in compliance with the minimum standards set out by the Act were placed in Tier 1. Those in Tier 2 did not meet the minimum standards, but were judged to be making significant efforts to bring themselves into compliance. Those in Tier 3 failed to take significant efforts.<sup>30</sup> The third category included nine OSCE countries in

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25 George W. Bush, President Announces Initiatives to Combat Human Trafficking, Tampa Marriott Waterside Hotel, Tampa, Florida, White House, press release, 16 July 2004, p. 2, at: <http://www.whitehouse.gov/news/releases/2004/07/print/20040716-11.html>.

26 Sullivan, cited above (Note 6), p. 73. Indeed, this framing is readily apparent in the title of the Victims of Trafficking and Violence Protection Act 2000. Critics of the “victim frame” argue that this radical feminist approach is racist and neo-colonialist, and depicts third world women as ignorant, helpless, naïve, victimized, and bound by tradition. On the other hand, the victim frame presents the West as competent and suitable rescuers; cf. Jeffrey, cited above (Note 15), p. 3.

27 Cf. Department of State, *Trafficking in Persons Report. Released by the Office to Monitor and Combat Trafficking in Persons*, Washington, D.C., 14 June 2004, p. 2.

28 Cf. Department of Justice, *Assessment of U.S. Activities to Combat Trafficking in Persons*, Washington, D.C., 2003, p. 19, at: [http://www.usdoj.gov/crt/crim/wetf/us\\_assessment.pdf](http://www.usdoj.gov/crt/crim/wetf/us_assessment.pdf).

29 Cf. Department of State, *Victims of Trafficking and Violence Protection Act 2000: Trafficking in Persons Report 2002*, Washington, D.C., 2002, p. 7.

30 As the 2001 report explains, the Act calls on the State Department to use several criteria to determine whether a country is making significant efforts. These include considering “1) the extent of trafficking in the country; 2) the extent of governmental noncompliance with the minimum standards, particularly the extent to which government officials have been complicit in trafficking; and 3) what measures are reasonable to bring the govern-

2001. As Helsinki Commissioner Christopher Smith explained, these countries, like other OSCE participating States, had committed themselves “to punish those who traffic in human beings and to better protect their victims”. In his view, the TIP Report served as a reminder that “the United States expects the OSCE countries to fulfil their commitments”.<sup>31</sup>

While special consideration may be given to countries facing particularly difficult situations, such as internal conflict or instability, the VTVPA nonetheless calls for sanctions to be imposed – starting with the 2003 report – on those countries failing to make significant efforts. These sanctions are designed not to apply to humanitarian aid and trade-related assistance, but may entail US opposition to assistance in such international financial institutions as the International Monetary Fund and multilateral development banks, including the World Bank.<sup>32</sup>

The 2001 TIP Report covered 89 countries, 18 in Tier 1, 52 countries in Tier 2, and 19 in Tier 3. These included nine OSCE States in Tier 1, ten in Tier 2 and seven in Tier 3. By a year later, a number of those states in the second and third Tiers had made significant improvements. For example, Romania, as well as Albania, Kazakhstan, and Yugoslavia all moved from Tier 3 to Tier 2. And the Czech Republic, France, Lithuania, Macedonia, and Poland all made a number of improvements that moved them from Tier 2 to Tier 1. Among the OSCE countries, this left just Armenia, Bosnia and Herzegovina, Greece, the Kyrgyz Republic, Russia, Turkey, and Tajikistan in Tier 3. The State Department increased the scope of its monitoring from 89 countries in the first TIP Report in 2001 to 140 countries in the latest TIP Report in 2004.

#### *Reactions to and Criticisms of US Advocacy*

The State Department has hosted many meetings to seek the input of NGOs in the preparation of the annual TIP reports, and in the development of programmes to combat trafficking and enhance NGO co-operation.<sup>33</sup> However, Human Rights Watch and other NGOs, such as the International Justice Mission, World Vision, The Salvation Army, and the Southern Baptist Ethics and Religious Liberty Commission, have often raised a number of concerns with respect to the methodology of the annual TIP reports. Critics contend that the 2002 report, for example, failed to use rigorous standards to evaluate coun-

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ment into compliance with the minimum standards in light of the government’s resources and capabilities”, Department of State, *Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report (2001)*, Washington, D.C., 2001, pp. 5-6.

31 Commission on Security and Cooperation in Europe/United States Helsinki Commission, Helsinki Commissions Praise First Annual Report on Trafficking in Persons, press release, 13 July 2001.

32 Cf. Department of State 2001, cited above (Note 30), p. 6.

33 Cf. Department of State, *Victims of Trafficking and Violence Protection Act 2000: Trafficking in Persons Report*, Washington, D.C., 11 June 2003, p. 5-6.

tries, and thus whitewashed the real record of abuse. In testimony before the House Committee on International Relations, Donna H. Hughes, an international expert on trafficking, argued that the report set the bar “pathetically low” for countries efforts to combat trafficking. Even though prosecutions of traffickers was the most heavily weighted factor in ranking, Hughes found that “there are countries in Tier 2 and even Tier 1, that have imprisoned few, if any, traffickers”.<sup>34</sup>

Hughes also criticized the TIP Report 2002 for failing to identify the demand factors that create the need for trafficking to supply the sex trade, and, in particular, for not addressing the link between legal prostitution and the demand for sex-trade workers. She notes that “Ambassador Ely-Raphel [Senior Advisor to Secretary of State Colin Powell, Office to Monitor and Combat Trafficking in Persons] has told audiences at briefings that the evaluation team did not consider prostitution or the demand for trafficking victims in their evaluation of countries’ efforts to prevent and combat trafficking,”<sup>35</sup> and that the “connection between legalized prostitution in countries like the Netherlands, Germany, and Australia and the trafficking of women and children for the sex trade is only ‘anecdotal’”.<sup>36</sup> But in her testimony, Hughes presents compelling evidence that the legalization of prostitution in the Netherlands in 2000, and the relaxation of pimping laws and the legalization of brothel keeping in 2001 in Germany (where prostitution was already legal), led to significant increases in the numbers of foreign women working in the sex trade in those countries, as well as other Western European destination countries.<sup>37</sup> Furthermore, countries that tolerate and legalize sex industries see an increase in child prostitution. In these respects, she considered the TIP Report 2002 a “lost opportunity”.<sup>38</sup>

The State Department has sought to address some of these criticisms in subsequent reports, in part by making changes to the report’s methodology.<sup>39</sup> These efforts have won some recognition. For example, Human Rights Watch noted that the country narratives were improved in the 2003 report, which also included information on trafficking of persons for exploitation in various forms of forced labour – both domestic and international. However, Human Rights Watch still found many shortcomings with the methodology of the TIP Report of 2003. For example, it found that

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34 Hughes, cited above (Note 18), p. 2.

35 Ibid.

36 Ibid.

37 Cf. *ibid.*, pp. 3-4. Hughes criticizes the TIP Report 2002 especially for placing countries like the Netherlands and Germany in the Tier I category. She reports that the Dutch sex trade industry pulls in about one billion US dollars annually – that is, five per cent of the Dutch economy, and that this represents a 25 per cent increase during the last decade. The income generated by the industry in Germany is estimated to run as high as 4.5 billion US dollars a year.

38 Ibid., p. 5.

39 Cf. Department of State 2002, cited above (Note 29), p. 5.

the State Department consistently credits countries for their efforts to combat trafficking even when they have not passed legislation specifically criminalizing all forms of forced labor as trafficking, or when they have failed to sign or ratify the Protocol to Prevent, Suppress, and Punish Trafficking supplementing the U.N. Convention Against Transnational Organized Crime, the single most authoritative international human rights instrument on trafficking. Another consistent shortcoming is that Tier 2, where seventy-five countries fall, remains a catch-all category. Tier 2 comprises countries of varied trafficking records. The report also fails adequately to explain its concrete minimum standards for countries to move up tiers.<sup>40</sup>

Human Rights Watch enumerated some specific recommendations for future reports, such as the inclusion of “reliable data on the number of trafficking victims in each country, disaggregated by age, sex, nationality, and the nature of their forced labor”; categorizing as Tier 3 any country that “summarily deports or incarcerates trafficking victims”; and barring any country from Tier 1 that “fails to enact specific legislation criminalizing trafficking”. It also called for adding the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol to the list of Relevant International Conventions that the report appends. Finally, Human Rights Watch wanted the State Department to ensure that future reports “adequately weigh efforts toward eliminating and punishing corruption in assessing a country’s record on combating trafficking”.<sup>41</sup>

The Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA) has led to some new monitoring requirements, thus addressing some of the criticisms previously raised of the TIP reports. For example, starting in 2003, the assessment in the country narratives is broken down into the categories of prosecution, protection of victims, and preventive efforts. In addition, the 2004 report lists the Convention on the Elimination of All Forms of Discrimination Against Women in its matrix of relevant international conventions, and it also introduces a “Special Watch List”. This includes countries that moved from Tier 3 to Tier 2, or from Tier 2 to Tier 1, as well as countries in Tier 2 where the number of victims of severe forms of trafficking is very significant, or increasing significantly, where there is “failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year”, or where “the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year”.<sup>42</sup>

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40 Human Rights Watch, US State Department Trafficking Report Undercut by Lack of Analysis, press release, 11 June 2003, p. 1, at: <http://www.hrw.org/press/2003/06/traffickingreport.htm>.

41 On the recommendations, see *ibid.*

42 Department of State 2004, cited above (Note 27), p. 14.

The 2004 TIP Report also begins to address the forced labour aspect of human trafficking – a second dimension of the original 2000 VTVPA. In addition, it identifies the linkage between trafficking and prostitution. The TIP Report 2004 notes that

considerable academic, NGO and scientific research confirms a direct link between prostitution and trafficking. In fact, prostitution and its related activities, including pimping, pandering, and patronizing or maintaining brothels, contributes to trafficking in persons by serving as a front behind which traffickers for sexual exploitation operate. A Swedish government study revealed that much of the vast profits generated by the global prostitution industry go directly into the pockets of human traffickers. The International Organization of Migration estimates that each year 500,000 women are sold (trafficked) to local prostitution markets in Europe.<sup>43</sup>

Indeed, the TIP Report notes further that “there is no evidence that legalization [of prostitution] in any country has reduced the number of trafficking victims, and NGOs working in this field note that the number of trafficking victims often increases. In short, where prostitution is legalized, a ‘black market’ in trafficking emerges, as exploiters seek to maximize profit by avoiding the scrutiny and regulatory costs of the legal prostitution market.”<sup>44</sup> The 2004 Report calls for a concerted strategy to target all aspects of the trade – supply, demand, and traffickers.<sup>45</sup> A further important new feature of the 2003 and 2004 reports is the information culled from around the world on best practices.

Another criticism which should be raised regarding the Congressional mandate for annual monitoring and reporting is that it focuses on problems other countries have in combating trafficking, but leaves the United States – the source of these judgments – free from the same scrutiny. This void has been filled to some extent by the mandate of the TVPRA of 2003, which requires the Attorney General of the United States to provide a report to the Congress every year starting on 1 May 2004. Critics point out that in the first year of this reporting, the United States has significantly lowered the estimated number of people trafficked in the United States annually from the previous estimate of 50,000 to 14,500-17,500.<sup>46</sup> The justification for this rather lower estimate is a new methodology for assessing trafficked persons in the United States.<sup>47</sup> Despite the increasing number of both prosecutions

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43 Ibid., p. 7.

44 Ibid., p. 12.

45 Cf. *ibid.*, p. 11.

46 Cf. Jeffrey, cited above (Note 15), p. 2.

47 Cf. Department of State 2004, cited above (Note 27), p. 12.

and victims assisted over the last few years, both the Ashcroft Report<sup>48</sup> and another report issued by the Department of Justice in 2003 recognize that the number of cases of sex and labour trafficking prosecuted remains low in relation to the estimated magnitude of the problem.<sup>49</sup>

The United States has also come under criticism for the conduct of its own nationals in international peacekeeping and policing operations. Human Rights Watch issued a scathing report entitled “Hopes Betrayed”<sup>50</sup> that brings to light trafficking abuses by US personnel among other nationals involved in the Stabilization Force in Bosnia and Herzegovina (SFOR). The report notes that SFOR civilian contractors from the security company DynCorp employed on US military bases in Bosnia and Herzegovina “engaged in the purchase of women and girls. Although these U.S. employees enjoyed only ‘functional’ immunity (immunity only for acts related to their official duties), as of October 2002 not one had faced prosecution in Bosnia and Herzegovina for criminal activities relating to trafficking.”<sup>51</sup> Instead they were quickly repatriated to the United States, thus thwarting the criminal investigation in Bosnia. Although a law passed in 2000 gives the US government jurisdiction over these types of cases, no action was taken. In October 2002, US personnel involved in the United Nations International Police Task Force (IPTF) in Bosnia who also committed trafficking abuses enjoyed protection under then applicable US law from prosecution for criminal offences while part of a UN mission. Human Rights Watch noted that “therefore, even after they returned to the United States, U.S. courts had no jurisdiction over IPTF monitors who engaged in the purchasing of women or girls abroad”.<sup>52</sup>

The Helsinki Commission has also expressed concern about such conduct and immunity. In a letter of inquiry to Deputy Secretary of State Richard L. Armitage dated 2 May 2003, the Commissioners sought to ascertain “the Administration’s efforts to fight against the emergence of prostitution and human trafficking industries in post-conflict Iraq spurred by an influx of international personnel from the United States and other countries”. They pointed to the need for such a strategy, including with respect to US contractors, given that prostitution and human trafficking were allowed “to thrive” in post-conflict Bosnia and Kosovo. More specifically, the Commissioners noted with concern that the State Department had awarded DynCorp International a contract of up to 1,000 civilian advisors to aid the Iraqi government organize civilian law enforcement, judicial and correctional agencies. They also undertook to remind Secretary Armitage that

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48 Department of Justice, *Report to Congress from Attorney General John Ashcroft on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2003*, Washington, D.C., 2004.

49 Cf. Department of Justice, cited above (Note 28), pp. 11-12; see also Bush, cited above (Note 25), p. 2.

50 Human Rights Watch, *Hopes Betrayed*, cited above (Note 14).

51 *Ibid.*, p. 2.

52 *Ibid.*

we are familiar with DynCorp's role in recruiting and training American police officers to serve on the International Police Task Force (IPTF) in Bosnia-Herzegovina. We are also aware of the documented involvement by some DynCorp employees or agents in prostitution, human trafficking, and sexual misconduct and of DynCorp's retaliation against those who endeavored to bring such misconduct to light.<sup>53</sup>

Also among the structural causes on the demand side of trafficking, Western countries must consider the role of their own citizens in sex tourism and the linkages between this industry and trafficking. Through the PROTECT Act of 2003, the United States introduced a law that permits US prosecutors to go after American paedophiles who prey on children around the globe for commercial sex. They are no longer beyond the reach of US justice.<sup>54</sup> Bush signed the PROTECT Act in 2003, thus enabling "U.S. law enforcement to prosecute Americans who travel abroad and engage in sex with minors without having to prove prior intent. The PROTECT Act expands the statute of limitations to life of the victim for crimes involving the abduction and physical or sexual abuse of children in virtually all cases."<sup>55</sup> In addition, the PROTECT Act provides strict new penalties and doubles the maximum sentence for US citizens who travel to foreign countries to sexually abuse children. The United States has launched campaigns in foreign countries to inform American travellers of legal action that they will face back home for sexually exploiting children abroad.<sup>56</sup>

#### *United States Support to OSCE Countries to Combat Trafficking*

In addition to producing the annual TIP reports, the US government has carried out a number of other initiatives to fight trafficking. For example, the ODIHR's Human Dimension Implementation Meetings have provided an opportunity for the United States to wield political leverage and remind OSCE countries listed on the TIP reports in Tier 2 and 3 to fulfil their OSCE commitments on combating trafficking. For example, in September 2002, US Ambassador Nancy Ely-Raphel noted that the June 2002 TIP Report listed "twenty OSCE participating States that are not yet meeting minimum standards in combating trafficking". To help remedy the lack of compliance, she called for ODIHR to be used as a repository for documents, models, and ideas.<sup>57</sup> The United States has contributed to this effort by making available a

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53 For the full text of the letter, see, Helsinki Commission, Full Text of Commission Letter to Deputy Secretary Armitage, press release, 13 May 2003.

54 Cf. Colin Powell, Letter from Secretary Colin L. Powell, in: Department of State 2004, cited above (Note 27).

55 Bush, cited above (Note 25), pp. 3f.

56 Ibid., p. 4.

57 For the full text of Ambassador Ely-Raphel's statement, see: Commission on Security and Cooperation in Europe/United States Helsinki Commission, Helsinki Commission Re-

guidebook for NGOs to develop anti-trafficking programmes, supporting other NGO empowerment initiatives, and introducing a Model Law for enforcing anti-trafficking efforts.<sup>58</sup> In addition to its engagement in the work of ODIHR, and Helsinki Commission Chairman Christopher Smith's efforts at the OSCE Parliamentary Assembly, the United States has also provided assistance to anti-trafficking measures in various regional contexts of the OSCE area, including the Southeast European Co-operative Initiative (SECI), which promotes interstate efforts among law enforcement agencies to combat trafficking in human beings and the Task Force on Trafficking in Human Beings of the Stability Pact for South Eastern Europe.

In support of these commitments, in fiscal year 2002 and 2003, the US Government assisted some 200 anti-trafficking programmes. In 2002 this totalled more than 55.8 million US dollars, with funds supporting over 75 countries. According to the 2002 TIP Report and a 2003 Department of Justice report, this assistance included the following types of measures:<sup>59</sup>

- economic alternative programmes for vulnerable groups;
- education programmes, training for government officials and medical personnel;
- development or improvement of anti-trafficking laws;
- provision of equipment for law enforcement;
- establishment or renovation of shelters, crisis centres, or safehouses for victims;
- support for voluntary and humane return and reintegration assistance for victims;
- support for psychological, legal, medical, and counselling services for victims provided by NGOs, international organizations, and governments;
- anti-corruption measures.

US funding to combat trafficking is partly geared towards global efforts. For example, under its global programme, the Department of State has provided funding to aid the IOM's development of a Counter-Trafficking Module Database. However, the State Department prioritizes assistance to countries in Tiers 2 and 3. In the European and Eurasian context of the OSCE, the United States has launched numerous programmes through bilateral assistance and regional initiatives focused on prevention, prosecution, and protection of victims, with funding going to support programmes developed by governmental agencies as well as non-governmental organizations (local and

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leases US Statement on Trafficking in Human Beings at OSCE Human Dimension Implementation Meeting, press release, 20 September 2002.

58 The Model Law can be found at the Department of Justice website at: [http://www.usdoj.gov/crt/crim/model\\_state\\_law.pdf](http://www.usdoj.gov/crt/crim/model_state_law.pdf).

59 Cf. Department of State 2003, cited above (Note 33), p. 5, and Department of Justice, *Report to Congress*, cited above (Note 48), p. 19.

international) fighting trafficking. Regional initiatives variously focus on the Caucasus and Central Asia, Eastern and South-eastern Europe, as well as Kazakhstan, Tajikistan, Armenia, Azerbaijan, and Georgia.

OSCE countries that have received US funding to combat trafficking in fiscal year 2003 included Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Latvia, Lithuania, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Macedonia, Moldova, Romania, Russia, Serbia and Montenegro (including Kosovo), Slovakia, Tajikistan, Turkey, Ukraine, and Uzbekistan.<sup>60</sup> Many of these programmes involve support for police training, prosecution, and border controls. In the Balkans, “the State Department is also supporting research into the role of international peacekeeping operations in the trafficking of women and girls. In Yugoslavia, a USAID project supports research into why Roma women and children are trafficked.”<sup>61</sup>

Some US-funded programmes target the supply side of the trafficking issue, including root causes, by working on raising awareness among high school children through the use of theatre and plays; training journalists; creating media awareness programmes on trafficking; and also reaching teachers and educators. However, there are only a few US-funded programmes that address such root causes of trafficking as violence against women, domestic violence, women’s economic empowerment, and the need for support for women at risk in rural areas. Important examples of these kinds of programmes can be found in USAID assistance to the Ukraine, Belarus, and Bulgaria.<sup>62</sup>

### *Conclusions*

The complexity of combating trafficking in human beings has brought together many NGOs, local and international, as well as government officials and international organizations. This multilayered co-operation is essential for dealing with a problem that has transnational dimensions. The concerted efforts of experts and officials from many facets of society are also needed to ensure comprehensive responses, and, in particular, to provide immediate shelter, security, and assistance to victims, and opportunities to prosecute the traffickers.

By starting out with a “victim frame” the United States’ early efforts against trafficking were geared towards rescuing the innocent – but all too often the victims were returned home to be re-trafficked, or were found by subsequent raids to be working again in the same locales. While many of the

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60 Cf. Department of State, *The U.S. Government’s International Anti-Trafficking Programs*. Released by the Office to Monitor And Combat Trafficking in Persons. Fiscal Year 2003, Washington, D.C., 7 July 2004.

61 Department of Justice, cited above (Note 28), p.20.

62 Cf. Department of State, cited above (Note 60).

efforts that the United States has helped to fund focus the anti-trafficking strategy on the side of law enforcement and victim assistance, these initiatives do not get at the root of the problem. In fact, many reports cited in this chapter point to substantial barriers to prosecuting traffickers and doing so in numbers that will diminish the incentives driving the cross-border sex trade. Thus, it has become increasingly apparent that anti-trafficking campaigns need to address the root causes within the origin countries as well as the demand side of the picture in the destination states. To date, this is the exception rather than the rule among US-funded programmes. However, providing economic empowerment to women in at-risk regions of the OSCE participating States would help to thwart trafficking at the source. And lifting the immunity of personnel in international operations under the United Nations or regional organizations from prosecution on trafficking charges would also help to transform the post-conflict dynamics in states whose citizens have already experienced great trauma. The comprehensive efforts of the OSCE under its Action Plan 2003 and the United States' increase in funding programmes addressing root causes may begin to make a difference in otherwise very difficult terrain.