

Counter Human Trafficking Legislation: Human Rights Approach v. Criminological Approach

Executive Summary

man trafficking is the third fastest growing international crime in the world. Actual number of individuals that fall prey for traffickers every day remain largely unknown given the organized complex nature of the crime. The definitions contained in international and regional legal instruments on human trafficking vary to a great extent adding complexity to the issue of human trafficking, conceptualized as modern day slavery. The approaches taken by different jurisdictions to combat the crime of human trafficking mostly vary between the criminal and civil law approaches with an emerging human rights based approach. The type of approach adopted by a jurisdiction to combat human trafficking have a tremendous impact on both victims and traffickers. The selected jurisdictions of the U.S., international law and Sri Lankan law exemplify the extent of impact of anti-trafficking legislation on stakeholders involved in the crime. The U.S. adopts a human rights based approach which provides extensive protection for victims. It also recognizes the rights of a victim to pursue a private civil action against the traffickers for compensation. The Sri Lankan Penal Code to the contrary adopts a complete criminal law based approach where rights of the victims are neglected. The Palermo Protocol that contains a comprehensive definition on human trafficking in international law on the other hand, stresses for a rights based approach on anti-human trafficking. Based on the analysis of legislative provisions of counter trafficking in selected jurisdictions, it is argued that the most suitable approach for counter human trafficking is the human rights based approach, where various rights of victims are given due protection during the process of prosecution and beyond. However, the author's personal experience of work in the field of anti-human trafficking and the careful analysis of the actual implementation of the law, manifest that states have a long way towards securing protection of rights in real lives of victims

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Chapter 1: Introduction

*"They would not call it slavery, but some other name. Slavery has been fruitful in giving herself 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."*¹

Human trafficking conceptualized as the modern day form of slavery is the shameful industry where human beings are brought, exploited and sold and resold by fellow human beings. Recorded as the third fastest growing transnational organized crime in the world second only to drug trafficking and arms trafficking, human trafficking is a billion dollar business that takes place in almost all states in the world.² The nature and the danger of human trafficking is such that anybody could be a victim at any given time without even knowing to be victimized. Fighting human trafficking has been one of the major concerns of states in the recent past with the sudden increase of reported trafficking incidents where states have taken various approaches to anti-human trafficking legislation.

It is estimated that 80% of the trafficked persons are women and children.³ At any given moment 2.4 million people are subject to human trafficking.⁴ According to the statistics of the UNODC based on data gathered from 155 countries, the most common aim of human trafficking (79%) is

¹Frederick Douglas(1818 - 1895) Former Slave, Abolitionist Leader, Speech to the American Anti-Slavery Society, 1865, available at

http://www.harperhighschool.org/ourpages/auto/2010/2/16/43984325/doc_ch12_5.pdf retrieved 16th July 2013

²P. Arlacchi, (2000) Opening Statement to the International Seminar on Trafficking in Human Beings, Brazil, UNODC <http://www.unodc.org/unodc/en/about-unodc/speeches/speech_2000-11-28_1.html> (Retrieved 15th November 2012)

³ US State Department, Trafficking in Persons Report 2005, <<http://www.state.gov/j/tip/rls/tiprpt/2005/46606.htm>>, (retrieved 15th November 2012)

⁴ Y. Fedotov, On the Occasion of the Interactive Dialogue on Human Trafficking: Partnership and Innovation to End Violence Against Women & Girls, Special General Assembly meeting, April 3rd 2012, <https://www.un.org/en/ga/president/66/statements/trafficking030412.shtml>> (retrieved 4th December 2012)

sexual exploitation.⁵ The ILO estimates that there are at least 12.3 million adults and children in forced labor, bonded labor, and commercial sexual servitude at any given time.⁶ It is estimated that 27 million people are held in slavery worldwide, meaning there are more slaves in the world than were taken from Africa during 300 years of the trans-Atlantic slave trade.⁷ According to the statistics of the US State Department approximately 800,000 to 900,000 victims are annually trafficked across international borders worldwide.⁸ As per a study conducted by the ILO in 2002, the number of children trafficked each year for forced labor and sexual slavery has been quoted to be as alarmingly high as 1.2 million.⁹ The Report “*A Global Report on Trafficking in Persons*” by the UNODC in 2009 has given the percentage break up of annually trafficked males, females and children as follows – men 12%, women 66% and children 22%.¹⁰ It should be noted at the outset that the estimates related to human trafficking are by no means conclusive. The hidden and transnational nature of the crime makes it extremely difficult to arrive at final calculations as to status of victims and their numbers and profits earned. Despite the difficulty in obtaining firsthand experience in human trafficking and to discover victims, there is widespread

⁵ United Nations Office on Drugs and Crime (UNODC), *Global Report on Trafficking in Persons* 2005. <<http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>>, (retrieved 15 November 2012)

⁶ International Labour Organization (ILO), *A Global Alliance against Forced Labour*, 2005, <www.ilo.org/wcmsp5/groups/public/@ed.../wcms_081882.pdf>, (retrieved November 17 2012)

⁷ K Bales, Z Trodd and AK Williamson, *Modern Slavery: The Secret World of 27 Million People*. Oneworld Publications, Oxford, 2009

⁸ US State Department, *Trafficking in Persons Report 2007*, <<http://www.state.gov/j/tip/rls/tiprpt/2007/>>, (retrieved 16th November 2012)

⁹ International Labour Organization (ILO), *A Future Without Child Labour*, Report of the Director-General, International Labour Conference Geneva, 90th Session, Report I(B), 2002 http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_publ_922112_4169_en.pdf, (retrieved 10th November 2012)

¹⁰ UNODC, 2005, p. 11

consensus among the international community of the seriousness of the offence and the urgent need to respond to the issue.¹¹

1.1. Objectives of the study

Human trafficking is an issue that has been worsening over the years adding new dimensions and new categories of victims. Most of the states that have adopted some sort of legal measure have focused more on the crime control perspective of the issue rather than an expanded human rights based approach where rights of the victims are protected. Most of the legislation in countries that are in force were adopted after the year 2000, when the UN Trafficking Protocol was introduced as the first international instrument on human trafficking. The Protocol contributed largely for states to introduce anti trafficking legislation as a distinct crime in their criminal codes. This thesis will explore into the most suitable approach to legislation on combating human trafficking based on the comparison of relevant legislation of Sri Lanka, the U.S. and international instruments on anti trafficking to achieve the following objectives:

- To examine different approaches in selected jurisdictions to address the issue of human trafficking;
- To analyze the consequences of different approaches to human trafficking legislation
- To discuss what are the main issues and needs that are to be addressed by counter trafficking legislation;

¹¹ International Organization for Migration (IOM), (2005) Data and Research on Human Trafficking: A Global Survey, Geneva, International Migration Vol. 43 (1/2), p. 07, http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/data_res_human.pdf, Retrieved 15th November 2012

- To identify the most suitable legal approach to combat human trafficking.

I was motivated to engage in this research due to personal experiences I have encountered with victims of human trafficking in Sri Lanka and the lack of attention paid by counter trafficking measures adopted in Sri Lanka to address issues concerning the victims of human trafficking, particularly the safety and protection of victims pending litigation. I worked at the Counter Human Trafficking Unit at IOM Sri Lanka, seconded to the Ministry of Justice for several years and during that period I worked closely to both the governmental and non-governmental sector stakeholders as well as different types of victims of human trafficking.

Human trafficking is a crime of distinct nature that involves a number of other crimes such as rape, abduction, grievous bodily injury, torture, document forgery etc, and as such require legislation with a unique and exclusive approach that caters to all aspects of the crime, not just crime control. However, it is important to note that mere legislative response is not sufficient to combat human trafficking. Awareness among the ordinary people in the grass root level of dangers of human trafficking, specially on illegal migration, fraudulent recruitment agencies and various other possibilities of falling prey to human trafficking is equally important as much as implementation of stringent legislation.

I am also motivated by the fact that there are only a limited number of studies conducted in the context of human trafficking to ascertain the best approach to legislation. Most of the studies have only on causes and consequences of human trafficking and are limited often to the situation

itself.¹² This thesis is expected to explore which legislative approach suits best to serve the interests of the victim between competing approaches of human rights and crime control.

Another factor that motivated me to conduct this study is the prevailing inconsistency and gap between the rate of conviction of traffickers and the spiraling incidents of human trafficking cases reported. Existence of strong anti-trafficking laws in the country with severe penalties and coordinated mechanisms *per se* do not contribute to successful prosecution on traffickers and their conviction. Therefore this study is also motivated by the need to understand the gap between various counter trafficking legislation in place and lack of protection for victims along with virtually 1% conviction rate of traffickers. It is also noted that in certain incidents of trafficking the victims put themselves in vulnerable situations due to various reasons such as poverty, ignorance, debts etc. which make them overlook the dangers of trafficking.

1.2. Methodology

This research is an exploratory study which attempts to investigate the following research problem: What is the most suitable approach to anti-human trafficking legislation, Criminal law based approach or Human Rights based approach?

Research questions that would be addressed in this research are:

- What are the objectives of a criminal law based anti trafficking legislation?
- What human rights are abused in the process of human trafficking?
- What purposes do the human rights based anti-trafficking legislation would achieve?

¹² C. Watawala (2007) Human Trafficking as a Threat to Human Security: Reflection on the Context of Trafficking in Sri Lankan Women to Middle-East, in Mainstreaming Human Security: The Asian Contribution, < <http://humansecurityconf.polsci.chula.ac.th/Documents/Presentations/Chandanie.pdf> >, (Retrieved 20th November 2012)

- What are the approaches taken by the selected jurisdictions to combat trafficking?
- What types of assistance are provided by the legislation to victims?
- What is the approach in international law to address human trafficking?

Being a research that encapsulates the effectiveness of legislations, this thesis is based on qualitative research. Qualitative research often attempts to answer a question rather than to test a hypothesis. Instead of devising “test conditions,” qualitative researchers examine ongoing social processes, study records or artifacts that shape or are produced by these processes, and talk to people who are engaged in or affected by the processes being studied.¹³ As the research question in this thesis is a “real world” issue, it cannot be analyzed through rigid quantitative methods. Rather, a more qualitative approach will have to be adopted to determine the effectiveness of a legal system with quantitative data where possible. In this research I intend to use traditional legal qualitative methods where opinions of people are sought and legislations and cases are analyzed to determine the most suitable approach to counter human trafficking legislation.

Firstly, the research will discuss the background to the study, the objectives and methodology of conducting the study.

Secondly, the study will examine various legal definitions adopted to human trafficking in different anti-trafficking legislations. The scope of the definition of trafficking still remains uncertain as various domestic and regional instruments have adopted different definitions.

Thirdly, the research will look into the approach to anti human trafficking legislation of selected jurisdictions namely, the U.S., Sri Lanka and international conventions and protocols on counter

¹³ S.B. Coutin, “Qualitative Research In Law And Social Sciences, Department of Criminology, Law And Society, University of California, Irvine., < <http://www.wjh.harvard.edu/nsfqual/Coutin%20Paper.pdf>>, (Retrieved 25th November 2012)

human trafficking. The justification for selection of these jurisdictions will be explained in the proceeding subsection.

Fourthly, the study will engage in a critical analysis of legislation explored in the previous chapter to identify failures and criticism against various approaches adopted in selected jurisdictions.

1.2.1. Jurisdictions

The jurisdictions that are used for a comparative analysis are the U.S., Sri Lankan and International legal instruments on human trafficking.

The counter human trafficking legislations adopted in the U.S. are one of the most progressive in the world compared to many other anti human trafficking laws adopted by different states.¹⁴ Series of legislation adopted since the year 2000 namely, The Victims of Trafficking and Violence Protection Act of 2000, the Trafficking Victims Protection Reauthorization Act of 2003, the Trafficking Victims Protection Reauthorization Act of 2005, and the Trafficking Victims Protection Reauthorization Act of 2008 of the U.S. provide a rich legislation source for comparison. In the Third Chapter on comparative analysis of the selected jurisdictions I will discuss in more detail the victim centered approach of the U.S. to human trafficking and the more proactive law enforcement response to the issue by the U.S. government. Very strong anti human trafficking laws adopted by the U.S. is one of the main reasons for the selection of the U.S. as one jurisdiction for purpose of comparative analysis of this research.

¹⁴ Inadequacy of such anti human trafficking laws of different countries will be discussed in brief in the next Chapter on the definition on human trafficking to point out that most of the legislation to address the issue of human trafficking are not progressive and ineffective.

Another important reason for the preference for the U.S. as a jurisdiction for the research is the influence and control that the U.S. has as a country over the world as the world super power. I intend to argue in this research in the Fourth Chapter about the politics involved in the organized crime of human trafficking and the influence the U.S. exercise over the control of human trafficking in the world, especially through the annual Trafficking in Persons Report (TIP Report)¹⁵ that compel governments to respond by ranking countries on their anti human trafficking measures. The ranking of states is tied to U.S. foreign aid to those states subject to ranking adding a political dimension to the issue. These interesting reasons make it important to explore the U.S. trafficking laws for a comparative analysis in the research.

The other jurisdiction that will be addressed in this thesis is Sri Lanka, which is known as a source and a destination country for human trafficking.¹⁶ The main reason for the selection of Sri Lanka as a jurisdiction for this research is my previous working experience in Sri Lanka extensively on human trafficking. Working as the convener for the National Anti Human Trafficking Task Force for two years (2011 and 2012) I had access to all the stakeholders both in the governmental and non-governmental sector, and the knowledge on practical issues faced by them as a developing nation to fight the issue of human trafficking. This thesis in its comparative analysis takes the advantage of my personal experience as a project officer of the Counter Trafficking unit (CT unit) at IOM Sri Lanka seconded to the Ministry of Justice. During the period I was working with the IOM I had the opportunity to speak to victims of human trafficking, both local and foreign, and also associated senior law enforcement officials involved

¹⁵ TIP Report is the diplomatic tool of the U.S. State Department to engage in states in its global anti-trafficking campaign. In the TIP Report, the Department of State places each country onto one of three tiers based on the extent of their governments' efforts to comply with the "minimum standards for the elimination of trafficking" based on Section 108 of the TVPA. For details see: <http://www.state.gov/j/tip/rls/tiprpt/>; (Retrieved 8th November, 2013)

¹⁶ See TIP Report (2012) on Sri Lanka for more information available at http://photos.state.gov/libraries/sri-lanka/5/pdfs/Trafficking_in_Persons_Report_2012.pdf, (Retrieved 17th July 2013)

in capturing and prosecuting traffickers. Even though the legislation in Sri Lanka is not strong enough to address multiple dimensions of the complex crime of human trafficking comparison of the legislation of the U.S., with the practical issues and aspects in actual implementation of anti trafficking laws drawn from the personal experience in Sri Lanka will balance the comparative analysis discussed in Chapter 4.

The third jurisdiction of the research is the sphere of international conventions and protocols related to human trafficking. This is expected to add a broader dimension to the comparative analysis of the U.S. and Sri Lankan legislation to understand what is the best possible approach to anti human trafficking legislation. Special attention will be paid to the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Palermo Protocol”)¹⁷ to understand the approach taken by the international law to fight human trafficking.

1.2.2. Data Collection

For the purpose of collecting data I intend to use the method of personal interviews. The persons were selected to the interviews on a non probability sample basis so that my prior knowledge on the subject is used to decide persons from which professional backgrounds will be interviewed. A core characteristic of non-probability sampling techniques is that samples are selected based

¹⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000, <http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf>, (Retrieved 30th November, 2012)

on the subjective judgment of the researcher, rather than random selection (i.e. probabilistic methods), which is the cornerstone of probability sampling techniques.¹⁸

Purposeful sampling selects participants for a specific reason and not randomly. As the research explores the best approach to anti trafficking legislation, a selected sample of law enforcement officials in Sri Lanka is interviewed to obtain their view points on the research problem. As such the non-probability *judgment sample* is used, i.e. the researcher uses his/her judgment to select potential interviewers who are good prospects for accurate information.

I interviewed six victims of human trafficking. A purposive sample of victims is obtained by contacts between Counter Trafficking Unit of the IOM, Sri Lanka. Two of them are female. All of them are adult victims of trafficking. Victims of human trafficking hardly come to the limelight, but they are the only people who know the depth of the issue and have seen the darkest underbelly of this degrading crime of humankind. Three of them are foreign victims, two Ukrainian and one Argentinian.

The key informants of the research consist of three categories of persons, namely law enforcement officers of the government and members of civil society organizations working in the field of anti- trafficking and actual victims of human trafficking.

Law enforcement officers of the government consists of offices from

- Criminal Investigation Department (CID) of Sri Lanka;

¹⁸ J. Castillo (2009). Non-probability Sampling, Experiment Resources , 2009, Available at: <http://www.experiment-resources.com/non-probability-sampling.html>; (Retrieved 11th July 2013)

- Criminal Records Division (CRD) of Sri Lanka;
- Attorney General's Department (AG's Department of Sri Lanka);
- Police Women and Children's Bureau of Sri Lanka;
- National Child Protection Authority (NCPA) of Sri Lanka;
- Ministry of Justice of Sri Lanka;

Anti-trafficking activists working in the field from IOM and ILO in Sri Lanka will be also interviewed to understand the practical impact of existing trafficking laws in Sri Lanka. Previous working experience as a project officer of IOM Sri Lanka seconded to the Ministry of Justice for two and half years will be used to obtain contacts to conduct these interviews.

1.2.3. Limitations of the Research

Difficulty of gathering data is a common limitation in research related to human trafficking. There are many reasons why data on trafficking is so poor.¹⁹ Trafficking is an underground activity, and vast majority of the cases go unreported because victims are reluctant to complain to relevant authorities, or are afraid to do so driven by the fear they have for their traffickers. Most of the persons who are subject to trafficking are members of a so called hidden population consisting of prostitutes, illegal migrants, survivors of human trafficking and may not be willing to cooperate for the purpose of the research. Another question that limits research on victims of human trafficking is the difficulty to identify victims. The likelihood of being identified, arrested, and prosecuted for human trafficking is extremely low, as because on one hand

¹⁹ G. Tyldum, (2010) Limitations in Research on Human Trafficking, *International Migration*, vol. 48 (5), 1–13

trafficking is not considered a high priority by law enforcement due to limited understanding of the crime, and on the other hand the definition of human trafficking is relatively new compared to other crimes, and requires officers to handle cases differently. Therefore any estimate of the magnitude of human trafficking should be construed with considerable caution and the limitations of exact accuracy of such estimations should be well noted. The hidden and complex nature of this crime contributes mainly to this uncertainty and skepticism about accuracy of global estimates. In this research data on human trafficking will be analyzed by using the limited number of research done on the subject, which will certainly reflect the tip of the iceberg of actual incidents of cases of human trafficking that take place in and across the borders of the country.²⁰

In this thesis I will be focusing on legal instruments enacted in selected jurisdictions and therefore will not examine anti-trafficking measures adopted by other institutions that are not provided by statutes or by such programmes implemented by non-governmental organizations in their own initiative. The research will be limited to approaches adopted by legal instruments to counter human trafficking.

The definition of human trafficking itself is a controversial phenomenon. Various legal instruments in different countries adopt entirely different definitions for human trafficking. Some are broad definitions, while others are limited to forced prostitution and trafficking of women and children only. The next Chapter will explore various legal definitions to human

²⁰ Ibid.

trafficking to understand complexities and uncertainties in relation to the definition of human trafficking.

Chapter 2: Definition of Human Trafficking and International Legal Instruments on Human Trafficking

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Palermo Protocol”)²¹ defines Trafficking in Persons as “*the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs*”. This internationally agreed definition to the offence of human trafficking applies to human trafficking committed across international borders as well as internally within a country. It is important to note that this article defines ‘exploitation’ to specify what type of activities are considered illegal to fall into the definition of human trafficking. The description of means of coercion in this article is left broad purposely to include a wide range of illicit conduct.²²

²¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000, <http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf>, (Retrieved 30th November, 2012)

²² Reichel, P. and Albanese J (Eds), (2013) Handbook of Transnational Crime and Justice (Second Edition), Sage Publication

The Palermo Convention was adopted in the year 2000 in Italy and was entered into force in December 2003. This Convention was regarded as an important step towards eradicating human trafficking from the face of earth and was welcome by many governments in the world. The transnational nature of the crime of human trafficking which spread through virtually all the countries in the world raised renewed attention of world leaders to understand the necessity to provide a global collaborative response to the issue.

The United Nations Office on Drugs and Crime (UNODC) defines three basic elements of trafficking: (1) the process; (2) the means; and (3) the purpose. UNODC explains that to complete the crime of trafficking there should be a combination of all the three constituent elements aforesaid and not the said components individually, though in some cases these individual elements will constitute criminal offences independently. The individual elements, such as sexual exploitation, forced labor, slavery-like practice, are not defined in the Protocol of United Nations Convention against Transnational Organized Crime, and signatory states are obligated to further define these terms under their domestic legislation.²³

²³ UNODC, The notion of serious crime in the United Nations Convention against Transnational Organized Crime Note by the Secretariat, Conference of the Parties to the United Nations Convention against Transnational Organized Crime Sixth session, September 2012, < www.unodc.org/.../organized_crime/.../CTOC_COP_2012_CRP4.pdf>, (Retrieved on 18th November 2012)

2.1. The Issue of “Definition”

It is important to note at the very initial stage of this study that ‘human trafficking’ itself is a highly complex phenomenon. Human trafficking is an organized crime and it may include commission of several individual offences which together constitute the elements for the offence of human trafficking such as abduction, cheating, document forgery, rape, physical harm etc. Trafficking includes all the elements of the crime of forcible rape when it involves the involuntary participation of another person in sex acts by means of fraud, force, or coercion.

The US Victims of Trafficking and Violence Protection Act of 2000²⁴ in section 102 (b) (9) states that “(...) *trafficking also involves violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion.*” This has made both law enforcement officials and the general public difficult to differentiate between human trafficking and other offences such as smuggling, cheating, rape, illegal migration, procreation, forgery, kidnapping etc. being sometimes elements of human trafficking.

In 1994, trafficking was defined very differently from its definition as it stands today and it makes no specific reference to exploitation.²⁵ This definition is similar to the current international definition of smuggling in human beings.²⁶ By the end of the 1990s, a wider definition was adopted which is stated in the Palermo Protocol, supplementing the UN

²⁴U.S. Victims of Trafficking and Violence Protection Act of 2000, available at<<http://www.state.gov/j/tip/laws/61124.htm>>; (Retrieved on 24th February 2013)

²⁵ IOM (2005), op. cit., p. 02

²⁶According to the 2000 UN Convention against Transnational Organized Crime, the ..smuggling of migrants shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

Convention against Transnational Organized Crime. This definition is considered to reflect international consensus on the definition of human trafficking. However researchers disagree on varying levels to adopt this definition. Some researchers argue that there is always a blurred demarcation between human smuggling and human trafficking, while others point out that all sex workers are victims of human trafficking.²⁷ The definition of human trafficking is further complicated by the difficulty for victims to identify themselves as victims.

There are three main basic elements reflected in most of the definitions provided in the offence of human trafficking (ILO 2009):

- The movement/transportation of a person from one place to another;
- The means/techniques used to bring about this condition of transportation (e.g. deception, fraud, cheating, coercion, abduction);
- For the purpose of exploitation (e.g. forced labour, prostitution, removal of organs, slavery like practices).

The above mentioned elements of human trafficking do not focus specifically on the actual outcome of the incident of human trafficking. They rather focus only up to the point where the act of trafficking takes place but not beyond that to include the outcome of trafficking. Human trafficking is predominantly known as a modern day form of slavery. Yet, the slavery like condition in which the victim is finally placed with is not dealt with in anti-trafficking

²⁷L. Kelly, 'You Can Find Anything you Want': A Critical Reflection on Research on Trafficking in Persons within and into Europe," in *Data and Research on Human Trafficking: A Global Survey*, International Organization for Migration, Vienna , 2005, pp. 237–38;
www.iom.int/documents/publication/en/Data_and_Research_on_Human_Trafficking.pdf, (Retrieved 25th November 2012)

definitions. It is only a portion of the issue is identified in the definitions and the real issue, the outcome of the use of ‘transportation’ and ‘recruitment’ is absent. This is analogous to a situation where attention is on all other incidents that led up to a rape, without including rape itself as part of the issue.²⁸

The ILO Report “*Cost of Coercion*”²⁹ points out that the definition provided in the Palermo Protocol is complex, and calling for uncertainty in several aspects. One such controversy is with regard to the element of ‘movement’. While the definition in the past required ‘movement/transportation’ of the victim to another place is considered to be an essential element, at present, with the increase in the crime rate of trafficking in its various forms, ‘transportation/movement’ it is not considered to be an essential constituent requirement of human trafficking. As such, for example where an individual is sold for prostitution by a trafficker in the same house she is living it could still be considered as an offence of human trafficking despite the element of movement is lacking.

One of the main aspects of the definition of human trafficking in the Protocol is the element of ‘exploitation’ which is defined to include forced labour, slavery or similar practices, servitude and sexual exploitation. The notion of exploitation of labour included in this definition therefore

²⁸ International Organization for Migration (IOM), Revisiting the Human Trafficking Paradigm, The Bangladesh Experience, 2004, < www.iom.org.bd/publications/16.pdf >; (Retrieved 28th November 2012)

²⁹ International Organization for Migration (IOM) (2009), The Cost of Coercion, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Geneva p. 07 <http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_106230.pdf>; (Retrieved 28th November 2012)

allows a link to be established between the Protocol and the ILO Forced Labour Convention, 1930.³⁰

The expression “human trafficking” itself caused a lot of confusion among the general public as it is associated with different meanings. For example in Sri Lanka the Penal Code Amendment Act No. 22 of 1995 provides a very narrow definition for “human trafficking” which includes only buying, selling or bartering of persons or illegal adoption of children. The new Penal Code Amendment Act No. 16 of 2006 repeals Section 360 C and replaces it with a much wider definition of human trafficking. Yet for many human trafficking only means selling of persons for sexual exploitation and identifies it as the offence of procuration under Section 360 A of the Penal Code. For the offence of ‘procuration’ the punishment is between two to ten years sentence whereas a conviction on human trafficking could carry a sentence between two to twenty years. Therefore, failure to identify the offence of human trafficking and categorizing it as procuration would result in convicting offenders for a lesser offence.

Another issue related to the definition of human trafficking is the fact that it is more often than not is associated only with women and children, not with men. When a woman or a child goes overseas and faces exploitative circumstances that is identified as human trafficking but if the same situation is faced by a man that is identified as mere migration issue. The SAARC Trafficking Convention signed by the South Asian Regional Association for Regional

³⁰ Ibid.

Cooperation (hereinafter SAARC convention)³¹ limits its purview exclusively to women and children among other shortcomings and fails to acknowledge differing capacities and needs of adult women and children.

The definition provided in the **Bangladesh**³² *Women and Children Repression Prevention Act, 2000*³³ limits trafficking which is done only for the purpose of forced prostitution and sexual exploitation and therefore fails to identify various other multiple forms of human trafficking. Section 05 of the Act as its very title denotes focuses exclusively on trafficking of women.

“5. Punishment for trafficking of woman:

i. Whoever fetches from abroad or dispatches or sends abroad for prostitution or, to engage a woman in illicit immoral act or sale or buy or, for the purpose of torturing her in rent or otherwise or, keeps a woman in his possession, custody or security for such purpose, he shall be punished with death or transportation for life or with rigorous imprisonment of either description which may extend to twenty years but not less than ten years and also with fine.”

The afore-cited Section 05 criminalizes trafficking for prostitution or other unlawful and immoral purposes. While the phrase “immoral purposes” could be defined to give a broad

³¹ SAARC Convention on Preventing And Combating Trafficking in Women and Children for Prostitution (2002), available at <http://imadr.org/wordpress/wp-content/uploads/2013/01/T4-1.-SAARC-Convenion.pdf>; (Retrieved 25th July 2013)

³² “Bangladesh is a source country for men, women, and children subjected to forced labor and sex trafficking. Bangladeshi men and women migrate willingly to Saudi Arabia, Bahrain, Kuwait, the United Arab Emirates (UAE), Qatar, the Maldives, Iraq, Iran, Lebanon, Malaysia, Singapore, Europe, and other countries for work, often legally via some of the more than 1,000 recruiting agencies belonging to the Bangladesh Association of International Recruiting Agencies (BAIRA).” See TIP Report 2012, Bangladesh, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192366.htm>; (Retrieved 25th July 2013)

³³ Women and Children Repression Prevention Act, 2000, available at <http://www.hsph.harvard.edu/population/trafficking/bangladesh.traf.00.pdf>; (Retrieved 21 January 2013)

meaning to the Act, the Act fails to provide a definition to that. The definition under the Prevention and Control of Human Trafficking Ordinance 2002³⁴ (Section 2(h)) in Pakistan³⁵ falls short of 2000 Protocol as it fails to recognize transportation as an important element of the crime. This definition also identifies only external trafficking and do not recognize internal human trafficking as an offence under the Ordinance.

*“human trafficking” means obtaining, securing, selling, purchasing, recruiting, detaining, harbouring or receiving a person, notwithstanding his implicit or explicit consent, by the use of coercion, kidnapping, abduction, or by giving or receiving any payment or benefit, or sharing or receiving a share for such person’s subsequent transportation out of or into Pakistan by any means whatsoever for any of the purposes mentioned in section 3.”*³⁶

Thailand is a major center for human trafficking.³⁷ However, the Thailand Measures in Prevention and Suppression of Trafficking in Women and Children Act of 1997³⁸ limits its scope for trafficking for sexual exploitation (section 5):

³⁴ Prevention and Control of Human Trafficking Ordinance 2002, available at <http://www.fia.gov.pk/pchto2002.htm>; (Retrieved 31st January 2013)

³⁵ Pakistan is a source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking. NGOs, international organizations, and the media describe an increase in trafficking during the past year, due to flooding and the country’s deteriorating security situation. TIP Report 2012, available at <http://www.state.gov/documents/organization/192597.pdf>; (Retrieved 25th July 2013)

³⁶ Ibid., section 2(h)

³⁷ “Thailand is a source, destination, and transit country for men, women, and children subjected to forced labor and sex trafficking.” TIP Report 2012, available at <http://www.state.gov/documents/organization/192598.pdf>; (Retrieved 8th August 2013)

³⁸ The Thailand Measures in Prevention and Suppression of Trafficking in Women and Children Act of 1997, available at http://www.wcwonline.org/pdf/lawcompilation/Thailand_PreventionAndSuppressionOfTraffickingInWomenAndChildren.pdf; (Retrieved 31st January 2013)

*“In committing an offence concerning the trafficking in women and children, buying, selling, vending, bringing from or sending to, receiving, detaining or confining any woman or child, or arranging for any women or child to act or receive any act, for sexual gratification of another person, for an indecent sexual purpose, or for gaining any illegal benefit for his/herself or another person, with or without the consent of the woman or child, which is an offence under the Penal Code, the law on prostitution prevention and suppression, the law on safety and welfare of children and youths, or this Act, the official is authorized to enforce power under this Act.”*³⁹

India is another country that has adopted an inadequate definition to human trafficking.⁴⁰

India’s Immoral Traffic Prevention Act 1956 (Amended in 2006) that addresses the offence of trafficking fails to differentiate between prostitution and human trafficking, and there had been incidents where trafficked women themselves had been penalized under this Act.⁴¹ The Amended Act defines human trafficking as:

5A. Whoever recruits, transports, transfers, harbours, or receives a person for the purpose of prostitution by means of,—

(a) threat or use of force or coercion, abduction, fraud, deception; or

(b) abuse of power or a position of vulnerability; or

³⁹ Ibid., section 05

⁴⁰ “India is a source, destination, and transit country for men, women, and children subjected to forced labor and sex trafficking. The forced labor of millions of its citizens constitutes India’s largest trafficking problem...”, TIP Report 2012, available at <http://www.state.gov/documents/organization/192595.pdf>; (Retrieved on 8th August 2013)

⁴¹ United Nations Office on Drugs and Crimes (UNODC), Legal and Policy Review - Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka, p. 27, http://www.unodc.org/documents/humantrafficking/2011/Responses_to_Human_Trafficking_in_Bangladesh_India_Nepal_and_Sri_Lanka.pdf; (Retrieved 29th November 2012)

(c) giving or receiving of payments or benefits to achieve the consent of such person having control over another person, commits the offence of trafficking in persons.”⁴²

This definition does not recognize forced labour and other slave-like practices and removal of organs as part of the definition of human trafficking.

Close relationship between migration and human trafficking is also a source of confusion. If a migration process has a satisfactory ending, it is described as a success story of migration, if it goes wrong, it is trafficking. But this is not a universal truth about all end results of migration process, even though in many cases migration could be a close element of human trafficking. The demarcation between human trafficking and human smuggling is often distorted and used interchangeably. The definition of human trafficking is even more complex by the difficulty for victims to identify themselves as victims. However for the purpose of the thesis the definition provided in the UN Palermo Protocol will be considered to provide a baseline definition.

The next Chapter explores two main approaches to combat human trafficking based on Human Rights and Criminal Law in the light of three selected jurisdictions, the U.S., Sri Lanka, and international law. As it will be discussed in more detail in the proceeding Chapter, the U.S. approach is more victim centered where rights of the victims are protected in the process of counter human trafficking. The legislative approach in Sri Lanka to the contrary does not refer at all to the rights of the victims in the criminal process. The international conventions also adopt a more human rights based approach where rights of the victims are recognized. Human Rights approach regards human trafficking as a violation of rights of the victim whereas the

⁴² Ibid., section 5 A

criminological approach only focuses on the conviction of the offender which as such neglects the protection of rights of the victim. The legal instruments of the three jurisdictions adopt different approaches to the crime and it reflects in the different provisions of the statutes of the three different jurisdictions.

Chapter 3: Analysis of Anti-Human Trafficking legal instruments in selected jurisdictions

The previous Chapter explored the definition of the crime human trafficking and the various complexities related to the definition of human trafficking. The definition of the crime trafficking in persons plays an important role particularly in the prosecution of traffickers and in the burden of proof of the prosecution to determine the parameters of the crime of human trafficking. As discussed above human trafficking is a complex crime consisting of a number of various other independent crimes. This Chapter will continue to discuss human trafficking in the context of relevant statutes of selected jurisdictions, namely in the jurisdiction of the US, Sri Lanka and in the context of international instruments related to human trafficking. This Chapter will analyze the sections in relevant statutes to understand the approach taken by each instrument to the issue of human trafficking and how they differ from one another in relation to human rights based approach *vis-a-vis* the criminal law based approach.

3.1. U.S. Laws on Anti-Human Trafficking

The following anti human trafficking statues govern the law on human trafficking in the US, The Victims of Trafficking and Violence Protection Act of 2000, the Trafficking Victims Protection Reauthorization Act of 2003, the Trafficking Victims Protection Reauthorization Act of 2005, and the Trafficking Victims Protection Reauthorization Act of 2008. These Acts provide for the office of the J/TIP⁴³ that evaluates and ranks anti human trafficking efforts of the governments worldwide and the Interagency Task Force to Monitor and Combat Trafficking in Persons.⁴⁴

3.1.1. The Victims of Trafficking and Violence Protection Act of 2000⁴⁵

The Victims of Trafficking and Violence Protection Act adopted by the U.S. Congress in the year 2000 (TVPA 2000) provides for a wide array of counter human trafficking efforts including mechanisms on reporting, increasing protection for trafficked victims, conditions on foreign aid and increased penalties for offenders. The provisions in this TVPA 2000, as discussed below, reflects a strong human rights based approach adopted to combat human trafficking. The very name of the Act suggests the increased attention paid to protect the interests of victims of trafficking, who are often neglected in the process of convicting offenders.

The purpose of the Act stipulated in Section 102 (a) states that the Act aims to combat trafficking in persons, to ensure effective punishment of trafficking offenders, and to protect their victims. One of the unique features of the TVPA 2000 is the establishment of the Interagency Task Force

⁴³ J/TIP is the US State Department's Office to Monitor and Combat Trafficking in Persons established by the Trafficking Victims Protection Act (TVPA) of 2000

⁴⁴ US Department of State website available at <http://www.state.gov/j/tip/laws/>, assessed on 24th February 2013

⁴⁵ The Victims of Trafficking and Violence Protection Act of 2000, available at <
<http://www.state.gov/j/tip/laws/61124.htm>>; (Retrieved 24th February 2013)

to Monitor and Combat Trafficking.⁴⁶ The members of the Task Force are appointed by the President which includes the Secretary of State, the Administrator of the United States Agency for International Development, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Director of Central Intelligence, and other officials as designated by the President.⁴⁷ The involvement of the high level government officials in the Task Force reflects the importance given by the U.S. Congress to combat trafficking and the growing seriousness of the issue.

The activities of the Task Force include measures, evaluation and report on the progress in the area of human trafficking by the U.S. and by other states. The Task Force is further empowered to *“engage in efforts to facilitate cooperation among countries of origin, transit, and destination”*⁴⁸ with the aim of *“strengthening local and regional capacities to prevent and prosecute traffickers and assist victims”*.⁴⁹ It is also required by Section 105 (d) (4) to enhance cooperative efforts between destination countries and countries of origin and assist in the reintegration of stateless victims of trafficking.

This establishment of the Inter Agency Task Force highlights that the TVPA 2000 adopts an approach that is beyond mere criminalization of the crime and prescribing penalties. It takes into account the gravity of the fast growing trafficking syndicates around the world and the need for a cooperated approach towards combating human trafficking. The office of the Task Force releases an annual report on the status of counter human trafficking efforts by various states and grades states according to the progress they make on prevention, prosecution, participation and

⁴⁶ Section 105 of the Act

⁴⁷ Section 105 (b) of the Act

⁴⁸ Section 105(d) (4) of the Act

⁴⁹ ibid

partnership on combating human trafficking. The Victims of Trafficking and Violence Protection Act of 2000; Trafficking in Persons (TIP) Reports⁵⁰ rank states into *Tier one*: governments that fully comply with minimum standards of the TVPA 2000; *Tier two*: those not yet meeting those standards, but taking significant measures to meet such standards; Tier Two Watch List: governments who have not met the minimum standards of the TVPA 2000 but making efforts to do so, and who has failed to provide evidence of increasing efforts to combat trafficking; *Tier three*: those who have not met the TVPA 2000 minimum standards and are not taking sufficient efforts to do so. In the latest TIP Report 2012, out of the total number of 185 countries evaluated only 33 states were ranked in Tier One fully complying with the minimum standards of counter human trafficking, 42 countries are in the Tier Two Watch list including Myanmar and Venezuela. Among the 17 countries in the last tier, Tier Three are Algeria, the Democratic Republic of the Congo, Libya, North Korea, Saudi Arabia, and Syria. However, a total of 29 countries had been upgraded in the ranking hierarchy.⁵¹

3.1.2. Victim centered approach of the U.S. Anti-Trafficking Laws

The victim centered approach of the TVPA 2000 is highlighted in its provisions from sections 107 (a) to (f). These provisions explain the rights based approach to counter human trafficking prominent throughout in the TVPA. Sec. 107 (b) (a) (A) states

“notwithstanding Personal Responsibility and Work Opportunity Reconciliation Act of 1996, an alien who is a victim of a severe form of trafficking in persons shall be eligible

⁵⁰ Trafficking in Persons Reports, available at < <http://www.state.gov/j/tip/rls/tiprpt/index.htm> > accessed on 24th February 2013

⁵¹ The Express Tribune (June 20 2012). Up to 27 million people living in slavery: U.S., available at < <http://tribune.com.pk/story/396406/up-to-27-million-people-living-in-slavery-us/>>; (Retrieved 24th February 2013)

for benefits and services under any Federal or State program or activity funded or administered by any official or agency (...) to the same extent as an alien who is admitted to the United States as a refugee.”

Most importantly Section 107 (c) (1) states:

“victims of severe forms of trafficking, while in the custody of the Federal Government shall (A) not be detained in facilities inappropriate to their status as crime victims; (B) receive necessary medical care and other assistance; and (C) be provided protection if a victim's safety is at risk [...]”

Furthermore, Section 107 (c) (2) guarantees victims right to information about their rights and translation services.

The category of ‘T visa’ as a new form of immigration provided as a relief for a victim of severe form of trafficking in persons, under Section 107 (e) (1) of the Act provides an incentive to trafficking victims to remain in the U.S. for three years. During this period the victim receives legal right to work and access to social benefits provided by the Department of Health and Human Services and in turn will assist and cooperate with the prosecution of traffickers.

These provisions in the TVPA exceed mere criminalization of the crime of trafficking in persons and adopt a rights based approach where rights of victims are received a special consideration. In cases of external trafficking where the victims are not citizens of the destination country to which they are trafficked, once the victim is rescued, they often become offenders of immigration laws of the destination country, the most common being visa overstay. In such situations they are either deported to their country of origin as illegal immigrants or detained as

illegal immigrants and fined. Such victims become illegal migrants as a direct result of being trafficked. Yet in many states, including in Sri Lanka, once rescued they are not given special protection or relief considering their victim status, largely due to the reason of lack of legislative provisions to provide such relief. This also results in such victims either attempting to leave the country as soon as possible upon escape from traffickers or deported by law enforcement officials. This severely affects successful prosecution against traffickers, as the victims, who are the direct evidence of the crime have already left the country. Thus, traffickers easily escape the law. The system of 'T Visa' in the U.S. provides an incentive for the victims to remain in the country pending the trial. On the other hand it also protects the rights of victims and ensures their right to work pending litigation.

The right for health and social benefits of trafficking victims are also provided in the Act. Right to reasonable access to translation and interpretation services are also stipulated. Furthermore a Human Trafficking Prosecution Unit (HTPU) was created by the Civil Rights Division within the Criminal Section in 2007 to provide services to victims of civil rights violations, including human trafficking.⁵² Victim/Witness Coordinators are available to provide assistance with accessing services such as case management, housing, medical care, counseling and shelter. The Attorney General Guidelines for Victim and Witness Assistance (2005)⁵³ ensure that all victims of crimes under federal law are entitled to several measures of protection including: protection of privacy of victims and their dignity,⁵⁴ right to proceedings free from unreasonable delay,⁵⁵ right

⁵² The United States Department of Justice, Available at <<http://www.justice.gov/crt/about/crm/htpu.php>>; (Retrieved 24th February 2013)

⁵³ The Attorney General Guidelines for Victim and Witness Assistance (2005), Available at http://www.justice.gov/olp/pdf/ag_guidelines2012.pdf; (Retrieved 24th February 2013)

⁵⁴ Guideline J

⁵⁵ Guideline I

to full and timely restitution,⁵⁶ reasonable right to confer with the prosecutor,⁵⁷ and right to be reasonable heard.⁵⁸

3.1.3. The Trafficking Victims Protection Reauthorization Act (TVPRA 2003)⁵⁹

This Act was enacted to enhance the anti trafficking measures under TVPA with special focus on sex tourism. Section 3 (e) of the TVPA provides for the dissemination to travelers about the illegality of the offence tourism of sex and deny grant to private entities that promote commercial sex.

One of the most significant provisions of the 2003 Amendment in terms of victims protection and rights is the introduction of civil remedy under sec. 1595 (a):

“An individual who is a victim of a violation of section 1589, 1590, or 1591 of this chapter may bring a civil action against the perpetrator in an appropriate district court of the United States and may recover damages and reasonable attorney’s fees.”

The most known way of prosecution of human traffickers is through criminal prosecution. The option of civil suit against trafficking offenders, given the complicated nature of trafficking cases could be more feasible in certain circumstances. Especially on the ground that civil cases require to establish a lesser standard of proof compared to criminal cases. Daniel Werner and Kathleen Kim, coauthors of the book *“Civil Litigation on Behalf of Victims of Human Trafficking”*⁶⁰ point

⁵⁶ Guideline H

⁵⁷ Guideline G

⁵⁸ Guideline F

⁵⁹ Trafficking Victims Protection Reauthorization Act (2003), available at <http://www.state.gov/j/tip/laws/61130.htm>; (Retrieved 26th March 2012)

⁶⁰ K. Kathleen, and D. Warner. "Civil Litigation on Behalf of Victims of Human Trafficking." Immigration Justice Project, 2005, available at http://www.splcenter.org/sites/default/files/legacy/pdf/static/splc_human_trafficking.pdf; (Retrieved 28th March 2013)

out that civil litigation would be the only opportunity that would allow the victim to confront the trafficker which would empower the victim and contribute to the victim's healing process. They suggest that civil cases grant more control over the suit to the victim compared to criminal cases. However Werner and Kim also point out that civil suit in cases of sex trafficking has not been frequent and that it may be a difficult task given the "fragile circumstances" of sex trafficking victims.⁶¹ What is more important to note is that availability of civil remedy along with criminal prosecution allows the victim to have more avenues to seek justice against traffickers who exploited them.

3.1.4. The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005)⁶²

This Act evaluates the previous TVPA 2000 and TVPRA 2003 and provide for further legal strengthening to victims against traffickers. Section 102 (a) amends the previous TVPA 2000 to extend right to information of victims on government programmes that assist victims.

One of the most significant changes to the US trafficking laws by the TVPRA 2005 is the amendment to include child soldiers into the definition of human trafficking. Section 104 (c) (6) provides:

"The abduction and enslavement of children for use as soldiers, including steps taken to eliminate the abduction and enslavement of children for use as soldiers and

⁶¹ Ibid., page 10-11

⁶² The Trafficking Victims Protection Reauthorization Act of 2005, available at <http://www.state.gov/j/tip/laws/61106.htm>; (Retrieved 28th March 2013)

recommendations for such further steps as may be necessary to rapidly end the abduction and enslavement of children for use as soldiers.”⁶³

The victim centered approach of the TVPRA 2005 is unmistakable in the Act which seeks to introduce residential rehabilitation facilitations for victims. Section 102 (1) (A) commissions a study on best practices of rehabilitation of trafficking victims. Lack or non existence of rehabilitation facilities to victims of human trafficking is a matter of critical concern in many countries as rescued victims find nowhere to go and no one to turn to after many years of continuous inhuman treatment and exploitation.

TVPRA addresses concerns of exploitation of victims in conflict and post conflict situations through peacekeeping missions deployed abroad.⁶⁴ Keith Allred on “*Peacekeepers and Prostitutes: How Deployed Forces Fuel the Demand for Trafficked Women and New Hope for Stopping It*”⁶⁵ states that peacekeeping forces including those of the UN are accused of gross misconduct, forced prostitution and pedophilia and sexual exploitation of local populations. Increase demand for prostitution among deployed peacekeepers inevitably contributes to the increase in sex trafficking. Allred remarks that de facto immunity that prevents members of peacekeeping forces from being prosecuted should be removed in the interest of justice. Section 104 (A) of the TVPRA 2005 addresses this very issue of human trafficking committed by deployed troops by providing measures to prevent facilitation of human trafficking by them.

⁶³ Ibid., section 104 (c) (6)

⁶⁴ Ibid., section 104 (A)

⁶⁵ K. J. Allred (October, 2006). *Peacekeepers and Prostitutes: Deployed Forces Fuel the Demand for Trafficked Women and New Hope for Stopping it*, Armed Forces & Society, Vol. 33, n°1, pp. 5-23

3.1.5. The Trafficking Victims Protection Reauthorization Act (TVPRA 2008)⁶⁶

This Act, moving further forward from the previous counter trafficking Acts gives special attention to victims of child trafficking and provides for special “interim assistance” to identified child victims of severe forms of trafficking.

“Upon receiving credible information that a child described in subparagraph (C)(ii)(I) who is seeking assistance under this para-graph may have been subjected to a severe form of trafficking in persons, the Secretary of Health and Human Services shall promptly determine if the child is eligible for interim assistance”⁶⁷

The victim-centered approach of the U.S. anti trafficking policy is envisaged and stressed pursuant to Section 213 of the Act that extends its assistance for the first time to citizens of the U.S. which was hitherto confined to international victims. Section 213 ensures assistance to all victims of severe forms of trafficking, including United States’ citizens and aliens lawfully admitted for permanent residence.

The above discussion on successive counter trafficking laws in the U.S. unmistakably manifest the victim-centered approach of their anti trafficking policy over the years since 2000 with a series of Act that amended the existing legislation to increase the protection. This goes beyond the criminal law approach to fight human trafficking, where the sole focus is on criminalization of the act and the prosecution of offenders. To the contrary, the legislation that addresses the

⁶⁶ Trafficking Victims Protection Reauthorization Act 2008, available at <http://www.justice.gov/olp/pdf/wilberforce-act.pdf>; (Retrieved 25th March 2013)

⁶⁷ Ibid., section 2012

offence of human trafficking in Sri Lanka takes a criminal law approach which will be discussed in the following section.

3.2. Anti-Trafficking Legislation in Sri Lanka

The main legislation that criminalizes human trafficking in Sri Lanka is section 360 C of the Penal Code in terms of the Amendment Act no 16 of 2006 (2006 Amendment).

“360C. (1) Whoever—

(a) buys, sells or barter or instigates another person to buy, sell or barter any person or does anything to promote, facilitate or induce the buying, selling or bartering of any person for money or other consideration;

(b) recruits, transports, transfers, harbours or receives any person or does any other act by the use of threat, force, fraud, deception or inducement or by exploiting the vulnerability of another for the purpose of securing forced or compulsory labour or services, slavery, servitude, the removal of organs, prostitution or other forms of sexual exploitation or any other act which constitutes an offence under any law ;

(c) recruits, transports, transfers, harbours or receives a child or does any other act whether with or without the consent of such child for the purpose of securing forced or compulsory labour or services, slavery, servitude or the removal of organs, prostitution or other forms of sexual exploitation, or any other act which constitutes an offence under any law”⁶⁸

⁶⁸ Penal Code Amendment Act no 16 of 2006, Available at <http://www.oecd.org/site/adboecdanti-corruptioninitiative/46817262.pdf>; (Retrieved 28th March 2013)

As discussed in Chapter 2 on the definition of human trafficking, Section 360C covers various different forms of human trafficking. The definition is comprehensive and reflects the definition in the Palermo Protocol on human trafficking. The previous amendment to the Penal Code in 1995 introduced the offence of human trafficking but limited it only for buying bartering or selling of persons for money. The expansion of the definition in 2006 manifests the concern of the legislature to the growing rate of human trafficking incidents in Sri Lanka, and the recognition of Sri Lanka as a source and destination country for trafficking by the international community. The jail term of 2 to 20 years⁶⁹ also manifests the serious nature of the offence.

3.2.1. Mutual Assistance in Criminal Matters Act, No. 25 of 2002

The Mutual Assistance in Criminal Matters Act, No. 25 of 2002 has been enacted to provide for the rendering of assistance in criminal matters by Sri Lanka and specified countries. Such assistance includes the location and identification of witnesses or suspects, the service of documents, the examination of witnesses, the obtaining of evidence, documents or other articles, the execution of requests for search and seizure, the effecting of a temporary transfer of a person in custody to appear as a witness, and the enforcement of orders for the payment of fines or for the forfeiture or freezing of property. So far Sri Lanka has signed bilateral agreements on mutual legal assistance with Hong Kong, Pakistan, People's Republic of China, India and Thailand. In 2008 Sri Lanka has also signed a multilateral agreement with SAARC member states with a view for law enforcement authorities of member states to enhance cooperation in the prevention, suppression and prosecution of offences. Mutual legal assistance may also be provided by the

⁶⁹ Ibid., sec. 360 C (2)

government without a treaty to 54 commonwealth nations that have been designated by order in the official gazette by the Ministry of Justice. The transnational and organized nature of the crime of human trafficking requires states to assist each other to track and prosecute offenders for a trafficked victim. However, so far, Sri Lanka has not requested legal assistance from other countries on a matter of human trafficking.

3.2.2. National Anti-Human Trafficking Task Force in Sri Lanka

Understanding the importance of multi-sectoral participation of all relevant authorities to combat the complex issue of human trafficking, the Government made significant progress in increasing coordination among all stake holders where under the leadership of the Ministry of Justice with technical assistance from the International Organization for Migration, a National Anti Human Trafficking Task Force was launched in October 2010. This Task Force was launched with a view to strengthen the co-ordination among key government stakeholders and to foster success in prosecutions and to improve the protection of victims. The Task Force will also be useful in the implementation of preventive strategies. The members of the Task Force include The Ministry of External Affairs, Ministry of Defense, Ministry of Women's affairs and Child Development, Attorney General's Department, Ministry of Labour, Ministry of Social Services and Social Welfare, Criminal Investigation Department, Police Crime Division, Immigration and Emigration Department, Police Women and Children's Bureau, Sri Lanka Bureau of Foreign Employment, National Child Protection Authority, Police Criminal Records Division, Department of Probation and Child Care and the Chief Judicial Medical Officer. Task Force

members meet on a monthly basis and share information and good practices among participating stakeholders.

The Task Force developed a National Plan of Action in the year 2011 which included anti trafficking activities of different government departments and ministries. The Action Plan was developed under four Ps of counter trafficking: Partnership, Prosecution, Prevention, and Protection. Most of the activities in the Action Plan were successfully implemented by respective institutions in the year 2011. The Task Force is an important initiative which will foster better co-ordination among key stakeholders.

3.2.3. Victim-centered approach to counter trafficking in Sri Lanka

Compared to anti trafficking laws in the U.S., it is obvious that Sri Lanka's counter trafficking laws are entirely criminal law based. The 2006 Amendment Act does not recognize or give effect to any right of victims. Instead, it only criminalizes the offence and provide for punishment in case of conviction.

It is commendable that the definition contained in the 2006 Amendment identical to the wide definition adopted in the Palermo Protocol which recognizes not only forced prostitution and forced labour but also different forms of human trafficking such as organ removal, including other forms of exploitation. This definition compared to those adopted in anti trafficking laws in the region, i.e. Pakistan, Bangladesh, India, Nepal, discussed in Chapter 02, is a progressive definition that criminalizes multiple forms of trafficking.

Section 360 (C) of the Penal Code is the only provision in Sri Lankan penal law that specifically refers to human trafficking and it has absolutely no reference to victims' rights and assistance to victims post rescue from trafficking syndicates. As discussed in the previous subsections, U.S.

anti-trafficking laws and their successive amendments, there has been unmistakable focus on protection of rights and interests of victims. Some of the important rights that are omitted in the Sri Lankan legislation include victims' rights, altogether with the necessary medical care and immediate assistance. Victims of severe forms of human trafficking, unlike most of other criminal victims are victims of a number of crimes such as rape, abduction, unlawful confinement, sexual harassment, psychological harassment etc. Once rescued, they need to be taken care of. The situation is even worse in case of foreign victims, who do not speak the native language and thus unable to seek for help. Two victims that managed to escape from a forced prostitution ring in Sri Lanka were Uzbekistani nationals who were detained by their traffickers.

Case Study 01

The two Uzbekistani girls in this case were lured to Sri Lanka by another Uzbekistani woman living in Sri Lanka married to a Sri Lankan man. They were promised lucrative jobs in a restaurant. However upon arrival their passports were confiscated by the said traffickers. The driver of the couple was also involved in transporting the two victims from place to place as sex slaves. The victims revealed that they were taken to Maldives by the said driver for forced prostitution. After around two years the two victims managed to escape and complained to the police, the police officers who were taking down the complaint had to obtain assistance for translation as the two women did not speak Sinhalese or English. It was not a surprise that the translator they ultimately found to translate the statements of the two victims were the trafficker herself, who was the same Uzbekistani national who lured the two women into forced prostitution in Sri Lanka. One disadvantage that prevailed over this case against the victims was the fact that the police officers who went to gather evidence failed to record that the passports of the victims were not in their possession and that they were later on produced by the traffickers.

Source: Counter Human Trafficking Unit, IOM Sri Lanka⁷⁰

⁷⁰ I personally attended the hearings of this case at the High Court of Colombo representing IOM Sri Lanka as IOM provided counseling assistance to the victims. The judgment delivered on 28th March 2011 was the first ever human trafficking case in which the Colombo High Court sentenced three persons including an Uzbek national to nine years maximum security imprisonment. The Court convicted Uzbekistani woman T. Tokey Banu, her Sri Lankan husband A. H. Maheer and a three-wheeler driver M. B. Husain who were convicted for trafficking two Uzbek women to Sri Lanka and for forced prostitution.

Right to information and right to access for translation become immensely important for foreign victims as the initial statement they make to the police play a crucial role in subsequent prosecution against traffickers.

Apart from the above case Sri Lanka records only one more successful prosecution on human trafficking in the case of an unfortunate story of a trafficking victim beheaded in Saudi Arabia at the age of 25.⁷¹

Case Study 02

The second conviction on human trafficking was recorded in April 2012 in Sri Lanka for the infamous case of Rizana Nafeek. The Colombo High Court sentenced the two accused sub agents in the case of Rizana Nafeek , an underage domestic worker who has been trafficked to the Middle East, to two years of rigorous imprisonment on 15th January 2012 in terms of Section 360 C (1) (a) of the Amendment Act No.22 of 1995 to the Penal Code for child trafficking. (Rizana was sent to Saudi Arabia in 2005, before the Amendment Act No 16 of 2006 was enacted). As per Section 360 C (1) (a) of the Amendment Act No.22 of 1995 trafficking includes “the act of buying or selling or bartering of any person for money or for any other consideration”. The investigations revealed that Rizana comes from a background of abject poverty and the accused exploited her situation for monetary gains. The other sections under which the suspects were charged were Section 113 A for conspiracy and Section 102 for aiding and abetting under the Penal Code. The accused were also ordered to pay Rs. 60,000 each to the victim’s mother. A police team under the CID Human Traffic Unit conducted investigations following a complaint made by the victim’s mother. The victim has still not been allowed to return home by Saudi law enforcement officers.

Source: Attorney General’s Department, Sri Lanka

⁷¹The victim Rizana Nafeek was an underage girl who was sent as a housemaid to Saudi Arabia on forged documents at the age of 17. In Saudi Arabia she worked as a housemaid and being a teenager herself was assigned to look after her employer’s infant. She was sentenced to death by General Court of Dawadmi for smothering the infant. After spending 08 years in prison, despite appeal by the Sri Lankan government and a number of non-governmental organizations she was beheaded in Saudi in January 2013 at the age of 25.

There is also no system in Sri Lanka to ensure protection from immigration laws for foreign victims of trafficking. Most of the victims become illegal migrants during the process of trafficking.

Case Study 03

An Argentinean belly dancer was trafficked and detained in a club in the capital of Sri Lanka for forced labour as a dancer. She was offered the job through the popular social network of Facebook. Upon her arrival she was taken to the club of the trafficker and was locked up in a room. She was not paid for her service as a belly dancer in the club. She was however not sexually abused. Same as in the Uzbek case her passport was taken away by her employer and she did not have any chance to escape. She was kept locked up for around eight months before she met an expatriate that came to the club who spoke her language who later on helped her to escape. By the time she escaped her visa had already expired. The victim immediately flew back to Argentina. No case was initiated against the traffickers and the offenders who exploited her still remain at large. Since there are no flexible immigration rules for foreign trafficked victims or reasonable care and assistance to victims it is understood that the victim preferred to fly back home without prosecuting her offenders.

Source: Counter Human Trafficking Unit, IOM Sri Lanka

Sri Lanka has no flexibility on immigration laws in case of foreign victims of trafficking compared to the mechanism of 'T visa' in the U.S. trafficking laws. However the Task Force on Anti Human Trafficking, a measure that was not provided for in the legislation itself, established by the Ministry of Justice, as a method to build corporation among various government institutions working on anti trafficking, continues to meet once a months since its establishment in October 2010 and discuss various matters of concern in relation to issue of human trafficking and its victims. I worked as the coordinator for the Task Force meetings since its establishment and it must be noted that the Task Force was not reported of any case of severe form of trafficking so far, for which the coordination among the Task Force members was made use of. Lack of an official reporting mechanism on identified victims of human trafficking remains a main obstacle in Sri Lanka for its low rate of conviction under Section 360 (C) for human

trafficking. Since the 2006 Amendment Act there are only two cases of human trafficking reported where the offenders were convicted.

The proceeding section will analyze the approach taken by international instruments to combat human trafficking with special attention to the Palermo Protocol to identify how far they cater to a human rights based approach as opposed to a mere criminal law based approach.

3.3. The Anti-Human Trafficking Approach in International Legal Instruments

3.3.1. The Palermo Protocol

The main legal instruments that address the issue of exploitation of human beings are the two protocols that supplement the U.N. Convention against Transnational Organized Crime. They are the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)⁷² and the Protocol against Smuggling of Migrants by Land, Air and Sea (2000). Even though concerns of human rights could have been an important ground for states to get together to draft the protocols, threat to state sovereignty and security caused by cross boarder human trafficking and smuggling were the actual reasons that motivated the states to adopt an international legal instrument to criminalize human trafficking and human smuggling. However there was unusual strong NGO and INGO participation in the deliberation process of the two protocols, particularly on the trafficking protocol that led to contribute more

⁷² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf, (Retrieved 30th November, 2012)

towards incorporation of the human rights aspects into the Protocol.⁷³ It was exceptional that the UN Crime Commission's deliberation on human trafficking protocol received close scrutiny and civil society participation throughout its drafting process. The involvement of the UN High Commissioner for Human Rights, UN Special Rapporteur on Violence Against Women, the United Nations Children's Fund, IOM, UNHCR played an influential role in incorporating human rights protection of children, women, refugees and migrants into the Conventions.⁷⁴ The involvement of these inter- governmental organizations particularly the interventions made by the UN High Commissioner for Human Rights had been very active to ensure advancement of human rights of women, children, migrants and refugees.

The purpose of the trafficking protocol is three-fold: (1) to prevent and combat trafficking of persons, specially women and children, (2) to protect victims of human trafficking, (3) and to facilitate cooperation among states to meet these purposes.⁷⁵ It is important to note that the fact the Palermo Protocol is a supplement to the Convention on Organized Crimes does not absolve states from their obligation to criminalize human trafficking where it lacks the transnational element. The Protocol, pursuant to Art 5(2) (a), requires state parties to undertake an obligation to criminalize human trafficking as defined in the Protocol by way of adopting domestic legislation independent of its transitional character.⁷⁶

⁷³ A. Gallagher. (2010). *The International Law of Human Trafficking*. Cambridge University Press, p.71

⁷⁴ *Ibid* p. 71-72

⁷⁵ T. Obokata (2006). *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach*, International studies in human rights, Leiden, Martinus Nijhoff Publishers

⁷⁶ P. Reichel and J. Albanese (Eds.), *Handbook of Transnational Crime and Justice* (Second Edition), Sage Publication, 2013, p. 144

It is evident that the Protocol has sought to adopt a human rights based approach to human trafficking by providing for basic rights of victims. Article 06 titled “*Assistance to and protection of victims of trafficking in persons*” provide for a number of rights of victims including privacy rights of victims (Article 6 para1), assistance in court and administrative proceedings (Article 6 para2), housing, psychological, educational and social recovery (Article 6 para3). Shielding the identity of victims and witnesses is very important in prosecution of traffickers from dangerous organized crime groups. The obligation to provide victims necessary information and ensure them fair trial rights are guaranteed under article 6 (2). Article 6(4) requires states to take into account the age, gender and special needs of victims of trafficking in persons in the application of domestic legislation.

These rights related obligations apply to both receiving and state of origin. Once the victim is returned to the state of origin the obligations shift from the receiving state to the sending state. However Article 06 obliges contracting states only in “appropriate cases and to the extent possible”. This qualification is due to the cost of these protection mechanisms and different levels of development and resources available in different states.⁷⁷

The rights based approach of the Protocol is further reflected in Article 6 para 4 that require state parties to pay special attention to child victims of human trafficking. While the Protocol doesn’t specify what specific measures state parties should take at such incidents of child victims, the Legislative Guide; UN Convention Against Transnational Organized Crime suggests that the

⁷⁷ Legislative Guide; UN Convention Against Transnational Organized Crime, available at http://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf; (Retrieved 18th August 2013), page 288 para 68

state parties may appoint a guardian as soon as a child victim is identified to accompany the child throughout the procedure.⁷⁸ It also suggests that the state parties should ensure safe housing suitable for the child to avoid re-victimization and to return them only to a suitable care giver. The guiding principle throughout the process is required to be the principle of best interest of the child. The following table sums up the manner in which different human rights concerns of trafficking victims were addressed by the Protocol. The Protocol's human rights based approach to human trafficking is unmistakably clear.

Table 1: Human rights concerns of victims and their place in the Palermo Protocol

Article of the Protocol	Human Rights concerns of victims
<i>Article 3(a)</i>	<i>Coerced based definition that recognizes different end purposes of trafficking beyond sex trafficking</i>
<i>Article 2</i>	<i>One of the purposes of the Protocol is to protect and assist victims of trafficking with full respect for their human rights</i>
<i>Article 14(2)</i>	<i>Principle of non- discrimination</i>
<i>Article 6(1)</i>	<i>Protection of privacy rights of victims</i>
<i>Article 6(2)</i>	<i>Fair trial rights of victims, right to information</i>
<i>Article 6(3)</i>	<i>Right to physical and psychological health of victims</i>
<i>Article 6(4)</i>	<i>Rights of children and victims of special needs</i>
<i>Article 6(5)</i>	<i>Right to safety, freedom from torture</i>
<i>Article 6(6)</i>	<i>Right to compensation</i>
<i>Article 8(1)</i>	<i>Right to permanent residence</i>

Source: Created by the author

⁷⁸ Ibid p.289-290

There are also few other international conventions that address human rights concerns of trafficked victims. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁷⁹ of 1979 refers to the prohibition against the trafficking of women. CEDAW requires all state parties to *"(...) take all appropriate measures including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women"*.⁸⁰ Another human rights based international agreement on human trafficking is the Convention Concerning Forced or Compulsory Labor (Labor Convention) adopted by the International Labor Organization⁸¹. The term forced labour is defined by the Convention to mean *" all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."*⁸² These elements of forced labour are generally present in human trafficking scenarios.⁸³ Apart from these international conventions, the Recommended Principles and Guidelines on Human Rights and Human Trafficking by the UN High Commissioner for Human Rights in 2002⁸⁴ also highlight the importance of protecting rights of victims of human trafficking in the process of prevention and prosecuting traffickers.

⁷⁹Convention on the Elimination of All Forms of Discrimination against Women, Adopted and opened for signature, ratification and accession by the General Assembly resolution 34/180 of 18 December 1979, available at <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>; (Retrieved 16th August 2013)

⁸⁰ *Ibid.* at Art.6

⁸¹ Convention concerning Forced or Compulsory Labour Adopted in Geneva at the 14th International Labour Commission session in June 1930 and entered into force on 01 May 1932, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312174; (Retrieved 16th August 2013)

⁸² *Ibid* at Art. 02

⁸³ A. Alexandra (2005). Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation, 12 Buff. Hum. Rts. L. Rev. 5

⁸⁴ Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002). Office of the High Commissioner for Human Rights, available at <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>; (Retrieved 16th August 2013)

However, the Protocol's human rights based approach is not all-inclusive and there are a number of gaps and lacuna that need to be addressed to adopt a complete victim centered human rights based approach to human trafficking. The next chapter thus proceed to critically analyze the afore-discussed different approaches to human trafficking, to expose in which ways they fail to embrace an entirely victim based human rights approach to human trafficking. This Chapter looked at the three selected jurisdictions, namely, the U.S., Sri Lankan and international law on anti-human trafficking. Apart from the Sri Lankan law on anti-human trafficking (Penal Code Amendment Act No 06 of 2006), which is entirely criminal law based, the other two jurisdictions seem to have taken a more victim concerned human rights laws based approach to human trafficking. Those two jurisdictions have specific provisions catering to the protection of victims and to provide them assistance. However none of these approaches carry a total victim centered approach. Thus the next Chapter will discuss failures and lacunas in the approaches of the different jurisdictions.

Chapter 4: Human Rights-Based Approach to Anti-Human Trafficking: A Critical Analysis of the Practical Application of the Law

The previous Chapter looked into specific provisions of human trafficking legislations in selected jurisdictions to understand to what extent they have adopted a human rights-based approach to human trafficking. The U.S., Sri Lankan and the International jurisdiction on anti-human trafficking has adopted different approaches to human trafficking ranging from civil, through criminal, to human rights centered approaches. Given the complexity and the gravity of the crime I argue that the approach taken by the legislations combating human trafficking should unmistakably take a human rights-based approach where not only traffickers are duly prosecuted

and punished but also victims are protected and their rights addressed. Having discussed varied approaches to combat human trafficking in the selected jurisdictions in the previous Chapter, this Chapter looks into practical realities of the actual implementation of human trafficking-related legislations from a critical analytical perspective. My experience in working with the Ministry of Justice in Sri Lanka is also shared to evidence how politics play a decisive role in anti-trafficking legislation and in their approach.

As depicted in Chapter 3, the U.S. legislation on The Victims of Trafficking and Violence Protection Act of 2000, the Trafficking Victims Protection Reauthorization Act of 2003, the Trafficking Victims Protection Reauthorization Act of 2005, and the Trafficking Victims Protection Reauthorization Act of 2008, with their respective amendments carry all three possible methods of civil, criminal and human rights-concerned mechanisms to combat human trafficking.

However, the mechanism of ranking states according to their level of participation in combating human trafficking pursuant to The Victims of Trafficking and Violence Protection Act of 2000, Trafficking in Persons Reports (TIP) is subject to heavy criticism. The ranking of states based on this Act requires states to submit a report named Trafficking in Persons Report (TIP Report) to the U.S. State Department. This report contains answers by respective states to specific questions raised by the U.S. State Department under four categories of Protection, Promotion, Prosecution and Prevention (the four Ps). The said four ‘P’ approach of the report highlights the human rights’ approach to combat trafficking especially under ‘Protection’. One of the main criticisms against the tier-ranking system of the U.S. State Department is the irony that the U.S. did not include itself in the ranking mechanism until nine years of its inception. The U.S. is only rated since 2010 after nine years of the TVPA, and the U.S. is ranked in Tier one since 2010 until 2013

for four consecutive years. This raises concerns regarding the credibility and objectivity of the report.⁸⁵

Another point of criticism is the vagueness of the compliance standard requirements demanded by the State Department. This affects the reliability of the report as a diplomatic tool. Most of the narrative reports, for example, do not explain clearly how each state has met the minimum standard of punishment regarding stringency of punishment for severe forms of trafficking. The methodology of the report requires, pursuant to Section 108 of the Trafficking Victims Protection Act of 2000, prescribed punishments for severe forms of trafficking to be ‘sufficiently stringent’, but it does not specify the required threshold of ‘stringency’. The narratives also remain silent on whether or not states have met with each specific minimum standard criteria prescribed in Section 108 of the Trafficking Victims Protection Act of 2000.⁸⁶ This creates doubts of subjectivity of the report. Out of the 30 Tier one countries in the 2013 TIP Report only few country-narratives fully explain the compliance of the states to the four minimum standards. France is described as a Tier one country in the 2013 TIP Report being a “*destination and transit country for men, women, and children from Eastern Europe, West Africa, and Asia, as well as the Caribbean and Brazil, subjected to sex trafficking and forced labor.*”⁸⁷ However the narrative also explains how the French Government fails to comply with effective protection of victims, one of the key objectives of the U.S. anti-trafficking legislation. Victims who do not have a legal status in France needed to cooperate with law enforcement to receive care.⁸⁸ The report also states that France only made modest anti-trafficking law enforcement efforts during the reporting period. Despite these failures the report ranks France as a Tier one country that

⁸⁵ M. Beale (November 22, 2011). The Trafficking in Persons Report: Who is The United States to Judge?, Council on Hemispheric Affairs (COHA), available at <http://www.coha.org/the-trafficking-in-persons-report-who-is-the-united-states-to-judge/>; (Retrieved 25th September 2013)

⁸⁶ United States Government Accountability Office (2006). Human Trafficking :Better Data, Strategy, and Reporting Needed to Enhance U.S. Anti-trafficking Efforts Abroad, available at <http://www.gao.gov/new.items/d06825.pdf>; (Retrieved 15th November 2013)

⁸⁷ TIP Report 2013, US State Department, available at <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>; (Retrieved 25th September 2013)

⁸⁸ Ibid.

fully complies with the minimum standards. As such the inability of the report to describe how each state meet or fail to meet minimum standards raise serious doubts about the credibility of the report.

The aforementioned arguments manifest the fact that even though the U.S. adopts a broad human rights approach to anti-human trafficking, it still has deficiencies in the anti-human trafficking system that attracts a number of criticism. One of the major criticisms against the U.S.' TIP Report is the fact that the report ranking is tainted with politics. The appropriateness of the U.S. to judge and rank other equally sovereign states is also a matter of concern, especially in the context where the U.S. is also now included in its own report. It is alleged that states that are friendlier with the U.S. such as India, Pakistan and Nigeria are not demoted to Tier three. India being a country alleged of a large number of forced labour and child labour is ranked as a Tier two country in the latest 2013 TIP Report. Countries such as North Korea, Sudan, Libya, Yemen and Cuba which record strained political relations with the U.S. have been listed as Tier three countries subject to U.S. sanctions.⁸⁹

The Sri Lankan experience on the ground level is also not different from the U.S. situation when it comes to practical realities. Sri Lanka is a developing state faced with a number of challenges including international allegations over human rights' violations during the last stages of the war.⁹⁰ The human rights' aspect of anti-human trafficking laws in Sri Lanka is virtually non-existent. However during my employment at the IOM Sri Lanka, seconded to the Ministry of

⁸⁹ Beale M, (November 22, 2011) The Trafficking in Persons Report: Who is The United States to Judge?, Council on Hemispheric Affairs (COHA), available at <<http://www.coha.org/the-trafficking-in-persons-report-who-is-the-united-states-to-judge/>>; (Retrieved 25th September 2013)

⁹⁰ The Resolution adopted at the 19th session of the Human Rights Council on 8th March 2012 and the Resolution adopted at the 22nd session of the Human Rights Council in March 2013 tilted Promoting reconciliation and accountability in Sri Lanka, available at <http://geneva.usmission.gov/2012/03/22/sri-lanka-resolution/> and <http://cl.ly/242V0y071E1v>; (Retrieved 25th September 2013)

Justice I noticed that the Secretary to the Ministry of Justice was keen on addressing escalating and worsening issue of human trafficking. With the technical support of the IOM Sri Lanka the Ministry established the National Anti-Human Trafficking Task Force.⁹¹ One of the main setbacks in the anti-human trafficking struggle in Sri Lanka is the lack of reliable data on traffickers and victims. The Task Force, realizing this need, sought to amend the Schedule of the Prevention of Crimes Ordinance No. 02 of 1926. The reason for this amendment was that in Sri Lanka, The Criminal Records Division (CRD) maintains a computer system of recording all related data on finger printable offences. The Task Force realized that if human trafficking is made a finger printable offence the CRD will automatically record data of such cases in their data base that will result in establishing a reliable data base on the offence of human trafficking. The Schedule of the Prevention of Crimes Ordinance No. 02 of 1926 was not amended since its inception in 1926, therefore a committee was formed to look into including all other serious finger printable offences into the list. The list was completed in the year 2012 by the Committee. Yet until today the legislature has been unable to amend the Act and the proposed amendment is still lying at the Attorney General's Department where it was sent for observations by the Ministry of Justice. Such is the level of bureaucracy in Sri Lanka.

Another example of practical difficulties in responding to human trafficking in Sri Lanka from a human rights' point of view is the lack of cooperation and understanding among law enforcement officers. For example I gathered from IOM Sri Lanka that in August 2013 that they received information about some Nepalese girls who have been trafficked to Sri Lanka. However, despite IOM's request from the Immigration and Emigration Department through the

⁹¹ See above in Chapter 3.

National Anti-Human Trafficking Task Force, to refer them to IOM for further assistance, IOM found out that they had been deported by the Immigration Department. The Department failed to identify the Nepalese girls as victims. They were deported merely as offenders of the immigration law of the country. It can be assumed that a number of victims are deported frequently without them being identified as victims of human trafficking.

The critical analysis of the application of the international aspect of rights-based approach to trafficking also warrants an in-depth discussion. It is first important to penetrate the definition of the trafficking in the Trafficking Protocol. A fact that could be easily neglected is that the *process* of trafficking does not end at the point of the commencement of the exploitation of the victim at the receiving end. Even though it is not explicitly mentioned in the definition in the Protocol, the trafficking process continues as long as situation of exploitation is maintained. Thus it is not only the person who transported or recruited the victim, but also the individual or the entity that sustained the status of exploitation of the victim is also a trafficker.⁹² The other important factor underlying the Protocol definition is the fact that trafficking does not necessarily need to take place across borders. In Sri Lanka it was reported once a case of a mother selling her two daughters for prostitution in the same house they were living. In this case there was no ‘transportation’ element present, let alone cross boarder movement. Yet it was decided that the two underage girls were ‘trafficked’ by their mother.⁹³ The other important aspect of the definition relates to the element of ‘consent’. The consent of an adult is irrelevant to trafficking if the trafficker has used one or more of the means used to obtain the consent of the victim. Thus there is a legal possibility of consensual trafficking of both adults and children.

⁹² A. Gallagher (2010). *The International Law of Human Trafficking*. Cambridge University Press, p.47

⁹³ This case was referred to IOM Sri Lanka during the time in which I was working for the Counter Trafficking Unit of the IOM Sri Lanka. IOM referred the case to the National Child Protection Authority (NCPA).

The Protocol definition does not recognize ‘exploitation’ as a separate offence. This raises the question whether states do not have an obligation under the Protocol to take measures against the actual exploitation of trafficking which is the end purpose of trafficking. However the ‘exploitation’ as an element of trafficking rather than as a separate offence does not have an impact in practical application of the law. Because the definition as it is now extends to maintenance of the exploitative status of the victim it is not virtually possible that there exists a form of exploitation that does not fall with the parameters of the trafficking definition. On the other hand, the failure of the definition to differentiate between types of exploitation and what constitutes ‘exploitation’ creates uncertainties. For example in case of ‘forced labour’ how hard the labour should be, what degree of deception or coercion is used to recruit the victim are not defined in clear terms in the Protocol.⁹⁴ I believe however, that the deliberate openness of the definition could also be used by law enforcement officers to the advantage of the victim.

Lack of clarity in the human trafficking definition has caused debates over various types of exploitation such as international and inter-country adoption by way of selling children and pornography. There has been recent discussion about possible links between sex trafficking and pornography.⁹⁵

“[...] while trafficking for the purpose of the production of pornography is not a widely known or recognized form of trafficking, incidents of coerced participation in

⁹⁴ Gallagher. A. (2012) *The International Law of Human Trafficking*. Cambridge University Press, 2010, p.50

⁹⁵ R. Peters, L. Lederer, S. Kelly (2012). The Slave and the Porn Star: Sexual Trafficking and Pornography, The Protection Project, Journal of Human Rights and Civil Society, Issue 05, Fall 2012, available at http://www.protectionproject.org/wp-content/uploads/2012/11/TPP-J-HR-Civ-Socy_Vol-5_2012-w-cover1.pdf; (Retrieved 3rd October 2013), see also C. MacKinnon (2005). “Pornography as Trafficking,” Michigan Journal of International Law 26, no. 4, p. 999–1000.

*pornography are far from trivial. Forced participation as a performer can constitute sex trafficking, and participation in the logistical side may be a form of labor trafficking”*⁹⁶

The multifaceted relationship between human trafficking, pornography and prostitution has been well established where the co-existence of human trafficking and pornography are proved to be thoroughly interlinked.⁹⁷ These growing aspects of involvement of human trafficking in different human behavioral patterns require further broadening of the definition of human trafficking to allow the definition to capture the full magnitude of one of the most dangerous organized crimes in contemporary society. However, on the other hand, the broadening of the definition of trafficking beyond the current Protocol definition could result in weakening the strength of legal interpretations and divert the attention and momentum it has gained so far. The expansion of the definition also requires amplifying the human and financial resources allocated to fight human trafficking. Thus, perhaps interconnectedness of human trafficking to other phenomena as should be taken well into consideration in combating trafficking, but the expansion of the definition further wider would frustrate the purpose. In fact, the definition of human trafficking, however modified and expanded, will not be able to reflect the realities and complexities of the real world.

In terms of the protection of rights of the victims pursuant to the Protocol lack of hard obligations imposed on states weaken the human rights’ based approach to trafficking in the Protocol.⁹⁸ Mandatory obligations of state parties to the Protocol arise only in relation to

⁹⁶ Peters R, Lederer L, Kelly S, The Slave and the Porn Star: Sexual Trafficking and Pornography, The Protection Project, Journal of Human Rights and Civil Society, Issue 05, Fall 2012, p.7, available at http://www.protectionproject.org/wp-content/uploads/2012/11/TPP-J-HR-Civ-Socy_Vol-5_2012-w-cover1.pdf; (Retrieved 5th October 2013)

⁹⁷ E. Arevalo and M.Regnerus (February 11, 2011). “Commercialized Sex and Human Bondage,” Witherspoon Institute, Princeton, NJ, available at <http://www.thepublicdiscourse.com>; (Retrieved 5th October 2013)

⁹⁸ Gallagher A, (2006). Recent Legal Developments in the Field of Human Trafficking: A Critical Review of the 2005 European Convention and Related Instruments, 8 Eur. J. Migration & L. 163

prosecution, criminalization, investigation, and international cooperation. In terms of victim assistance, state parties are required under the Protocol to ‘consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons.’⁹⁹ Article 6(1) of the Protocol requires state parties to protect the privacy of victims in appropriate cases, and to the extent possible under its domestic law. There is also evidence that states provide assistance to victims on a conditional basis of obtaining cooperation from the victim for prosecuting offenders.¹⁰⁰ These instances of conditional support damage the human rights’ concern of the Protocol.

The previous Chapter discussed the extent of the human rights’ concerns of victims incorporated into respective selected jurisdictions on anti-human trafficking. Yet the practical application of these laws and mechanism in case of real life victims is a different story all together. This Chapter discussed the lacunas and practical realities of the application of human rights based legislation in combating human trafficking. Even the U.S. with its global interest in combating trafficking is not void of criticism for apparent politicization of the global TIP Report. The Palermo Protocol with all its rights’ based approach fails to impose mandatory obligations on states on victim protection.

State responsibility in protection of victims of human trafficking is an important aspect that is not addressed in the Protocol. In this regard, a fairly recent decision of the European Court of Human Rights in the case of *Rantsev v. Cyprus and Russia*¹⁰¹ marks a turning point on human

⁹⁹ Article 6(3) of the Protocol

¹⁰⁰ Section 107(b)(1)(E) Trafficking Victims Protection Act of 2000, A. Gallagher (2010). *The International Law of Human Trafficking*. Cambridge University Press, p. 83, `

¹⁰¹ *Rantsev v. Cyprus and Russia*, App. No. 25965/04 (Eur. Ct. H.R. 2010), available at http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/car_serbia/ECtHR%20Judgements/Englis

trafficking litigation. In this case, father of Oxana Rantseva sued two state parties, Russia and Cyprus, for violation of Article 2, 3, 5 and 8 of the European Convention on Human Rights. The court in this case, used a rarely used provision, article 04 of the Convention, to hold that human trafficking falls within the parameters of the Convention despite the fact that it was not explicitly mentioned in the Convention. Rantsev argued that both Russia and Cyprus failed in their obligation from preventing Rantseva from being trafficked. In his landmark decision the court recognized positive obligations of states towards victims of human trafficking and held that

“[...] the spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking. Accordingly, in addition to criminal law measures to punish traffickers, Article 4 requires member States to put in place adequate measures regulating businesses often used as a cover for human trafficking.”¹⁰²

“[...] Member States are required to put in place a legislative and administrative framework to prohibit and punish trafficking. The Court observes that the Palermo Protocol and the Anti-Trafficking Convention refer to the need for a comprehensive approach to combat trafficking, which includes measures to prevent trafficking and to protect victims, in addition to measures to punish traffickers[...] The extent of the positive obligations arising under Article 4 must be considered within this broader context.”¹⁰³

[h/RANTSEV%20v%20CYPRUS%20%20RUSSIA%20-%20ECHR%20Judgment%20_English_.pdf](https://www.echr.coe.int/ViewDoc.aspx?id=1865366); (Retrieved 18th October 2013)

¹⁰² Paragraph 282 of the judgment

¹⁰³ Paragraph 285 of the judgment

The recognition of state obligation to provide protection for victims and to take necessary steps to prevent trafficking by the European Court of Human Rights, provide an important precedent in anti-human trafficking litigation, especially in the context where the Palermo Protocol does not carry mandatory state obligations on combating human trafficking.

In Sri Lanka, while the main legislation on anti-trafficking does not refer to rights of victims at all, non legislative mechanisms such as anti-trafficking task force attempt to ensure protection of victims of trafficking. Yet due to lack of coordination among law enforcement officers and increased bureaucracy, a right-based approach to protect interests of victims is virtually nonexistent.

Conclusion

This study looked into the research question on the appropriateness of human rights' centered approach as a legislative response to combat human trafficking. Most legal instruments and law enforcement mechanisms of states focus on a criminal law based approach to prevent human trafficking. The other possible anti-trafficking legislation method is the civil law based legal action for compensation. It is argued in this study that human rights' based approach that not only criminalizes the act of human trafficking as a serious offence, but also addresses the concerns of the victims from a right based perspective is the most suitable way of combating human trafficking. Unlike victims of other offences, trafficked victims are denied a number of rights ranging from right to life, right to movement, right to decent employment, right to health, freedom from torture etc. which need to be sufficiently addressed for effective protection and rehabilitation of victims.

The main objective of a criminal law based approach is the retributive purpose of punishing the offender. Given the international organized nature of the crime of human trafficking, most of the participants of the trafficking syndicates remain at large due to complexity of mass trafficking networks. Furthermore, punishing the mere offender, however severe the punishment is, overlooks the other stakeholders in the process of the exploitation and fails to take a holistic approach. Not addressing the fate of victims in the process risks them being fallen prey to traffickers again or turning into traffickers themselves. Mere criminal law based approach to an offence such as human trafficking will only alleviate a part of the issue of punishing the offenders.

A civil action against the trafficking offenders on the other hand will only allow the victims to be awarded with compensation for the damages, which alone will be completely inadequate to curb the crime. Yet a civil action would facilitate a victim to prove his/her case with a lower level of standard of proof on balance of probability. A civil action also has the advantage of speedy hearing, unlike a criminal action that could drag along for a long period. Trafficked victims have a right for civil action to recover unpaid wages, economic losses and sufferings as damages and punitive awards holding the traffickers personally accountable for their wrongs.¹⁰⁴ However, as in the case of criminalization of human trafficking, a civil suit, while holding its own advantages, does not carry a holistic approach to the issue. It merely provides a viable alternative for a victim in the absence of an opportunity for criminal prosecution.

¹⁰⁴ K. Kim and D. Werner. (March 2005). Civil Litigation on Behalf of Victims of Human Trafficking, Legal Aid Foundation for Los Angeles, available at <http://www.oas.org/atip/Reports/Civil%20Litigation%20on%20behalf%20of%20TIP%20victims.pdf>; (Retrieved 22nd October 2013)

A human rights based approach, to the contrary, extends beyond both criminal and civil law redresses towards a more comprehensive approach. The U.S. jurisdiction on human trafficking addressed by its series of anti-trafficking legislation carry elements of both civil and criminal law based approaches. It penalizes human trafficking as a serious offence and at the same time pursuant to Trafficking Victims Protection Reauthorization Act of 2003, recognizes the right of a trafficked victim to pursue a private civil action.¹⁰⁵ Furthermore, by addressing various special needs of the victims, the U.S. solution marks a human rights based approach to combat trafficking. Most important of those is the grant of temporary measures of immigration status to victims to remain in the U.S. for three years with temporary work permit. The Act also demands compulsory restitution of all losses of the victims as a direct result of the offence.¹⁰⁶ A T-Visa holder under the U.S. anti-trafficking laws is also entitled to certain social benefits.¹⁰⁷

In the international arena, the Palermo Protocol is the most comprehensive international legal instrument on human trafficking. The Four Ps' approach¹⁰⁸ of the Protocol, as explained in Table 1 in the previous Chapter, reflects various human rights of the victims of trafficking recognized in international human rights conventions protected in the Protocol. The Protocol pays special attention to the protection of victims and important rights, such as right to information of the victims. Compared to other regional instruments such as the SAARC Trafficking Convention which does not recognize different types of trafficking or the trafficking of men, the Palermo

¹⁰⁵ Sec.4. (4) (A), Trafficking Victims Protection Reauthorization Act of 2003

¹⁰⁶ Title 18 of U.S. Code, Crimes and Criminal Procedure, section 1593(b)(3) available at <http://www.law.cornell.edu/uscode/text/18/1593>; (Retrieved 28th October 2013)

¹⁰⁷ Sec. 107 Trafficking Victims Protection Reauthorization Act of 2000

¹⁰⁸ K. Touzenis (2010) Trafficking In Human Beings Human rights and trans-national criminal law, developments in law and practices ,UNESCO Migration Studies, available at <http://unesdoc.unesco.org/images/0018/001883/188397e.pdf>; (Retrieved 20th October 2013)

Convention contains a comprehensive definition that covers all types of human trafficking leaving room for more victims to gain protection under the Convention.

The Sri Lankan jurisdiction on human trafficking on the other hand does not include any human rights' elements at all. The 2006 Amendment Act of the Penal Code merely criminalizes the offence and imposes a maximum of 20 years of imprisonment. Rights of victims and their needs are not recognized at all in the legislation. However non-legal mechanisms such as National Anti-Human Trafficking Task Force in Sri Lanka continue to make an attempt to establish and maintain coordination among law enforcement officers to expedite prosecution and to provide protection to victims.

Despite the human rights' concerns of victims of human trafficking addressed in the three jurisdictions in legal and non-legal mechanisms, it is noted that human trafficking victims are not sufficiently protected. For example, even in the U.S. where there is a strong human rights' based approach to human trafficking, Trafficking Victims Protection Reauthorization Act of 2000 only provides protection if the victims meeting certain criteria under the Act. The victim has to suffer 'severe form of trafficking'¹⁰⁹ under the Act, and should be willing to cooperate with the law enforcement to prosecute against the trafficker. The Palermo Protocol also carries its own drawbacks despite its progressive approach to combat human trafficking. The Protocol's definition on trafficking is an 'international compromise',¹¹⁰ and as such cannot be considered an all-inclusive definition. The terms exploitation and the prostitution of others are not defined in

¹⁰⁹ Trafficking Victims Protection Reauthorization Act of 2000, Section 103 (8)

¹¹⁰ C. Rijken, (September 2009), A Human Rights Based Approach to Trafficking in Human Beings, Security and Human Rights, Volume 20, Number 3, pp. 212-222

the Protocol, and as per the *travaux préparatoires* of the Protocol each state is left to interpret them in their respective domestic laws.¹¹¹

The politics involved in addressing human trafficking makes it more difficult for an effective human rights' approach to take place. Criticism against the TIP Report of the U.S. State Department is an example of the politicization of anti-trafficking mechanisms. The U.S. did not grade itself until eight years of the inception of the TIP Report. Ranking of U.S. friendly states in higher grades and penalizing states that have strained relations with the U.S. by downgrading such states raise doubts about the impartiality of the mechanism. In Sri Lanka, lack of coordination and interest among law enforcement officers to protect the rights of victims have resulted in reducing the number of successful prosecution and victims being re-victimized due to absence of protection for them during prosecution. In Sri Lanka, after two years of drafting an Amendment to the Prevention of Crimes Ordinance to include human trafficking as a finger printable offence, the final draft amendment still rests at the AG's Department awaiting permission to proceed to the Cabinet. This lack of interest among the law enforcement has resulted in causing frustration among the victims and losing the trust of victims in the justice system. This explains one of the reasons why Sri Lanka so far has only two successful cases of prosecution under Section 360 (C) of the Penal Code on human trafficking.

Therefore, while human rights' based approach is recognized in many jurisdictions including international legal instruments as the most suitable approach to combat human trafficking, it is understood that existing mechanisms so far has failed to make an effective impact on prevention,

¹¹¹Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, A/55/383/Add.1, available at https://www.unodc.org/pdf/crime/final_instruments/383a1e.pdf; (Retrieved 28th October 2013)

protection and prosecution. It must be concluded that human rights' based approach is the best way of combating human trafficking along with the alternative possibility of civil action. However, mere letter of the law, as in many other cases, is not sufficient to bring about a change. It is the actual implementation of the right-based approach in the ground that the silent victims of human trafficking call for.

Bibliography

Alexandra, A. (2006). Integrating a Human Rights' Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation, 12 Buff. Hum. Rts. L. Rev. 5

K. J. Allerd (October, 2006). *Peacekeepers and Prostitutes: Deployed Forces Fuel the Demand for Trafficked Women and New Hope for Stopping it*, Armed Forces & Society, Vol. 33, n°1, pp. 5-23

Arevalo, E. and Regnerus, M. (February 11, 2011). "Commercialized Sex and Human Bondage," Witherspoon Institute, Princeton, NJ, available at <http://www.thepublicdiscourse.com>; (Retrieved 5th October 2013)

Arlacchi, P. (2002) Opening Statement to the International Seminar on Trafficking in Human Beings, Brazil, UNODC <http://www.unodc.org/unodc/en/about-unodc/speeches/speech_2000-11-28_1.html>; (Retrieved 15th November 2012)

Bales, K. Trodd, Z. and Williamson, A.K. (2009). *Modern Slavery: The Secret World of 27 Million People*. Oneworld Publications, Oxford

Beale, M. (November 22, 2011). The Trafficking in Persons Report: Who is The United States to Judge?, Council on Hemispheric Affairs (COHA), available at <http://www.coha.org/the-trafficking-in-persons-report-who-is-the-united-states-to-judge/>; (Retrieved 25th September 2013)

Castillo, J. (2009). Non-probability Sampling, Experiment Resources , 2009, Available at: <http://www.experiment-resources.com/non-probability-sampling.html>; (Retrieved 11th July 2013)

Convention Concerning Forced or Compulsory Labour (June 1930). Available at https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312174; (Retrieved 16th August 2013)

Convention on the Elimination of All Forms of Discrimination against Women (December 1979). Available at <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>; (Retrieved 16th August 2013)

Coutin, S. "Qualitative Research In Law And Social Sciences, Department of Criminology, Law And Society, University of California, Irvine., <<http://www.wjh.harvard.edu/nsfqual/Coutin%20Paper.pdf>>; (Retrieved 25th November 2012)

Frederick Douglass (1818 - 1895). Former Slave, Abolitionist Leader, Speech to the American Anti-Slavery Society, 1865, available at

http://www.harperhighschool.org/ourpages/auto/2010/2/16/43984325/doc_ch12_5.pdf;
(Retrieved 16th July 2013)

Gallagher, A. (2010). *The International Law of Human Trafficking*. Cambridge University Press, p.71

Gallagher A. (2006) Recent Legal Developments in the Field of Human Trafficking: A Critical Review of the 2005 European Convention and Related Instruments, 8 Eur. J. Migration & L. 163
International Labour Organization (ILO) (2002). A Future Without Child Labour, Report of the Director-General, International Labour Conference Geneva, 90th Session, Report I(B), http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_publ_9221124169_en.pdf; (Retrieved 10th November 2012)

International Labour Organization (ILO)(2005).A Global Alliance against Forced Labour, < www.ilo.org/wcmsp5/groups/public/@ed.../wcms_081882.pdf>; (Retrieved 17th November, 2012)

International Organization for Migration (IOM) (2005). Data and Research on Human Trafficking: A Global Survey, Geneva, International Migration Vol. 43 (1/2), p. 07 < www.iom.int/jahia/webdav/site/myjahiasite/.../data_res_human.pdf>; (Retrieved 15th November 2012)

International Organization for Migration (IOM) (2004). Revisiting the Human Trafficking Paradigm, The Bangladesh Experience, 2004, < www.iom.org.bd/publications/16.pdf>; (Retrieved 28th November 2012)

International Organization for Migration (IOM) (2009). The Cost of Coercion, p. 07 < http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_106230.pdf>; (Retrieved 28th November 2012)

Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, A/55/383/Add.1, available at https://www.unodc.org/pdf/crime/final_instruments/383a1e.pdf; (Retrieved 28th October 2013)

Kathleen, K., and Warner, D. (2005)."Civil Litigation on Behalf of Victims of Human Trafficking." Immigration Justice Project, available at http://www.splcenter.org/sites/default/files/legacy/pdf/static/splc_human_trafficking.pdf; (Retrieved 28th March 2013)

Kelly, L. (2005). 'You Can Find Anything you Want': A Critical Reflection on Research on Trafficking in Persons within and into Europe," in *Data and Research on Human Trafficking: A Global Survey*, International Organization for Migration, Vienna, pp. 237–38;

www.iom.int/documents/publication/en/Data_and_Research_on_Human_Trafficking.pdf;
(Retrieved 25th November 2012)

Kim, K. and Werner, D. (March 2005). Civil Litigation on Behalf of Victims of Human Trafficking, Legal Aid Foundation for Los Angeles, available at <http://www.oas.org/atip/Reports/Civil%20Litigation%20on%20behalf%20of%20TIP%20victims.pdf>; (Retrieved 22nd October 2013)

Legislative Guide; UN Convention Against Transnational Organized Crime, available at http://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf;
(Retrieved 18th August 2013)

MacKinnon, C. (2005). "Pornography as Trafficking," Michigan Journal of International Law 26, no. 4

Obokata, T. (2006). Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach, International studies in human rights, Leiden, Martinus Nijhoff Publishers

Penal Code Amendment Act no 16 of 2006, available at <http://www.oecd.org/site/adboecdanti-corruptioninitiative/46817262.pdf>; (Retrieved 28th March 2013)

Peters, R., Lederer, L., Kelly, S. (2012). The Slave and the Porn Star: Sexual Trafficking and Pornography, The Protection Project, Journal of Human Rights and Civil Society, Issue 05, Fall 2012, available at http://www.protectionproject.org/wp-content/uploads/2012/11/TPP-J-HR-Civ-Soc_Vol-5_2012-w-cover1.pdf; (Retrieved 3rd October 2013)

Prevention and Control of Human Trafficking Ordinance of Pakistan (2002). Available at <http://www.fia.gov.pk/pchto2002.htm>; (Retrieved 31st January 2013)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000,
<http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf>; (Retrieved 30th November, 2012)

Rijken, C. (September 2009). A Human Rights Based Approach to Trafficking in Human Beings, Security and Human Rights, Volume 20, Number 3, pp. 212-222

Rantsev v. Cyprus and Russia, App. No. 25965/04 (Eur. Ct. H.R. 2010), available at http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/car_serbia/ECtHR%20Judgements/English/RANTSEV%20v%20CYPRUS%20%20RUSSIA%20-%20ECHR%20Judgment%20_English_.pdf; (Retrieved 18th October 2013)

Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002). Office of the High Commissioner for Human Rights, available at <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>; (Retrieved 16th August 2013)

Reichel, P. and Albanese J (Eds) (2013), Handbook of Transnational Crime and Justice (Second Edition), Sage Publication

SAARC Convention on Preventing And Combating Trafficking in Women and Children for Prostitution (2002). available at <http://imadr.org/wordpress/wp-content/uploads/2013/01/T4-1.-SAARC-Convenion.pdf>; (Retrieved 25th July 2013)

The Attorney General Guidelines for Victim and Witness Assistance (2005). Available at <http://www.justice.gov/olp/pdf/ag_guidelines2012.pdf>; (Retrieved 24th February 2013)

The Express Tribune (June 20, 2012). Up to 27 million people living in slavery: US, available at < <http://tribune.com.pk/story/396406/up-to-27-million-people-living-in-slavery-us/> >; (Retrieved 24th February 2013)

The Thailand Measures in Prevention and Suppression of Trafficking in Women and Children Act of 1997, available at http://www.wcwonline.org/pdf/lawcompilation/Thailand_PreventionAndSuppressionOfTraffickingInWomenAndChi.pdf; (Retrieved 31st January 2013)

Touzenis, K. (2010). Trafficking In Human Beings Human rights and trans-national criminal law, developments in law and practices ,UNESCO Migration Studies, available at <http://unesdoc.unesco.org/images/0018/001883/188397e.pdf>; (Retrieved 20th October 2013)

Trafficking Victims Protection Reauthorization Act (2003). Available at <http://www.state.gov/j/tip/laws/61130.htm>; (Retrieved 26th March 2012)

The Trafficking Victims Protection Reauthorization Act (2005). Available at <http://www.state.gov/j/tip/laws/61106.htm>; (Retrieved 28th March 2013)

Trafficking Victims Protection Reauthorization Act (2008). Available at <http://www.justice.gov/olp/pdf/wilberforce-act.pdf>; (Retrieved 25th March 2013)

Tyldum G. (2010). Limitations in Research on Human Trafficking, *International Migration*, vol. 48 (5), 1–13

U.S. Code, Title 18, Crimes and Criminal Procedure, section 1593(b)(3), available at <http://www.law.cornell.edu/uscode/text/18/1593>; (Retrieved 28th October 2013)

United States Government Accountability Office (2006). Human Trafficking :Better Data, Strategy, and Reporting Needed to Enhance U.S. Anti-trafficking Efforts Abroad, available at <http://www.gao.gov/new.items/d06825.pdf>; (Retrieved 15th October 2013)

United Nations Office on Drugs and Crime (UNODC) (2005). Global Report on Trafficking in Persons <<http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>>; (Retrieved 15 November 2012)

United Nations Office on Drugs and Crimes (UNODC) (2011). Legal and Policy Review - Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka, p. 27, available at http://www.unodc.org/documents/humantrafficking/2011/Responses_to_Human_Trafficking_in_Bangladesh_India_Nepal_and_Sri_Lanka.pdf; (Retrieved 29th November 2012)

United Nations Office on Drugs and Crime (UNODC) (September 2012). The notion of serious crime in the United Nations Convention against Transnational Organized Crime Note by the Secretariat, Conference of the Parties to the United Nations Convention against Transnational Organized Crime Sixth session, < www.unodc.org/.../organized_crime/.../CTOC_COP_2012_CRP4.pdf>; (Retrieved 18th November 2012)

The United States Department of Justice, available at <http://www.justice.gov/crt/about/crm/htpu.php>; (Retrieved 24th February 2013)

U.S. State Department, Trafficking in Persons Report 2005, <<http://www.state.gov/j/tip/rls/tiprpt/2005/46606.htm>>; (Retrieved 15th November 2012)

U.S. State Department, Trafficking in Persons Report 2007, < <http://www.state.gov/j/tip/rls/tiprpt/2007/> >; (Retrieved 16th November 2012)

U.S. State Department, Trafficking in Persons Reports 2012, Reports, available at < <http://www.state.gov/j/tip/rls/tiprpt/index.htm> >; (Retrieved 24th February 2013)

U.S. State Department, Trafficking in Persons Report on Bangladesh (2012). Available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192366.htm>; (Retrieved 25th July 2013)

U.S. State Department, Trafficking in Persons Report on India (2012). available at <http://www.state.gov/documents/organization/192595.pdf>; (Retrieved 8th August 2013)

U.S. State Department, Trafficking in Persons Report on Pakistan (2012). Available at <http://www.state.gov/documents/organization/192597.pdf>, accessed on 25th July 2013

U.S. State Department, Trafficking in Persons Report on Thailand (2012). Available at <http://www.state.gov/documents/organization/192598.pdf>; (Retrieved 8th August 2013)

U.S. State Department, Trafficking in Persons Report (2012) on Sri Lanka <http://photos.state.gov/libraries/sri-lanka/5/pdfs/Trafficking_in_Persons_Report_2012.pdf>; (Retrieved 17th July 2013)

U.S. Victims of Trafficking and Violence Protection Act of 2000, available at <<http://www.state.gov/j/tip/laws/61124.htm>>; (Retrieved 24th February 2013)

Women and Children Repression Prevention Act of Bangladesh (2000). Available at <http://www.hsph.harvard.edu/population/trafficking/bangladesh.traf.00.pdf>, accessed on 21 January 2013

Watawala, C.(2007). Human Trafficking as a Threat to Human Security: Reflection on the Context of Trafficking in Sri Lankan Women to Middle-East, in Mainstreaming Human Security: The Asian Contribution, available at

<<http://humansecurityconf.polsci.chula.ac.th/Documents/Presentations/Chandanie.pdf>>; (Retrieved 20th November 2012)

Fedotov, Y. (April 3rd 2012). On the Occasion of the Interactive Dialogue on Human Trafficking: Partnership and Innovation to End Violence Against Women & Girls, Special General Assembly meeting, available at <https://www.un.org/en/ga/president/66/statements/trafficking030412.shtml>; (Retrieved 4th December 2012)