

**They Can't Have it Both Ways: Why States Cannot Fight Sex Trafficking While  
Simultaneously Legalizing Prostitution**

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## I. Introduction

They would not call it slavery, but some other name . . . . It has been called by a great many names, and it will call itself by yet another name; and you and I and all of us had better wait and see what new form this old monster will assume, in what new skin this old snake will come forth.<sup>2</sup>

Frederick Douglass was correct in predicting the “old snake” of slavery would assume a new skin; today’s modern form of slavery is known as human trafficking.<sup>3</sup> Human trafficking has become one of the most lucrative organized crimes in the world, second only to the drug trade and it is estimated to generate thirty-nine billion dollars a year.<sup>4</sup> Since 2006 it has been the fastest growing underground criminal activity source of income.<sup>5</sup> As if that growth does not already claim attention, human trafficking is a worldwide epidemic that permeates today’s culture far deeper than most imagine, affecting virtually every nation and population.<sup>6</sup>

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<sup>2</sup> Frederick Douglass, Address to the American Anti-Slavery Society (May 11, 1865).

<sup>3</sup> Trafficking Explained, **European Commission**, [http://ec.europa.eu/anti-trafficking/Citizens%27+corner/Trafficking\\_Explained/](http://ec.europa.eu/anti-trafficking/Citizens%27+corner/Trafficking_Explained/) (last visited Nov. 16, 2013);

<sup>4</sup> Id.; Fact Sheet, Interpol, Trafficking in Human Beings, at 24, COM/FS/2013-11/THB-02, available at <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html> (last visited Nov. 18, 2013).

<sup>5</sup> Omar Mahmoud, Toman, & Christoph Trebesch, The Economics of Human Trafficking and Labour Migration: Micro-evidence from Eastern Europe, 38 **J. Comp. Econ.** 2, 173-88 (2010), <http://www.sciencedirect.com/science/article/pii/S0147596710000028>.

<sup>6</sup> **Stephanie Hepburn & Rita J. Simon, Human Trafficking Around the World: Hidden in Plain Sight**, 3 (2013).

In Part II, this Note describes domestic and international responses to sex trafficking. In evaluating these responses, this Note will argue the necessity of curbing demand before any lasting impact can be made to combat this global epidemic. In addition, Part II will discuss the sex market in Amsterdam to suggest the impact that legalized prostitution has on sex trafficking.

Part III of this Note provides an analysis of the aforementioned measures against global sex trafficking. It will assert that governments who seek to curb demand likely cannot do so effectively while simultaneously permitting legalized prostitution, because prostitution and sex trafficking are so intertwined. For this reason, Part III argues that the Trafficking In Person's Report tier-placement for States needs to be re-evaluated. Contrasting laws on the legality of prostitution, illustrated by using the United States and Italy as examples, show different perspectives on how states view fulfilling the requirement to curb demand and how prostitution impacts demand deterrence. Part III concludes with a suggestion for curbing demand that has proved effective in Sweden, but has not yet been attempted in the United States or Italy.

For the purposes of this Note, the jobs victims are made to do through "sex trafficking" will refer to any kind of commercial sexual exploitative activity: forced prostitution, pornography, adult entertainment dancing, and similar activities.

## **II. Background**

### **A. Overview of Human Trafficking in the Sex Industry**

Every country in the world is involved in this modern-day slavery, whether as a source-, transit-, and/or destination-country.<sup>7</sup> Victims have been identified from over 127 countries, and

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<sup>7</sup> Trafficking Explained, supra note 4

the crimes against those victims have taken place in 137 countries to date.<sup>8</sup> No nationality, ethnicity, socio-economic class, gender, or religion is exempt.<sup>9</sup> Twenty-seven million people are estimated to be modern day slaves of human trafficking, though a recent study indicates the number may be closer to thirty million.<sup>10</sup>

Human trafficking is distinct from smuggling, though the two crimes do overlap.<sup>11</sup> Often victims of international human trafficking are women, children, or men who try to leave desperate circumstances in their native state in search of a better life abroad.<sup>12</sup> The difficulty of gaining legal admission to other countries, often caused by those countries' harsh immigration restrictions, causes many to turn to illegal methods such as smuggling to leave their native

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<sup>8</sup> **U.N. Executive Directory of United Nations Office on Drugs and Crime, The Globalization of Crime: A Transnational Organized Crime Threat Assessment 2** (2010), available at [http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA\\_Report\\_2010\\_low\\_res.pdf](http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf).

<sup>9</sup> Hepburn & Simon, *supra* note 6, at 9 (stating the authors chose a variety of first, second, and third world nations to help show how all countries experience human trafficking).

<sup>10</sup> **U.S. Dep't of State, 2013 Trafficking in Persons Report, 7**, available at <http://www.state.gov/j/tip/rls/tiprpt> [hereinafter "TIP Report"]; **Walk Free Foundation, The Global Slavery Index 2013 1**, available at <http://www.globalslaveryindex.org/media/>.

<sup>11</sup> Kelly Hyland Heinrich, Ten Years After the Palermo Protocol: Where are Protections for Human Trafficking Victims?, Human Rights Br. 18, no. 1, at 1 (2010) available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1145&context=hrbrief>.

<sup>12</sup> Id.

countries.<sup>13</sup> This is one reason why the supply of trafficking victims is practically infinite, though a significant number of trafficking victims are domestic in origin.<sup>14</sup>

Collecting data on human trafficking in general is extremely difficult.<sup>15</sup> As with many organized crimes, the perpetrators' activities are clandestine and the numbers of those affected are only estimates.<sup>16</sup> While this secrecy and other factors mean that there is no definite way to determine specific numbers, the majority of human trafficking victims are suspected to be laboring in the sex industry.<sup>17</sup> Victims of sex trafficking have been estimated to make up seventy-nine percent of the population of human trafficking victims.<sup>18</sup> Eighty-two percent of the human trafficking cases opened from January 2008 to June 2010 in the United States turned out

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<sup>13</sup> The Associated Press, Niger Authorities Arrest 30 Trafficking Suspects, **Atlanta Journal Constitution** (Nov. 18, 2013, 2:25 PM), <http://www.ajc.com/ap/ap/crime/niger-authorities-arrest-30-trafficking-suspects/nbwpt/>.

<sup>14</sup> Heinrich, supra note 12 at 1.

<sup>15</sup> Gillian Wylie, Doing the Impossible? Collecting Data on the Extent of Trafficking, in **Trafficking and Women's Rights** 70 (Christien L. van den Anker & Jeroen Doomernik eds., 2006).

<sup>16</sup> Id.

<sup>17</sup> Trafficking Explained, supra note 4.

<sup>18</sup> U.N. Executive Directory of United Nations Office on Drug and Crime, **Global Report on Trafficking in Persons**, 6 (Feb. 2009), available at [https://www.unodc.org/documents/Global\\_Report\\_on\\_TIP.pdf](https://www.unodc.org/documents/Global_Report_on_TIP.pdf).

to be sex trafficking cases.<sup>19</sup> There is a concern that the number of labor-trafficked victims is underreported, but nonetheless, sex trafficking is an enormous problem in the modern world.<sup>20</sup>

Additionally, because child pornography is intertwined with child prostitution, it is also related to child sex trafficking.<sup>21</sup> Both child pornography and child prostitution are part of an illicit commercial sex market, for children under eighteen are not legally able to consent to any pornographic, prostitution, or trafficking activity.<sup>22</sup> While children are universally protected from

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<sup>19</sup> **Duren Banks & Tracey Kyckelhahn, U.S. Dep't of Justice, NCJ 233732: Characteristics of Suspected Human Trafficking Incidents 2008-2010** 1 (2011), available at <http://www.bjs.gov/content/pub/pdf/cshti0810.pdf>.

<sup>20</sup> Sam Olen, Georgia Attorney General, Keynote Address at the Emory University of Law Public Interest Conference: Neighbors for Sale: Modern Slavery in Atlanta (Sept. 21, 2013).

<sup>21</sup> Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Rep. on the Sale of Children, Child Prostitution and Child Pornography, Comm'n of Human Rights, U.N. Doc. E/CN.4/1994/84, (Jan. 14, 1994)(by Vitit Muntarbhorn), <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/3662c5c8967c4768802567320064762f?Opendocument>, p. 39, para. 173.

<sup>22</sup> Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Thematic Rep. on Child Pornography on the Internet, Econ. & Soc. Council, Commission on Human Rights, U.N. Doc. E/CN.4/2005/78 (23 Dec. 23, 2004)(by Juan Miguel Petit), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/100/19/PDF/G0510019.pdf?OpenElement>, p. 24, para. 123.

the sex market (by international law), they are still common victims because of their particular vulnerability.<sup>23</sup>

Another element to these heinous activities is sex tourism. When speaking of the defendant charged with sexual exploitation of children, a court in Pennsylvania stated: “his crimes represent a global problem whereby individuals from developed nations travel to less-developed nations to prey on young children from impoverished communities.”<sup>24</sup> This type of trafficking has grown as the cost to travel internationally decrease, especially since the risk of prosecution in the supply countries is low.<sup>25</sup> Historically Asia has been the continent of greatest concern, but Africa, South America, and Central America are also sex tourist destinations.<sup>26</sup> Because sex tourism also encompasses sexual exploitation of trafficking victims, for the purposes of this Note it is included in the broad term “sex trafficking.”<sup>27</sup>

Victims forced in to prostitution may be subject to up to thirty clients a night.<sup>28</sup> They are also exposed to violent conditions and abuse-by their pimps when they are not working, and

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<sup>23</sup> **Anne T. Gallagher, *The International Law of Human Trafficking*, 427 (2010)** (noting children are especially vulnerable due to their dependence upon others for security and general well-being).

<sup>24</sup> *M.C. v. Bianchi*, 782 F. Supp. 2d 127, 132 (E.D. Pa. 2011).

<sup>25</sup> Types of Human Trafficking, **Interpol**, <http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking> (last visited Nov. 18, 2013).

<sup>26</sup> Id.

<sup>27</sup> See generally, id.

<sup>28</sup> Laura Trevelyan et al., Trafficked: Sex Slaves Seduced and Sold, Video: Traffickers’ Town, **BBC News** (May 22, 2012), <http://www.bbc.co.uk/news/world-us-canada-18144333>. (Former



sometimes by clients when they are.<sup>29</sup> Pimps work to erode any feeling of self-worth or value so the girls will be more accommodating.<sup>30</sup> Traffickers also use drug addiction as a tactic to keep their “stable,” the term used by pimps to refer to the girls they “own,” from running away.<sup>31</sup> Basically, victims are lured into and kept in bondage through deception, fear, lies, threats, drug

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victim from Tenancingo, Mexico was interviewed about her time working as a prostitute in the United States)(During a conversation with a street worker in Rome in Spring of 2012, a young girl told this Author she also has up to thirty teenagers or men purchase her services in one night.)

<sup>29</sup> Survivors of Human Trafficking: Breaking the Silence, **United Nations Human Rights** (June 7, 2010),

<http://www.ohchr.org/EN/NewsEvents/Pages/SurvivorstraffickingBreakingthesilence.aspx>; see

also, Nadia Cholakova & Stanimir Vaglenov, A Prostitute in Italy, **Bulgarian Investigative**

**Journalism Center**

<http://www.bijc.eu/en/ivestigations.php?contentId=65> (last visited Nov. 20, 2013) (article published in July 2004) (account of Bulgarian’s entrance into Italy, time working as a prostitute under her “boyfriend” pimp, and escape).

<sup>30</sup> See, Domestic Sex Trafficking: The Criminal Operations of the American Pimp, **The Polaris Project 5**,

[http://www.dcjs.virginia.gov/victims/humantrafficking/vs/documents/Domestic\\_Sex\\_Trafficking\\_Guide.pdf](http://www.dcjs.virginia.gov/victims/humantrafficking/vs/documents/Domestic_Sex_Trafficking_Guide.pdf).

<sup>31</sup> Id. at 3.

addiction, abuse, debt bondage, and other controlling or manipulative techniques.<sup>32</sup> Even those in legal prostitution markets face harsh conditions.<sup>33</sup>

## **B. Measures to Combat Trafficking**

While human trafficking has become the fastest growing organized crime in the world, governments have started crafting legislation and devoting resources to fight this atrocity.<sup>34</sup> Every year the United States publishes the findings of an extensive research initiative in its Trafficking in Persons Report, which gives a breakdown of every country and its specific forms of trafficking and government initiatives to prosecute criminals, protect victims, and prevent future cases.<sup>35</sup> The timing of the birth of this Report coincided with a collaborative push from the United Nations Convention Against Organized Crime, where the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, was produced.<sup>36</sup> While that

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<sup>32</sup>Sex Trafficking in the U.S., **The Polaris Project**, <http://www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us> (last visited Nov. 21, 2013).

<sup>33</sup> Julie Bindel, Revealed: the Truth About Brothels, **The Guardian** (Sept. 9, 2008, 7:01 PM), <http://www.theguardian.com/lifeandstyle/2008/sep/10/women.socialexclusion>.

<sup>34</sup> About, **Stop the Traffik**, <http://www.stopthetraffik.org/what-is-human-trafficking> (last visited Nov. 16, 2013).

<sup>35</sup> Hepburn and Simon, supra note 6 at 5.

<sup>36</sup> Trafficking in Persons Report, **U.S. Dep't of State**, <http://www.state.gov/j/tip/rls/tiprpt> (last visited Sept. 30, 2013)(showing the first TIP Report was issued in 2001); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000 [hereinafter

Protocol was not binding law upon issuance, soon after it was released members of the fifty-fifth General Assembly met in Palermo, Italy, where it was opened for signature through the Palermo Protocol-an international law modeled on its provisions.<sup>37</sup>

1. Trafficking in Persons Report (“TIP Report”)

The United States calls itself a worldwide leader in raising awareness of this issue and encouraging governments to get involved.<sup>38</sup> To achieve this, Congress passed the Trafficking Victims Protection Act in 2000, which included a provision requiring the Secretary of State to submit an annual report to Congress addressing the global and domestic state of trafficking.<sup>39</sup> In 2001, the United States adopted a unilateral approach towards engaging other countries in the fight against sex trafficking through publishing the first annual TIP Report.<sup>40</sup>

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“Trafficking Protocol”] available at

[http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_%20traff\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf)

<sup>37</sup> See, Trafficking Protocol, supra note 36, art. 16(1), (3) (stating Protocol will first be open to signature in Palermo) (also stating Protocol is “subject to ratification, acceptance or approval,” showing it is not yet a binding law).

<sup>38</sup> Trafficking in Persons Report, supra note 36.

<sup>39</sup> 2001 Trafficking in Persons Report, **Dep’t of State**, (July 2001),

<http://www.state.gov/j/tip/rls/tiprpt/2001/3929.htm>.

<sup>40</sup> Id.

The TIP Report is a compilation of data the Department of State collected on global trafficking.<sup>41</sup> This Report contains some of the most-cited figures for trafficking, and carries a “political punch” with its ranking system.<sup>42</sup> Each TIP Report includes a summary and evaluation of the current state of anti-trafficking efforts in the United States and around the world.<sup>43</sup> Every year, the United States categorizes countries in four different tiers:<sup>44</sup>

- Tier 1: Countries who fully comply with the minimum standards of the TIP Report.
- Tier 2: Countries who do not fully comply with minimum standards, but are making significant efforts to do so.
- Tier 2 Watch List: Countries who do not fully comply with minimum standards, but are making a significant effort to do so and:
  - The absolute number of victims is either significant or increasing;
  - There was a failure to prove that efforts have been significant; or
  - The determination that a country is meeting minimal compliance is based upon an idea that they will take significant efforts in the next year.
- Tier 3: Countries whose governments are not in compliance with minimum standards and are not making efforts to change.

The TIP Report is issued annually by the United States Department of Justice to encourage governments around the world to advance and collaborate on anti-trafficking

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<sup>41</sup> Id.

<sup>42</sup> Wylie, supra note 15 at 73.

<sup>43</sup> 2001 Trafficking in Persons Report, supra note 39.

<sup>44</sup> **TIP Report**, supra note 10, 41-44.

initiatives.<sup>45</sup> To be in compliance with the minimum standards of the Trafficking Victims Protection Act, a State must follow all four requirements.<sup>46</sup> Three of those conditions address State punishment for those who knowingly participate in an act of sex trafficking.<sup>47</sup> The final minimum standard requires governments to make “serious and sustained efforts to eliminate severe forms of trafficking in persons.”<sup>48</sup>

In determining whether a State is in compliance with the minimum standards of the Trafficking Victims Protection Act described above, twelve factors are listed for evaluation.<sup>49</sup> The twelfth factor asks:

“Whether the government of the country has made serious and sustained efforts to reduce the demand for

- (a) commercial sex acts; and
- (b) participation in international sex tourism by nationals of the country.”<sup>50</sup>

Some allege the Trafficking in Persons Report tier ranking is politically flawed, for it gives some world powers or volatile nations a more generous ranking than compliance with minimum standards has shown.<sup>51</sup> China is one such nation, though it was automatically

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<sup>45</sup> Heinrich, supra note 12 at 1.

<sup>46</sup> 22 U.S.C. §1706(a) (2013).

<sup>47</sup> 22 U.S.C. §1706(a)(1)-(3) (2013).

<sup>48</sup> 22 U.S.C. §1706(a)(4) (2013).

<sup>49</sup> 22 U.S.C. §1706(b) (2013).

<sup>50</sup> 22 U.S.C. 7106(b)(12) (2013) (emphasis added).

<sup>51</sup> Parameswaran Ponnudurai, Controversy Behind Human Trafficking Rankings, **Radio Free Asia** (Apr. 25, 2013),

downgraded to Tier 3 in the 2013 Report after being on the Tier 2 Watch List for eight years- six years longer than the “automatic downgrade” that should occur when a nation is in the Tier 2 Watch List for longer than two years.<sup>52</sup> Other countries like India, Pakistan, and Nigeria that are more “friendly” with the United States (compared with regularly sanctioned Tier 3 nations like Cuba, North Korea, Sudan, and Burma) have generally remained in Tier 2.<sup>53</sup>

Beyond outside critics, some within the United States Government have opined the TIP Report does not carry the credibility needed to elicit worldwide change.<sup>54</sup> One reason is the significant number of disputes over tier placement between the Trafficking Office (focused solely on anti-trafficking efforts) and the Regional Bureaus (concentrated on bilateral

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<http://www.rfa.org/english/commentaries/east-asia-beat/trafficking-04252013232758.html>.

<sup>52</sup> Id.; see TIP Report 2013, supra note 40 (Russia and Uzbekistan were also automatically downgraded, while Iraq, Republic of Congo, and Azerbaijan were bumped up to Tier 2).

<sup>53</sup> Melissa Beale, The Trafficking in Persons Report: Who is the United States to Judge?, **Council on Hemispheric Affairs** (Nov. 22, 2011), <http://www.coha.org/the-trafficking-in-persons-report-who-is-the-united-states-to-judge/>; see Tier Placements, **U.S. Department of State**, <http://www.state.gov/j/tip/rls/tiprpt/2012/192363.htm> (showing Burma and Nigeria moved to the Tier 2 Watch List in 2012, but Cuba, North Korea, and Sudan remained in Tier 3 while India and Pakistan stayed in Tier 2); see also Tier Placements, **U.S. Department of State**, <http://www.state.gov/j/tip/rls/tiprpt/2013/210548.htm> (showing aforementioned placements remained the same in 2013, other than Nigeria moving up to Tier 2).

<sup>54</sup> See generally, **U.S. Gov’t Accountability Office**, GAO-06-825, **Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad** (2006).

relations).<sup>55</sup> The United States Government Accountability Office’s research confirmed disputes over tier distribution of certain nations are often resolved by a process of “horse[-]trading,” “whereby the Trafficking Office agrees to raise some countries’ tiers rankings in exchange for lowering others.”<sup>56</sup> Therefore, it appears the critics are right about political considerations affecting tier placement, because senior officials in the Trafficking Office acknowledge the political considerations themselves.<sup>57</sup>

## 2. Trafficking Protocol

As a supplement to the United Nations Convention on Organized Crime, the United Nations created the Trafficking Protocol.<sup>58</sup> This Protocol requires that states adopt or strengthen legislation or take other measures (like improving education or cooperating with anti-trafficking agencies) “to discourage the demand that fosters all forms of exploitation of persons . . . that leads to trafficking.”<sup>59</sup> While compliance standards address prosecution of perpetrators, protection of victims, cleansing of government corruption, and other related matters, this Note will focus specifically on the requirement to reduce demand.<sup>60</sup>

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<sup>55</sup> Id. at 32.

<sup>56</sup> Id. at 33.

<sup>57</sup> Id.

<sup>58</sup> Trafficking Protocol, supra note 36.

<sup>59</sup> Id., art. 9, para. 5 (emphasis added).

<sup>60</sup> See generally, id.

### 3. Palermo Protocol

On January 8, 2001, the General Assembly of the United Nations enacted the Palermo Protocol.<sup>61</sup> This treaty was adopted by the General Assembly in response to the growing awareness of trafficking, and enacted to create a unified front for ratifying countries to prevent and fight trafficking in persons, protect and assist the victims, and promote cooperation among states to achieve these goals.<sup>62</sup>

When the Palermo Protocol opened for signature in 2000, it marked the first gathering of world leaders to seriously discuss the issue of human trafficking—beginning with creating an acceptable definition of “trafficking.”<sup>63</sup> Especially noteworthy, the Palermo Protocol adopted the Trafficking Protocol.<sup>64</sup> As of 2008, one hundred fifty-nine states were ratifying parties of the Palermo Protocol.<sup>65</sup> However, ratification is not enough because the Palermo Protocol is not self-executing; states must also implement their own anti-trafficking laws to “bridge the gap between domestic and international law.”<sup>66</sup>

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<sup>61</sup> Palermo Protocol, G.A. Res. 55/25, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

<sup>62</sup> Id. at Annex II, Art. 2.

<sup>63</sup> See, Laura L. Shoaps, Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act, **Lewis & Clark L. Rev.** 931, 933 (2013) available at <http://law.lclark.edu/live/files/15325-lcb173art6shoapspdf>.

<sup>64</sup> Palermo Protocol supra note 61 at 2; see also previous section for reference.

<sup>65</sup> STATUS AS AT: 11/01/2014 05:02:45 EDT, **United Nations Treaty Collection**, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en).

<sup>66</sup> Hepburn & Simon, supra note 6, at 4.



The Palermo Protocol defines “trafficking in persons” 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 . . . .”<sup>67</sup>

If a child is recruited, transported, transferred, harbored, or received for exploitation, it is considered “trafficking in persons,” even if none of the above means are executed.<sup>68</sup> For the purposes of this provision, a child is anyone less than eighteen years of age.<sup>69</sup>

The idea of a trafficking victim has changed tremendously since the Palermo Protocol was adopted, and a belief that was common in 2000--that victims are “naïve, uneducated, duped or kidnapped”--is no longer widely held.<sup>70</sup> Though the Palermo Protocol has not produced the results the General Assembly hoped for at the time of signing, it has served as a point of

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<sup>67</sup> Palermo Protocol, supra note 16, at Annex II, Art. 3(a). (NB: insertion of bullets done by author to break up the definition into three relevant parts).

<sup>68</sup> Id. at Annex II, Art. 3(c).

<sup>69</sup> Id. at Annex II, Art. 3(d).

<sup>70</sup> Heinrich, supra note 12, at 1.

reference and foundation for states developing individual anti-trafficking policies.<sup>71</sup> Countries with anti-trafficking legislation more than doubled between 2003 and 2008, fifty-four percent of responding States created a specific police unit to target human trafficking, and over half of those adopting nations developed national anti-trafficking action plans, all in response to the Palermo Protocol.<sup>72</sup>

#### 4. UN Special Rapporteur

The United Nations took further action against global trafficking in the sixtieth session of the Commission on Human Rights, where it appointed a Special Rapporteur to investigate human trafficking (specifically of women and children) and submit annual reports to the Commission with recommendations to combat trafficking.<sup>73</sup> Special Rapporteur Joy Ngozi Ezeilo of Nigeria urged States to focus on fighting human traffic through strategies like the five “P’s” (protection, prosecution, punishment, prevention, and promotion of international cooperation) and the three

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<sup>71</sup> Carol S. Brusca, Palermo Protocol: The First Ten Years After Adoption, 2 **Global Security Studies**, 8, 16 (Summer 2011) available at

<http://globalsecuritystudies.com/Brusca%20Palermo%20Final%20One.pdf>.

<sup>72</sup> Global Report on Trafficking in Persons, supra note 8 at 8.

<sup>73</sup> Special Rapporteur on Trafficking in Persons, Especially in Women and Children, **Office of the United Nations High Commissioner for Human Rights**,

<http://www2.ohchr.org/english/issues/trafficking/> (last visited Nov. 16, 2013).

“R’s” (redress, rehabilitation/recovery, and [constructive] reintegration of victims into society) in her 2010 address to the General Assembly.<sup>74</sup>

##### 5. Custom and Soft Law

Even when legislation does not address issues underlying sex trafficking, customary international law might do so. The International Court of Justice (“ICJ”) defines customary international law by “evidence of general practice accepted as law.”<sup>75</sup>

Despite the growing emphasis on treaties and unification towards fighting sex trafficking since 2000,<sup>76</sup> some of the international approach can still be considered “soft law.”<sup>77</sup> Soft law is roughly defined as “declared norms of conduct understood as legally nonbinding by those accepting the norms.”<sup>78</sup> Examples of soft law include expert reports (like that of the TIP Report

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<sup>74</sup> Special Rapporteur on Trafficking in Persons, Especially Women and Children, 2010 Rep. on the Trafficking in Persons, Especially Women and Children, U.N. Doc. A/65/2008(III)(B)(16) (Aug. 9, 2010) (by Joy Ngozi Ezeilo), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/483/11/PDF/N1048311.pdf?OpenElement>.

<sup>75</sup> I.C.J. Statute art. 38(b)(1), available at <http://www.icj-cij.org/documents/?p1=4&p2=2&p3=0#>.

<sup>76</sup> See generally Palermo Protocol, supra note 61; see also Trafficking Protocol, supra note 58; United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, 2004.

<sup>77</sup> **Gallagher**, supra note 23, at 139.

<sup>78</sup> **Jeffrey L. Dunoff, Steven R. Ratner, & David Wippman, International Law: Norms, Actors, Process** 32 (Erwin Chemerinsky et. al. eds., 2002).

or United Nations Special Rapporteur) and declarations of international organizations (like the Trafficking Protocol).<sup>79</sup> Declarations like the Trafficking Protocol (adopted by the Palermo Protocol) have vague provisions that ask States to “consider” measures, “endeavor” to provide other assistance, and take action “to the extent possible.”<sup>80</sup> Likewise, the United States’ unilateral Trafficking Victims Protection Act requires governments to make “serious and sustained efforts” to eliminate trafficking and prescribe punishment to offenders that is “sufficiently stringent” to deterrence.<sup>81</sup>

## **B. Importance of Curbing Demand**

Demand is a root cause of sex trafficking.<sup>82</sup> While four previously discussed international anti-trafficking measures directly address prosecution of perpetrators, protection for victims, government transparency, international collaboration, and other matters, this Note will focus specifically on the consistent requirements to curb demand.<sup>83</sup> For a policy to be useful in truly attacking and preventing the growth of sex trafficking, it must be directed towards reducing

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<sup>79</sup> Id.

<sup>80</sup> Id.; see Trafficking Protocol, supra note 58 at Art. 6(5); see also Palermo Protocol, supra note 61, Introduction (2).

<sup>81</sup> Trafficking Victims Protection Act, Pub. L. No. 106-386, §108(a)(2000).

<sup>82</sup> See, Palermo Protocol, supra note 38; Special Rapporteur, supra note 74 (making her second recommendation to the General Assembly that states must address demand as a root cause).

<sup>83</sup> See generally Section II(B)(referring to TIP Report, Palermo Protocol, Trafficking Protocol, and suggestions of the UN Special Rapporteur).

demand.<sup>84</sup> Buyers do not simply wake up one day and think, “I’m going to buy a girl.”<sup>85</sup> Sex trafficking is a demand-based industry, and there are many determinants to this demand.<sup>86</sup> To better understand these determinants, the United States Department of State Office to Monitor and Combat Trafficking in Persons funded Shared Hope International, a non-governmental organization, to conduct a yearlong study of the commercial sexual exploitation marketplace.<sup>87</sup> This demand-based study researched four countries that showcase different political systems, economies, cultures, and histories of prostitution: Jamaica, Japan, the Netherlands, and the United States.<sup>88</sup>

Escalation in sex trafficking is heavily correlated to the rise of the legal sex industry, for

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<sup>84</sup> United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, New York, U.S., 2004, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Annex II.

<sup>85</sup> Kara Cooper, Juvenile Justice Fund, A Future. Not a Past., Panel on Human Trafficking at The University of Georgia (April 7, 2011).

<sup>86</sup> DEMAND. A Comparative Examination of Sex Tourism and Trafficking in Jamaica, Japan, the Netherlands, and the United States, **Shared Hope International**, 21 (June 12, 2007), <http://www.sharedhope.org/Resources/DEMAND.aspx> (finding after a twelve-month study of four different nations that the only way to effectively fight sexual exploitation, like sex trafficking, is by attacking demand)(hereinafter “Demand Study”).

<sup>87</sup> Id. at 1.

<sup>88</sup> Id.

traffickers blend into legal instruments like strip clubs, escort services, and pornography.<sup>89</sup> Proliferation of suggestive ads, sexual television shows, movies and music, strip clubs, and pornography help create a culture of tolerance.<sup>90</sup> The fact that a primary commercial sex industry exists shows a degree of tolerance by society, tolerance that for many becomes acceptance.<sup>91</sup> Pornography specifically affects the demand for an underground sex market by the way it sticks in the mind of viewers.<sup>92</sup> Consumers of pornography are more likely to participate in illegal activities, and their demand for sexual services increases.<sup>93</sup> Because the nature of Internet pornography is such that viewers remain anonymous, it can prepare viewers for prostitution markets, where identities are similarly concealed.<sup>94</sup>

Supply in this illicit commercial sex market is seemingly never-ending for several reasons. First, many victims of sex trafficking come from poor socio-economic or oppressive

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<sup>89</sup> Id. at 3 (determining that sex trafficking also rises to meet demand for sex tourism).

<sup>90</sup> Id. at 23.

<sup>91</sup> See generally id.

<sup>92</sup> Id. at 17.

<sup>93</sup> Hearing on the Brain Science Behind Pornography Addiction and the Affects of Addiction on Families and Communities Before the S. Sub Comm. on Science, Technology, and Space, 108th Cong. (2004)(statement of Dr. Mary Anne Layden, Co-Director, Sexual Trauma and Psychology Program), available at [http://www.ccv.org/wp-content/uploads/2010/04/Judith\\_Reisman\\_Senate\\_Testimony-2004.11.18.pdf](http://www.ccv.org/wp-content/uploads/2010/04/Judith_Reisman_Senate_Testimony-2004.11.18.pdf).

<sup>94</sup> Demand Study, supra note 86, at 17.

conditions.<sup>95</sup> As immigration laws tighten around the world, those desperate to leave their countries of origin and start fresh in another nation often turn to smugglers to get out- smugglers who later pass them off to traffickers.<sup>96</sup> Typically, the supply of trafficked victims escalates with immigration.<sup>97</sup>

Second, whenever one pimp is shut down or prosecuted, another springs up to take his place.<sup>98</sup> Because trafficking is an illegal operation, there are no registration barriers in trafficking like in legal business start-ups; pimps do not need to follow a rigorous approval process so transaction costs are low, making it an easy market to enter.<sup>99</sup> For these reasons, government

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<sup>95</sup> **U.S. Dep’t of State**, Trafficking in Persons Report (2007)(describing conditions that contribute to the supply of victims like poverty, lure of perceived higher standards of living in other States, lack of employment opportunities (in their native state), corruption, violence and discrimination against women, violence against children, armed conflict, political instability, and cultural traditions of sending a young child to an urban center to work in exchange for education and a skillset, all found in the policy section of the Report).

<sup>96</sup> Mahmoud, Toman, & Trebesch, supra note 5 at 174.

<sup>97</sup> Id.

<sup>98</sup> **The Candy Shop** (Whitestone Motion Pictures 2010), available at <http://vimeo.com/20833462> (illustrating this idea at the end of the film, where one “shop” is shut down and another is ready to take its place).

<sup>99</sup> See Niklas Jacobsson & Andreas Kotsadam, The Law and Economics of International Sex Slavery: Prostitution Laws and Trafficking for Sexual Exploitation, 7 (University of Gothenburg, Working Paper No. 458, 2010), available at <http://andreaskotsadam.files.wordpress.com/2010/06/trafficking.pdf>.

leaders, NGOs, and individual actors alike recognize it is imperative to combat demand to effectively attack sex trafficking.<sup>100</sup>

To achieve Tier 1 status under the TIP Report, a state's government must make serious and sustained efforts to curb demand for both commercial sex acts and participation in international sex tourism.<sup>101</sup> This implies the lack of a legal commercial sex industry, which likely fuels the demand for a secondary market, an illegal market that comprises trafficked victims or children working as prostitutes.<sup>102</sup> Cities where the sex industry has permeated societal culture are also places where sex trafficking is high.<sup>103</sup>

Both the United Nations and the United States have recognized that addressing demand as a root issue of sex trafficking is imperative.<sup>104</sup> The Palermo Protocol requires member States

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<sup>100</sup> See Palermo Protocol, *supra* note 61; Trafficking Protocol, *supra* note 36, art. 9, para. 5; Demand Study, *supra* note 86; Lauren Hersh, *Prosecuting Sex Buyers*, **New York Times** (Aug. 5, 2013) [http://www.nytimes.com/2013/08/06/opinion/prosecuting-sex-buyers.html?partner=rssnyt&emc=rss&\\_r=0](http://www.nytimes.com/2013/08/06/opinion/prosecuting-sex-buyers.html?partner=rssnyt&emc=rss&_r=0).

<sup>101</sup> **U.S. Dep't of State, Trafficking in Persons Report** (2013).

<sup>102</sup> See, Demand Study, *supra* note 86, at 21.

<sup>103</sup> Chris Swecker, Assistant Director of the Criminal Investigative Division, Fed. Bureau of Investigation, *Exploiting Americans on American Soil: Domestic Trafficking Exposed*, Address Before the Commission on Security and Cooperation in Europe, United States (June 7, 2005), available at <http://www.fbi.gov/news/testimony/exploiting-americans-on-american-soil-domestic-trafficking-exposed>.

<sup>104</sup> See generally *Trafficking in Persons Report*, *supra* note 10; see also Palermo Protocol, *supra* note 61.



to “adopt or strengthen legislat[ion] . . . to discourage the demand” of any kind of exploitation of women and children that subsequently leads to trafficking,<sup>105</sup> modeling the language of the Trafficking Protocol.<sup>106</sup>

### III. Analysis

Due to the nature of this crime against humanity,<sup>107</sup> effective policies aimed at combatting sex trafficking must target demand.<sup>108</sup> A demand-based attack would require necessary and aggressive efforts, even if such efforts are unpopular, because “[m]ore must be done to reduce the vulnerability of victims, increase the risks to traffickers, and lower demand for the goods and services of modern-day slaves.”<sup>109</sup> While there are several measures that can be taken to combat demand, this section will focus primarily on prostitution.

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<sup>105</sup> Palermo Protocol, supra note 61, Annex II, art. 2.

<sup>106</sup> Trafficking Protocol, supra note 58, art. 9, para. 5.

<sup>107</sup> I.C.C. Statute art. 7(1)(c), (2)(c) (1999), available at <http://legal.un.org/icc/statute/romefra.htm> (listing “enslavement” in the acts of crimes against humanity and defining “enslavement” as “powers attaching to the right of ownership over a person and includ[ing] the exercise of such power in the course of trafficking in persons, in particular women and children.”).

<sup>108</sup> Demand Study at 151, supra note 86.

<sup>109</sup> Antonio Maria Costa, Executive Director, United Nations Office of Drug and Crime, Launch of A Global Report of Trafficking in Persons in New York (2009), available at <https://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>.

## A. Legality of Prostitution and Its Likely Effect on Trafficking

I believe that we will never succeed in combating trafficking in women if we do not simultaneously work to abolish prostitution and the sexual exploitation of women and children. Particularly in light of the fact that many women in prostitution in countries that have legalised prostitution are originally victims of trafficking in women.<sup>110</sup>

Believing that legalizing prostitution would increase protection for women and decrease violence, the Netherlands eliminated the ban on brothels and allowed prostitution to become a legitimate business activity.<sup>111</sup> However, after five years of legalization, reports of violence against women were “collecting dust” since officials were focused on the regulation of prostitution.<sup>112</sup> Policemen have since recognized the Dutch “are in modern day slavery,” but legalization of prostitution has hampered efforts to combat sexual exploitation and trafficking.<sup>113</sup> In 2005 the mayor of Amsterdam, who formerly praised the progress in legalizing prostitution, admitted the idea failed miserably and it is time to admit, “the aims of the law have not been

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<sup>110</sup> Margareta Winberg, Deputy Prime Minister of Sweden, Welcoming Address at the Seminar on the Effects of Legalisation of Prostitution Activities in Stockholm (Nov. 5, 2002), available at <http://projectrespect.org.au/system/files/Paper+presented+at+Swedish+Seminar.pdf>.

<sup>111</sup> Demand Study, supra note 86 at 48.

<sup>112</sup> Canada Considers Further Legalizing Prostitution While Amsterdam Mayor Admits Legalization’s Failure, **Life Site News**, Oct. 5, 2005, <http://www.lifesitenews.com/news/archive/ldn/2005/oct/05100508>.

<sup>113</sup> Id.

reached” and “abuse [of those working as prostitutes] still continues.”<sup>114</sup> As the Amsterdam government has learned and studies have shown, claims that legalized prostitution helps reduce violence towards women may be without merit.<sup>115</sup>

One overarching and tremendous factor contributing to higher levels of sex trafficking is a permissive “culture of tolerance.”<sup>116</sup> A “culture of tolerance” refers to the compounding influences in a nation--from media, movies, music, public figures, legislation, general attitudes, etc.--that indicate either broad acceptance of or acquiescence to a commercial sex market.<sup>117</sup> The 2007 TIP Report found “[w]here prostitution is tolerated, there is a greater demand for human trafficking victims and nearly always an increase in the number of women and children trafficked into commercial sex slavery.”<sup>118</sup>

Some argue that legalized prostitution would decrease incentives for traffickers.<sup>119</sup> Other proponents of legalized prostitution believe criminalizing it would either drive the activity underground to make it harder to find or merely push traffickers to neighboring countries.<sup>120</sup>

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<sup>114</sup> Id.

<sup>115</sup> See, Id.; Janice G. Raymond, Guide to the New UN Trafficking Protocol, **United Nations Inter-Agency Project on Human Trafficking** 8 (2001), [http://www.no-trafficking.org/content/pdf/guide\\_to\\_the\\_new\\_un\\_trafficking\\_protocol.pdf](http://www.no-trafficking.org/content/pdf/guide_to_the_new_un_trafficking_protocol.pdf).

<sup>116</sup> Demand Study, supra note 86 at 23.

<sup>117</sup> Id.

<sup>118</sup> Trafficking in Persons Report, supra note 36.

<sup>119</sup> Aaron D. Simowitz, How Criminal Law Shapes Institutional Structures: A Case Study of American Prostitution, **50 Am. Crim. L. Rev.** 1 (2013), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1105409.&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1105409.&download=yes).

However, several problems accompany legalization of prostitution. One, legalization requires administration costs and regulations-whether the legalization model requires prostitutes to apply for identification work cards or commercial sex business owners to request and be awarded a permit, these regulatory costs come at the expense of already-limited government resources and personnel.<sup>121</sup> Governmental oversight involved in legalization of prostitution could distract resources from monitoring child sexual exploitation or filtering cases of adult sex trafficking. It might also indirectly expand the illegal underground market.<sup>122</sup> An Amsterdam study implies this latter repercussion, for a gulf has been found between legal and illegal commercial sex workers and businesses.<sup>123</sup>

Second, regulating commercial sex participants by requiring workers or buyers to be the age of majority is feckless in addressing the issue of child sexual exploitation. Amsterdam commercial sex business owners' association strongly opposed legislation in Amsterdam to raise the minimum age from eighteen to twenty-one by arguing it would encourage workers from

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<sup>120</sup>Human Trafficking Bill: Lord Morrow Criticises Police Comments, **BBC News** (Sept. 23, 2013), <http://www.bbc.co.uk/news/uk-northern-ireland-24193952> (see video where politician inquires as to potential effects of banning prostitution).

<sup>121</sup> **Ronald Weitzer, *Legalizing Prostitution: From Illicit Vice to Lawful Profession*** (2012) at 197.

<sup>122</sup> See, Demand Study, supra note 86 at 77 (where Dutch researcher found “the prostitution-business is not that healthy at all. A business that has been working underground for centuries doesn’t seem to have been tidied up just like that a couple of years after the ban on brothels has been lifted.”).

<sup>123</sup> **Weitzer**, supra note 121 at 197

eighteen to twenty to join the illegal sector.<sup>124</sup> This argument indirectly applies to workers below eighteen as well, meaning that regardless of what the minimum age requirement may be, those workers below it will be in the illegal sector.

Furthermore, many women who voluntarily engage in prostitution do so as a last resort.<sup>125</sup> Those with pimps usually do not get to keep most of their earnings, if any.<sup>126</sup> A nurse in Sweden who knows almost every prostitute in Malmö stated: "There are no happy whores. Most of the ones I've met here over the years were sexually abused by relatives when they were young and have serious emotional problems . . . . Not much of this is about choice. . . . I wish all of them could get out of it."<sup>127</sup>

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<sup>124</sup> **Weitzer**, *supra* note 121 at 157.

<sup>125</sup> Diane Taylor, Really lifting the lid?, **The Guardian** (Sept. 8, 2008, 6:00 AM)  
<http://www.theguardian.com/commentisfree/2008/sep/08/ukcrime.gender>.

<sup>126</sup> See, Nicolas D. Kristof, From the Streets to the 'World's Best Mom', **N.Y. Times** (Oct. 12, 2013), [http://www.nytimes.com/2013/10/13/opinion/sunday/kristof-from-the-streets-to-worlds-best-mom.html?smid=fb-share&\\_r=2&\(revealing the testimony of a former prostitute who reveals her pimp kept all the money\)](http://www.nytimes.com/2013/10/13/opinion/sunday/kristof-from-the-streets-to-worlds-best-mom.html?smid=fb-share&_r=2&(revealing%20the%20testimony%20of%20a%20former%20prostitute%20who%20reveals%20her%20pimp%20kept%20all%20the%20money)).

<sup>127</sup> André Anwar, Criminalizing the Customers: Prostitution Ban Huge Success in Sweden, **Spiegel** (Nov. 8, 2007)(noting also that many who have been engaging in prostitution for a while have a problem with drugs or sedatives).

## B. Comparative Examples: United States & Italy

The U.S. and Italy share many attributes. Both are Western, developed nations.<sup>128</sup> Both have prolific commercial sex markets that include easily accessible pornography, strip clubs, adult entertainment shops, and the like.<sup>129</sup> In addition, both have ratified the Palermo Protocol and both are labeled as Tier 1 countries in the 2013 TIP Report.<sup>130</sup> This shared Tier status indicates that both countries are in compliance with minimum standards to combat modern-day slavery, yet there is one major legal difference: Italy legalizes prostitution, and the United States does not (absent eleven counties in Nevada).<sup>131</sup> Comparing the approaches of each, and how those approaches impact demand, may shed some light on effectiveness of various policies in the fight to end modern day sex slavery.

### 1. United States

In 2000 the United States enacted federal legislation to criminalize human trafficking, with harsher penalties given for those who traffic or facilitate trafficking of minors.<sup>132</sup> Approximately 2700 children have been rescued in the last ten years through investigative

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<sup>128</sup> Countries of the First World, **Nations Online: Countries of the World**,

[http://www.nationsonline.org/oneworld/first\\_world.htm](http://www.nationsonline.org/oneworld/first_world.htm).

<sup>129</sup> See Demand Study, *supra* note 86, at 2.

<sup>130</sup> STATUS AS AT: 26/09/2008 11:45:00, *supra* note 65; TIP Report, *supra* note 44, at 56.

<sup>131</sup> 100 Countries and Their Prostitution Laws, **ProCon.org**, (last updated Dec. 22, 2011, 10:26 AM), <http://prostitution.procon.org/view.resource.php?resourceID=000772>.

<sup>132</sup> 18 U.S.C. 1590 (legislative history); 18 U.S.C. 1591.

efforts.<sup>133</sup> For instance, the Federal Bureau of Investigation arrested 159 men in the summer of 2013 for coercing 109 girls into prostitution, some as young as thirteen.<sup>134</sup> Efforts are also being made to reunite families of trafficked women and children with the victims, both domestically and abroad- in 2012 alone, 209 domestic family members were reunited and two foreign victims were given assistance to return home by the DOS Return, Reintegration, and Family Reunification Program.<sup>135</sup>

Aside from a few counties in Nevada, prostitution is not legal in the United States.<sup>136</sup> Furthermore, “prostitution and related activities- including pimping and patronizing or maintaining brothels” have been identified by the United States Department of State as “encourag[ing] the growth of modern-day slavery [throughout the world] by providing a façade behind which traffickers for sexual exploitation operate.”<sup>137</sup> The idea of mass buyer ignorance, or that the majority of sex buyers reasonably believe the sexual services purchased are given voluntarily, is mildly contradicted by a study on men who buy sex that found fifty-five percent of those interviewed believed a majority of the women prostitutes had been “lured, tricked, or

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<sup>133</sup> Id.

<sup>134</sup> Michael S. Schmidt, F.B.I. Charges 159 Men With Forcing Teenage Girls Into Prostitution, **New York Times** (July 29, 2013), <http://www.nytimes.com/2013/07/30/us/fbi-charges-159-men-with-forcing-teenage-girls-into-prostitution.html>

<sup>135</sup> TIP Report, supra note 10 at 385.

<sup>136</sup> What are the Prostitution Laws in the US, **Laws.Com** <http://sex-crimes.laws.com/prostitution/laws-prostitution> (last visited Jan. 12, 2014).

<sup>137</sup> Trafficking in Persons Report, **U.S. Dep’t of State**, 2007, <http://www.state.gov/j/tip/rls/tiprpt>.

trafficked.”<sup>138</sup> Over approximately the last decade, many non-profit organizations, corporations, and government agencies in the United States have engaged in public awareness campaigns to more strongly combat the idea of buyer ignorance. These campaigns operate under the premise that active demand for sexual services in general needs to be diminished to decrease demand for sex trafficking..

## 2. Italy

### i. Commercial Sex Market in Italy

From the base-level classification of a victim of trafficking, Italy is quite different from the United States. While the majority of known and suspected victims in the United States are domestic citizens,<sup>139</sup> Italy defines victims as those who are exploited, “abducted and lured by deception in their origin countries and sold as slaves by international criminal organisations [in Italy].”<sup>140</sup>

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<sup>138</sup> Melissa Farley, Julie Bindel, & Jacqueline M. Golding, Men Who Buy Sex: Who They Buy and What They Know, **Eaves** 16 (December 2009), available at <http://i1.cmsfiles.com/eaves/2012/04/MenWhoBuySex-89396b.pdf>.

<sup>139</sup> Sam Olens, Attorney General of Georgia, Keynote Address at the Emory Public Interest Committee Annual Conference on Neighbors for Sale: Modern Day Slavery in Atlanta (Sept. 21, 2013).

<sup>140</sup> Trafficking in human beings, **Ministero Dell’Interno**, [http://www.interno.gov.it/mininterno/export/sites/default/it/temi/asilo/English\\_version/Trafficking\\_in\\_human\\_beings\\_.html](http://www.interno.gov.it/mininterno/export/sites/default/it/temi/asilo/English_version/Trafficking_in_human_beings_.html) (last visited Oct. 1, 2013).



Presumably because of its long coastline and geographical proximity, both to economically successful nations in Western Europe and impoverished northern African or Eastern European nations, Italy is a transit nation for trafficking.<sup>141</sup> Italy is also a destination country, where 40,000 people are estimated to be victims of sex trafficking.<sup>142</sup> Distinguished from the United States and some other regions, trafficking pimps and suppliers are generally not Italian because in Europe, most suppliers are not nationals of the country where they are working.<sup>143</sup> Often though, the pimps are of the same nationality as their victims.<sup>144</sup> Where data is currently lacking on whether Italy should be considered an origin country as well, that remains a possibility since most trafficking is national or regional.<sup>145</sup> Nine percent of the identified trafficking victims between 2003 and 2007 in Italy were Italian citizens, though the true figure is likely underrepresented.<sup>146</sup>

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<sup>141</sup> **Hepburn & Simon**, supra note 6 at 175.

<sup>142</sup> Id.

<sup>143</sup> U.N. Executive Directory of United Nations Office on Drugs and Crime (“UNODC”), *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, at 48 (2010) available at [http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA\\_Report\\_2010\\_low\\_res.pdf](http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf).

<sup>144</sup> Id.

<sup>145</sup> *Global Report on Trafficking in Persons*, supra note 8 at 7.

<sup>146</sup> **Hepburn & Simon**, supra note 6 at 180.

Prostitution has been legal in Italy since 1958.<sup>147</sup> The Merlin Law of 1959 outlawed brothels and red-light districts in Italy, which effectively pushed sex workers, still watched closely by their pimps, into the streets.<sup>148</sup> One manifestation of the U.S. TIP Report's requirement to curb demand is a suggestion for "zero-tolerance policies for employees, uniformed service members, and contractors paying for sex-even if legal in the country where these individuals work."<sup>149</sup> Unfortunately, this zero-tolerance idea does not appear to be a high priority to the Italian government at this point, though the recent conviction of former-prime minister Silvio Berlusconi for engaging in sexual relations with a minor does show some sign of improvement.<sup>150</sup> While several countries do not purport to follow the U.S. TIP Report standards, those countries are given a lower-level Tier ranking than Italy.

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<sup>147</sup> Nick Squires, Prostitutes, pimps and clients to be punished in Italy's tough new sex laws, **The Telegraph** (Sept. 12, 2008, 7:11 AM), <http://www.telegraph.co.uk/news/worldnews/europe/italy/2801538/Prostitutes-pimps-and-clients-to-be-punished-in-Italys-tough-new-sex-laws.html>.

<sup>148</sup> Squires, supra note 147.

<sup>149</sup> **Office to Monitor and Combat Trafficking in Persons, United States Department of State, Prevention: Fighting Sex Trafficking By Curbing Demand for Commercial Sex Acts** (June 2013).

<sup>150</sup> Lizzy Davies, Berlusconi found guilty after case cast spotlight on murky premiership, **The Guardian** (June 24, 2013) <http://www.theguardian.com/world/2013/jun/24/silvio-berlusconi-guilty-underage-prostitute>; Note also, this Author learned through a conversation with a teenager working on a major highway in Italy as a prostitute in the Spring of 2012 that her biggest customer was the chief of the local carabinieri, or Italian police force.

Rape was classified as a criminal felony, or “a crime against a person” in February of 1996.<sup>151</sup> This was the first time that rape of children less than fourteen was considered a sexual assault.<sup>152</sup> In recent years Italians have made the penalty for rape harsher, with life imprisonment as a punishment for sexual assault on a minor.<sup>153</sup>

Numerous ethnic mafias contribute to the organized crime of trafficking in Italy.<sup>154</sup> According to Italian authorities in 2008, the Chinese mafia engaged in the most sex-trafficking activities of the foreign mafias.<sup>155</sup> There are also prominent Romanian, Italian, Albanian, and Nigerian mafias engaging in the practice.<sup>156</sup>

Italy is the second largest host to Nigerians living in Europe, and it is estimated that the majority of ten thousand Nigerian females working in prostitutes in Italy are victims of sex

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<sup>151</sup> Italy Toughens Rape Law, Drops ‘Moral’ Classification, **The Associated Press**, Feb. 14, 1996.

<sup>152</sup> Id.

<sup>153</sup> Constance Johnson, Italy: Emergency Decree on Rape, Immigration, **Library of Congress** (Mar. 3, 2009), [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp0\\_1205401050\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp0_1205401050_text).

<sup>154</sup> Michael Day, Revealed: Mafia’s prime role in human-trafficking misery, **The Independent** (Oct. 24, 2013), <http://www.independent.co.uk/news/world/europe/revealed-mafias-prime-role-in-humantrafficking-misery-8902359.html>.

<sup>155</sup> U.N. Executive Directory of United Nations Office on Drugs and Crime (“UNODOC”), *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, 49, 51 (2010), [http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA\\_Report\\_2010\\_low\\_res.pdf](http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf).

<sup>156</sup> **Hepburn & Simon**, supra note 6, at 183.

trafficking.<sup>157</sup> Nigerian victims in Italy are often forced to work under the “debt bondage” scheme, where they must pay their captors an extravagant smuggling fee.<sup>158</sup> Even when immigrants leave their native country with an awareness they may become sex workers in Western nations, they do not foresee that they are only leaving one desperate situation to land in another.<sup>159</sup> A Nigerian girl who escaped from her oppressive prostitution work in Italy told a case worker that many Nigerian girls know they will probably have to resort to prostitution in their search for a better life in Italy, “[b]ut they don’t know they will never have money, that they’ll be raped, hit; that they won’t be able to send money to their families.”<sup>160</sup>

ii. Standards of Compliance, as per TIP Report

The 2013 Trafficking in Persons Report states that Italy fully complied with the minimum standards, which places Italy in Tier 1.<sup>161</sup> Italian authorities “provided comprehensive protection and assistance” to a “significant number” of trafficking victims.<sup>162</sup> The government also “continued to prosecute and convict offenders vigorously” for human trafficking.<sup>163</sup> However, Italy has not been consistently proactive in screening for trafficking among migrant

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<sup>157</sup> Id. at 176-77.

<sup>158</sup> UNODOC, supra note 155, at 46.

<sup>159</sup> See generally, Stephen Farris, Nigerian Teens Flood Italy’s Sex Market, **We News**, Jan. 21, 2002, available at <http://womensenews.org/story/prostitution-and-trafficking/020121/nigerian-teens-flood-italys-sex-market#.UmmFOGR4a4d>.

<sup>160</sup> Id.

<sup>161</sup> Trafficking in Persons Report, supra note 40 at 209.

<sup>162</sup> Id.

<sup>163</sup> Id.

workers,<sup>164</sup> a population that carries a high risk and vulnerability in sex trafficking.<sup>165</sup> Even more concerning, in 2012 the Italian government decreased anti-trafficking prevention efforts and “did not demonstrate efforts to reduce demand” for services provided by trafficking victims.<sup>166</sup>

Italy’s narrow definition of trafficking victims suggests either there are not domestic citizens being trafficked in Italy, or there are not a significant number of cases reported yet.<sup>167</sup> It is also noteworthy that their state-created definition is actually narrower than that of the Palermo Protocol, of which Italy is a ratifying party.<sup>168</sup> By failing to recognize that domestic citizens may also be victims of trafficking, Italy may be neglecting to assist a likely victim group-making full compliance with minimum standards seem questionable.

### 3. Differences in Approaches to Curb Demand

Arguably both the United States and Italy have a “culture of tolerance.” A couple of examples illustrate this culture of tolerance. Urban Dictionary, an online dictionary for street lingo and slang with definitions provided and ranked by members of the Internet community,<sup>169</sup>

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<sup>164</sup> Id.

<sup>165</sup> **Hepburn & Simon**, supra note 6 at 175-80 (noting that Italian citizens only comprised nine percent of identified trafficking victims in Italy from 2003 through 2007, indicating that ninety-one percent of identified victims were immigrants.)

<sup>166</sup> Trafficking in Persons Report, supra note 40 at 210.

<sup>167</sup> See, Trafficking in Human Beings, supra note 4; also see, Section II(C)(2).

<sup>168</sup> See Section II(A)(2) and see also Palermo Protocol, supra note 61 at Annex II, Art. 3.

<sup>169</sup> Urban Dictionary, **iTools**, <http://itools.com/tool/urban-dictionary-slang> (last visited Jan. 13, 2014).

defines “stable” as “a hoe/group of hoes a Pimp owns that he uses to make money,” and does not imply there may be a problem with females being called hoes or being owned by pimps or used for commercial gain.<sup>170</sup> Websites are easily accessible that glamorize the pimp life and provide instructions on how to become a pimp, break a woman, and earn money through prostitution.<sup>171</sup> Also, profitable, violent video games like Grand Theft Auto encourage aggression towards women and portray them primarily as prostitutes or strippers.<sup>172</sup> Pornography is prolific, and studies have proven that pornography can physically form new neural pathways in the brain, which essentially “reprogram[s] the brain structurally, neurochemically, and metabolically.”<sup>173</sup>

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<sup>170</sup> Pimp’s Stable, **Urban Dictionary** (Nov. 2, 2013)

<http://www.urbandictionary.com/define.php?term=pimp's%20stable> (last visited Nov. 20, 2013)

<sup>171</sup> How to Be A Pimp, <http://pimpfeet.com/> (last visited Nov. 20, 2013)(explaining the process to “turn” a girl, “keep [women] in check” get her to bring in “tricks,” and more); Nicky Mack the Pimp, [http://members.tripod.com/~Nicky\\_Mack\\_The\\_Pimp/](http://members.tripod.com/~Nicky_Mack_The_Pimp/) (last visited Jan. 14, 2014)(listing “how to become a pimp” with statements like “A pimp...has to use great pressure;” “Remember...pimping isn’t a game of love. Your women should fear you;” and, “a female in strange surroundings is more dependent on her pimp.”)

<sup>172</sup> Tom Hoggins, Grand Theft Auto V is Designed to Deliberately Degrade Women, **The Telegraph** (Oct. 4, 2013, 10:38 AM) <http://www.telegraph.co.uk/women/womens-life/10355275/Grand-Theft-Auto-V-is-designed-deliberately-to-degrade-women.html>.

<sup>173</sup> See Dr. Donald L. Hilton Jr., Can Pornography Use Become an Actual Brain Addiction?, **S.A. Lifeline Foundation**, <http://salifeline.org/article/pornography-brain-addiction/his-recovery>, last visited July 17, 2014).

These few examples of sexually exploitative materials may be illustrative of modern-day society's de-sensitization to the degradation of women.

By allowing prostitution to continue legally, however, Italy's government could be implicitly furthering tolerance for sexual exploitation. Since Italy leads the Europe with the largest number of human trafficking victims,<sup>174</sup> it might be time for the Italian government to reevaluate what it means to "discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking."<sup>175</sup> Due to the strong evidence linking legalized prostitution with demand for services often provided by sex trafficking victims,<sup>176</sup> it is curious how nations like Italy are still viewed as compliant to international requirements to take governmental action to reduce demand.

### C. Recommendations

"Deterrents would only work if enforced. . . .Any negative would make you reconsider. The law's not enforced now, but if any negative thing happened as a consequence it would deter me. . . .If I'd get in trouble for doing it, I wouldn't do it."<sup>177</sup>

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<sup>174</sup> Italy Leads Europe in Human Trafficking, **La Gazzetta del Mezzogiorno** (August 22, 2013)

<http://www.lagazzettadelmezzogiorno.it/english/italy-leads-europe-in-human-trafficking-no646920>.

<sup>175</sup> Palermo Protocol, supra note 61, Art. 9(5).

<sup>176</sup> See, Section III(A).

<sup>177</sup> Interview by Julie Bindel with a John, Why Men Use Prostitutes, **The Guardian** (Jan. 14, 2010), <http://www.theguardian.com/society/2010/jan/15/why-men-use-prostitutes>.

Ultimately, there should not be such leeway for states to choose how to tackle demand. Once prostitution is legalized, there is no longer any buffer between activities deemed legal and those deemed criminal. Because the oversight and regulation required to ferret legal, consenting, and voluntary prostitutes from those who are underage and/or coerced would likely be tremendous, a far simpler method would be to make prostitution illegal. Critics say (with merit to their claims) that criminalizing prostitution could backfire to further harm victims who need protection.<sup>178</sup> For this reason, and because it could be extremely difficult in some cases to accurately determine if an adult engaging in prostitution is doing so voluntarily or under coercion, a distinction should be drawn in the law to punish those who purchase sexual services. Even in States where prostitution is criminalized, purchasers often go free while prostitutes are charged—a contradictory result when it takes two to tango.

Because sex trafficking is a global issue—one where the victims and perpetrators are constantly in motion—it cannot effectively be addressed solely on a state-by-state basis.<sup>179</sup> There must be collaboration among states, and some uniformity of domestic or regional policies to comply with international law.<sup>180</sup>

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<sup>178</sup> See generally, Simowitz, supra note 119.

<sup>179</sup> U.N. Executive Directory of United Nations Office on Drugs and Crime (“UNODOC”), *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, 2010, available at [http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA\\_Report\\_2010\\_low\\_res.pdf](http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf).

<sup>180</sup> See, Special Rapporteur on Trafficking in Persons, Especially Women and Children, 2010 Rep. on the Trafficking in Persons, Especially Women and Children, U.N. Doc.

A/HRC/14/32(IV)(106),(107) (May 4, 2010) (by Joy Ngozi Ezeilo), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/132/11/PDF/G1013211.pdf?OpenElement> (suggesting



Brooklyn, New York uses a controversial reform method to curb demand called “john school.”<sup>181</sup> Attendants are a diverse group of men who were arrested for trying to buy sex, and given the option of taking this class instead of going to jail.<sup>182</sup> During the program men are educated about sex trafficking, including how likely it is the prostitute they tried to purchase sex from is actually a victim.<sup>183</sup> Some attendants see this program as “a revelation,” and see how consumer behavior and commercial sex harms women.<sup>184</sup> Alternatively, Georgia addresses its residents broadly through its “Not Buying It” campaign, launched on March 18, 2013.<sup>185</sup> The public service announcement features Georgia professional athletes saying things to encourage citizen participation like “it just takes ordinary people being informed, standing up, and making a statement” and provides a website for more information.<sup>186</sup> The video also seeks to discourage

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implementation of regional or sub-regional mechanism to encourage coordination in combatting human trafficking, mechanisms that should develop standards based on international instruments).

<sup>181</sup> Trevelyn, supra note 28, Video: ‘John School.’

<sup>182</sup> Id.

<sup>183</sup> Id.

<sup>184</sup> Id.

<sup>185</sup> Fathers Against Child Exploitation, Streetgrace, <http://streetgrace.org/FACE/> (last visited Jan. 15, 2014).

<sup>186</sup> Attorney General Sam Olens, “Georgia’s Not Buying It” PSA, **YouTube** (Mar. 18, 2013), <http://www.youtube.com/watch?v=EqBoThjeuyk> (providing “notbuyingit.org” as the page to visit for more information about commercial sexual exploitation of children in Georgia).

consumerism with lines like “[s]o when you tell me you didn’t know, we’re not buying it.”<sup>187</sup> Perhaps a wider installment of reform measures like ‘john school’ or public awareness campaigns like “Not Buying It” could directly advance the decline of sex trafficking through curbing demand from attempted buyers themselves.

Whatever measures a state may choose to address those convicted of engaging in sex trafficking, criminalizing prostitution would be a helpful method to find traffickers and buyers who provide the demand for sex trafficking. As Lord Morrow of Northern Ireland said, “criminalization of paying for sex would simplify the current law and make it easier to secure convictions that send a clear message to traffickers.”<sup>188</sup>

This approach has proven successful in Sweden.<sup>189</sup> In 1999 the Act Prohibiting the Purchase of Sexual Services was passed in Sweden and is now used to prosecute trafficking cases.<sup>190</sup> Since then, several other nations have either followed or begun discussing criminalizing the buyers: Norway (where the prison term may be raised if the act is “particularly degrading”); Iceland (where the duration of a prison term depends upon the age of the prostitute); Britain (where it is criminal to purchase from a trafficking victim, even if the buyer

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<sup>187</sup> Id.

<sup>188</sup> Human Trafficking Bill: Lord Morrow Criticises Police Comments, *supra* note 120 (see video where Lord Morrow addresses the legislators of Northern Ireland).

<sup>189</sup> Richard Poulin, The Legalization of Prostitution and Its Impact on Trafficking in Women and Children, *Sisyphé* (Feb. 6, 2005) available at <http://sisyphe.org/spip.php?article1596> (last accessed October 23, 2013).

<sup>190</sup> Helga Konrad, A Comparative Account of Legal Provisions, in **Trafficking and Women’s Rights** 123 (Christien L. van den Anker & Jeroen Doomernik eds., 2006).

had no knowledge); Slovakia (where prostitution is tolerated but seeking the purchase of sex is punishable for up to ten years); Spain (where fines are levied for purchase of sex in Barcelona and proposed in Madrid); and France (where a proposed law criminalizing purchase is being debated).<sup>191</sup> Members of the United States House of Representatives have also proposed a similar bill that would amend 18 U.S.C. 1591 to penalize individuals who solicit or patronize victims of sex trafficking.<sup>192</sup> Should this bill be adopted, it could help the United States better target demand- the plausible stepping-stone to eradicating sex trafficking.

Some critics to criminalizing prostitution believe that prostitution serves as “rape prevention,” for if prostitution did not exist, those who would purchase sex would be more likely to rape someone.<sup>193</sup> Others argue it hurts the women by preventing an avenue to report violence when the violence stemmed from an unlawful activity,<sup>194</sup> a similar argument that may be transferred to criminalizing purchasing sex since those engaging in prostitution would likely have fewer customers. This opens the door to completely different policy matters that are not within the scope of this Note, like whether the number of rapes would go up if prostitution decreased, or if there is a way to determine which individual working as a prostitute is doing so

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<sup>191</sup> Prostitution Around Europe: Which Country Has it Right?, **The Local: France’s News in English** (Nov. 29, 2013, 13:22 GMT+01:00), <http://www.thelocal.fr/20131129/prostitution-around-europe-which-country-has-it-right>.

<sup>192</sup> End Sex Trafficking Act of 2013, H.R. Con. Res. 2805, 113th Cong. (2013).

<sup>193</sup> Farley, Bindel, & Golding, supra note 138, at 13.

<sup>194</sup> Simowitz, supra note 119, at 430 (citing the first known study on prostitution in America from the 1850s by William Sanger, where Sanger found regulation of prostitution would be better than criminalization, so as to prevent the spread of sexually transmitted diseases).

voluntarily. However, it is important to broaden perspective on prostitution and coercion. While “voluntary” prostitutes may have more freedom than victims, many who fall into this profession likely do so because they feel they have no other option.

A choice must be made- legalized prostitution cannot coexist with efforts to substantially diminish demand. This is not a moralist argument- whether or not prostitution should be permitted for other reasons is completely separate, and would invoke further analysis. Rather, copious empirical and anecdotal evidence shows that the commercial sex market and prostitution fuel demand.<sup>195</sup> In our current day and age, where it is unclear who is voluntarily in the market and who is trafficked<sup>196</sup> and when there is a tremendous global epidemic of child sex trafficking,<sup>197</sup> serious steps taken to eradicate modern day slavery must address demand.

Under the current TIP Report ranking regime, there are no standards on how states must work to reduce demand. Since the language is limited to evaluating whether a government has “made serious and sustained efforts to reduce the demand for commercial sex acts...” it allows diversity in how states deal with demand.<sup>198</sup> As such, even though nations like Italy allow legalized prostitution, they may technically remain in Tier 1. However, Italy, and all other

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<sup>195</sup> See generally, Demand Study, supra note 86.

<sup>196</sup> See generally, id.; Trafficking Protocol, supra note 76.

<sup>197</sup> See 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. Doc. A/RES/54/263 (May 25, 2000).

<sup>198</sup> See, Trafficking Victims Protection Act: Minimum Standards for the Elimination of Trafficking in Persons, **U.S. Department of State**, <http://www.state.gov/j/tip/rls/tiprpt/2011/164236.htm>.

countries that have legalized prostitution, should not be placed in such high standing, regardless of how friendly their relations with the United States. The United States Government Accountability Office was correct when it expressed that tier rankings by political considerations hurt the credibility of the Trafficking in Persons Report.<sup>199</sup> Greater transparency on the methodology to tier placements of each specific nation would be helpful to doing this, especially if the United States wants to rebut claims of political favoritism (for all of Western Europe and other common trading partners are historically placed in Tier 1, or more generously than a country's narrative indicates it should be).<sup>200</sup>

The factor concerned with minimizing demand should also be weighed more heavily than others, for plentiful evidence shows this is the factor that addresses long-term eradication of sex trafficking from the ground up.<sup>201</sup> Other factors, like those involving punishment, prosecution, etc., are on a case-by-case basis slowly addressing supply. Supply is, and likely will stay, almost infinite.<sup>202</sup> To truly progress in abolishing modern day slavery, as the United States and many ratifying States of the Palermo Protocol and Trafficking Protocol claim they are striving to do, demand must not only be recognized as a root cause, but also sufficiently targeted.<sup>203</sup>

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<sup>199</sup> **U.S. Gov't Accountability Office**, supra note 54 at 37 (stating the Trafficking in Persons Report would be useful as a diplomatic tool only if it is viewed as credible by governments and others).

<sup>200</sup> See generally, Trafficking in Persons Report, supra note 40.

<sup>201</sup> See generally, Demand Study, supra note 86.

<sup>202</sup> **Abraham Flexner, Prostitution in Europe**, 61 (Patterson Smith 1969)(1914)(explaining how, when demand exists, “somehow. . . a supply springs up to meet it”).

<sup>203</sup> See generally, Section II(B).

By criminalizing the purchase of sex, States can begin to do just that. Economist and Nobel Prize winner Gary Becker's findings on organized crime provide support to the mental rationale of criminal actors.<sup>204</sup> One day when he was late for an exam he debated breaking the parking regulations to illegally park next to the building.<sup>205</sup> Becker's intellectual reasoning laid the foundation for furthering the study of economic theory in crime:

I started thinking about my chances of getting caught. As I walked over to the exam—it took me about 10 minutes—I'm realizing that if I'm thinking about my chances, the police, if they're being rational, must also be thinking about that. What's the likelihood, the chance of catching somebody? They don't want to spend every minute looking, so they do some kind of a probability analysis. And so they're kind of in a war against the offenders.<sup>206</sup>

Just as Becker analyzed his odds of getting away with the forbidden parking spot, sex offenders probably calculate their chances in conducting underground businesses undisturbed. When prostitution is legal, the difficulties of separating those who are truly consensual prostitutes from the mass quantity of victims in the sex industry is immense, and a barrier to catching traffickers or buyers of minors and/or victims. But, if prostitution is illegal and the purchase of sex criminalized, not only would commercial demand for sexual services probably decrease, the “war against the offenders” could also be more strongly fought. The price for

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<sup>204</sup> See generally, Gary S. Becker- Biographical, **NobelPrize.Org**,

[http://www.nobelprize.org/nobel\\_prizes/economic-sciences/laureates/1992/becker-bio.html](http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/1992/becker-bio.html).

<sup>205</sup> Interview by Douglas Clement with Gary Becker, 1992 Nobel Prize Winner in Economic Sciences (published June 1, 2002) (transcript available at [http://www.minneapolisfed.org/publications\\_papers/pub\\_display.cfm?id=3407](http://www.minneapolisfed.org/publications_papers/pub_display.cfm?id=3407)).

<sup>206</sup> Id.

buying would increase dramatically from a mere surface charge to a risk of jail time and/or a steep fine, which would likely deter many buyers.<sup>207</sup>

While States are fighting criminals and corruption hiding in the shadows, there are ways that can bring this sexual exploitation to light and identify victims. Criminalizing the purchase of sex and banning prostitution might do that, for countries with harsher laws against prostitution are less subject to trafficking.<sup>208</sup> This suggested measure could create some hardship for voluntary sex workers in commercial markets;<sup>209</sup> however, a choice has to be made between continuing to allow prostitution as a viable occupation and seriously trying to eradicate trafficking. With the overwhelming number of estimated victims of sexual servitude in our world today,<sup>210</sup> and the need to add “teeth” to measures like the Palermo Protocol that numerous States have voluntarily adopted,<sup>211</sup> the move to criminalize the purchase of sex is not as radical as it may appear on first glance.

Furthermore, it is possible the illegal sex industry crushes the legal sex market. Generally the gateway of a legal market opens the door for illegal activity- for instance, a researcher of legal brothels in Nevada (twenty in total at the time of the study) found that nine times as many

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<sup>207</sup> See Bindel, supra note

<sup>208</sup> Jacobsson & Kotsadam, supra note 99, at 11.

<sup>209</sup> See generally, Simowitz, supra note 119.

<sup>210</sup> See **U.S. Dep’t of State**, supra note 10; see also **Global Report on Trafficking in Persons** at 6, supra note 18 (using the conservative estimate of twenty-seven million enslaved, seventy-nine percent of which are estimated to be victims of sex trafficking, to surmise that twenty-one million, three hundred and thirty thousand individuals are possibly modern day sex slaves).

<sup>211</sup> STATUS AS AT: 11/01/2014 05:02:45 EDT, supra note 65.

illegal brothels sprung up in surrounding counties.<sup>212</sup> Increases in the illegal sector have also been noted with the legality of brothels and prostitution in Melbourne, Australia and Amsterdam.<sup>213</sup> This hidden industry is “a tragedy marked by forced sexual servitude, demeaning human exploitation, and unspeakable brokenness. Each year, countless numbers of girls are kidnapped [and/or] forced into sexual slavery. They lose not only their basic human dignity; many will lose their lives.”<sup>214</sup>

#### IV. Conclusion

Sex trafficking is a heinous crime against fundamental human rights, and it is a complex multi-faceted issue. Though there are several aspects to this problem, states and non-governmental organizations alike agree that demand must be reduced to make true progress in eradicating this form of modern day slavery. It is inconsistent for countries allegedly in compliance with the minimum standards of the TIP Report, the Trafficking Protocol, and the Palermo Protocol to have legal prostitution because the chances of a sex trafficking victim being used to work as a prostitute are so high.

With that, a new evaluation for Tier Placement of the TIP Report is warranted to show we cannot both curb demand and condone implicit encouragement of the commercial sex industry. As long as a minimum standard of compliance is to reduce demand (a minimum standard that should really be weighed more heavily than other requirements since it targets the

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<sup>212</sup> Julie Bindel, ‘It’s like you sign a contract to be raped’, **The Guardian** (Sept. 7, 2007, 7:12 AM), <http://www.theguardian.com/world/2007/sep/07/usa.gender>

<sup>213</sup> Revealed: the truth about brothels, *supra* note 33.

<sup>214</sup> 153 **Cong. Rec. H** 762 (daily ed. Jan. 19, 2007) (statement of Rep. Joe Pitts).



root of the sex trafficking industry), the United States Department of State should respond appropriately in determining Tier Placements. Italy, and any other state that permits prostitution, should not receive a Tier One status.

If nations truly want to begin fighting sex trafficking effectively, they cannot ignore prostitution any longer.<sup>215</sup>

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<sup>215</sup> See generally, Laila Mickelwait, Manager of Policy and Public Affairs, Combatting Sex Trafficking: Reducing Demand for Prostituted Persons, **Exodus Cry** (Jan. 2013).