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## The Palermo Protocol: Why It Has Been Ineffective in Reducing Human Sex Trafficking

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## INTRODUCTION

International human trafficking and enslavement have been issues throughout history. Today, human trafficking, specifically regarding trafficking for sexual services, reaches at least 118 documented countries and is one of the most profitable crimes globally.<sup>1</sup> The majority of the roughly twenty-one million trafficking victims worldwide are women and girls.<sup>2</sup> These victims are frequently induced into slavery through false pretenses, family members who sell them into the trade, kidnapping, or debt bondage.<sup>3</sup> Occasionally, victims voluntarily integrate themselves into the sex trade, often while following the recommendations of another prostitute or seeking a greater income. Although victims are trafficked for various reasons including prostitution, domestic servitude, manufacturing, and agriculture, the focus of this paper will be on international human sex trafficking.<sup>4</sup> However, it must be understood that sex trafficking constitutes only about twenty-five percent of the global human trafficking network.<sup>5</sup>

There was no internationally accepted definition for “trafficking” until 2000, when the United Nations (UN) published a definition in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as the Palermo Protocol).<sup>6</sup> Article 3 of this Protocol clearly defines human trafficking as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of

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<sup>1</sup> United Nations, Office on Drug and Crime, *Global Report on Trafficking in Persons 2012*, 2012, 1.

<sup>2</sup> Heather Smith, “Sex Trafficking: Trends, Challenges, and the Limitations of International Law,” *Human Rights Review* 12, no. 3 (2011): 274; International Labour Organization, “New ILO Global Estimate of Forced Labour: 20.9 Million Victims,” June 1, 2012, [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_182109/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_182109/lang--en/index.htm).

<sup>3</sup> Smith, “Sex Trafficking,” 274; Jennifer W. Mandel, “Out of Sight, Out of Mind: The Lax and Underutilized Prosecution of Sex Trafficking in the United Kingdom and Israel,” *Tulane Journal of International & Comparative Law* 21, no.1 (Winter 2012): 209.

<sup>4</sup> Smith, “Sex Trafficking,” 272.

<sup>5</sup> Wendy M. Konstantopoulos et al., “An International Comparative Public Health Analysis of Sex Trafficking of Women and Girls in Eight Cities: Achieving a More Effective Health Sector Response,” *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 90, no. 6 (2013): 1194.

<sup>6</sup> Michelle Madden Dempsey, Carolyn Hoyle, and Mary Bosworth, “Defining Sex Trafficking in International and Domestic Law: Mind the Gaps,” *Emory International Law Review* 26, no.1 (April 2012): 137-38.

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.<sup>7</sup>

This definition is specific, yet it encompasses many aspects of trafficking, including the act (recruitment, transportation, transfer, harboring, or receipt of persons), means (using threats, force, or coercion, abduction, fraud, deception, abuse of power or vulnerability, giving or receiving payments or benefits), and purpose (exploitation) of trafficking. This comprehensive wording labels a wide range of people as traffickers and activities as trafficking; one would assume, therefore, that the introduction of the Palermo Protocol's encompassing definition into international law would result in an increase in worldwide prosecutions for such offenses, especially in countries that signed the Protocol and agreed to adopt its definition. However, it appears that the Palermo Protocol's wording for its human trafficking definition reduces its global support and therefore its strength. By 2012, 157 of the UN's 192 members had ratified the Palermo Protocol; this agreement bound them to adopt the Palermo definition of human trafficking and construct the necessary legislation to criminalize such activities. However, many Protocol-ratifying countries that self-report compliance are, in fact, not.<sup>8</sup> Also, the domestic sex trafficking laws of various countries contain definitions with significant differences from the Protocol's. Why has the Palermo Protocol been ineffective and globally unenforced? This paper seeks to display that the Palermo Protocol is ineffective due to disagreements on wording, inaccurate reporting, and the UN's inability to enforce compliance.

## THE BROAD WORDING OF THE PALERMO PROTOCOL

International disagreement regarding the broad wording of the Palermo Protocol's human trafficking definition has led Protocol signatory countries to create their own definitions. These nations should either accept the Protocol's human trafficking definition or begin international discussion to modify the definition to which they have agreed. "Destination" countries have an additional obligation to adhere to international legislation and provide acceptable national laws to protect victims of trafficking brought into their countries, especially because these countries have the financial and legal means to do so.

One-hundred-forty-seven countries signed the Palermo Protocol, which requires them, per Article 5, to uphold and enforce the Protocol's trafficking definition; yet many countries maintain definition variants within their own national sex trafficking legislation. Of course, having a definition which deviates

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<sup>7</sup> United Nations Office on Drugs and Crime, "Human Trafficking," par. 2.

<sup>8</sup> UN, *Global Report on Trafficking*, 1; Dempsey et al., "Defining Sex Trafficking," 141-42.

from that of the Protocol is not inherently incriminating. If a state has a broader and more encompassing definition than the Protocol, it may be able to prosecute and convict more traffickers than if it had simply adopted the Protocol's definition. This rarely occurs, however, as more states have definitions that are narrower than the Protocol's. This means that these states cannot prosecute or convict as many traffickers as the Palermo Protocol definition would allow, thus directly violating the Protocol.

## LEGISLATION ISSUES

Compliance with and adaptation of the Palermo Protocol varies greatly among Protocol signatory countries: some countries define trafficking more broadly than the Protocol, and some have copied the Article 3 definition verbatim, but a majority of the signatory nations have adopted human trafficking definitions narrower than that of the Palermo Protocol, meaning that these countries reduce the number of traffickers they can legally convict.<sup>9</sup>

Three main areas of dispute create differences among trafficking definitions: whether the victim's consent is relevant; whether the victim was trafficked internationally or intranationally; and whether the victim received compensation for sexual employment.

Although the victim's consent is irrelevant according to the Palermo Protocol, many countries still consider consent an important factor in determining whether a person in a trafficking situation was actually trafficked. For example, if a woman agrees to be housed in a brothel under repressive conditions in a foreign country for the sole employment of sexual services, some countries would consider her to not be a sex trafficking victim because she consented to participate in such activities; however, the Palermo Protocol would disregard her consent. Because the Palermo Protocol focuses on the act, method, and purpose of trafficking, it ignores the victims and instead focuses on the traffickers. Thus, the consent of the person being trafficked is irrelevant to the definition of trafficking according to the Protocol. However, many countries, including the United States, consider consent a vital part of the definition: if a person consents to being trafficked, then the trafficker cannot be convicted.<sup>10</sup>

Another aspect that creates differing trafficking definitions is international and intranational transportation. According to the Palermo Protocol, human trafficking does not require crossing borders, and therefore intranational trafficking is a legitimate, convictable crime. Some countries, however, consider transnational passage a requirement in their trafficking definitions.<sup>11</sup> This

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<sup>9</sup> Dempsey et al., "Defining Sex Trafficking," 144-45.

<sup>10</sup> *Ibid.*, 146.

<sup>11</sup> *Ibid.*, 150.

stipulation means that intranational sex trafficking is not a criminal offense, even if the victim is transported within the country.

Finally, many countries require a lack of compensation for a service in order for an act to be considered trafficking. However, the Palermo Protocol does not differentiate between situations of compensation and noncompensation. These definition differences create extra offenses that must be established by a prosecutor in order to convict the criminal. For instance, the recruitment, capture, and harboring of a person are not enough to convict someone for trafficking in some countries, especially if the trafficking victim was compensated.<sup>12</sup>

Legislative differences between the Palermo Protocol trafficking definition and the definitions of signatory countries are unacceptable. Per the Palermo Protocol's Article 5, each state that signs the Protocol must adopt the Palermo definition of human trafficking and create legislation that ensures the criminality of trafficking.<sup>13</sup>

Two researchers from Örebro University in Sweden, Katalin Kelemen and Märta Johansson (2013), analyze the legislative differences of five Palermo Protocol signatory states: Sweden, Italy, the United Kingdom, Hungary, and the Netherlands.<sup>14</sup> Even though these countries have agreed to adopt and enforce the Protocol definition for human trafficking, discrepancies exist. For example, Swedish law requires the existence of an undefined "power relationship," which does not appear in the Palermo definition and makes the conviction of accused traffickers more difficult.<sup>15</sup> In Italy, the human trafficking definition is similar to the Protocol's, except that the Italian definition does not include recruiting or receiving persons, effectively ignoring part of the trafficking market. Other countries in this study, such as the Netherlands and Hungary, are not yet entirely compliant with the Palermo Protocol but have been improving their national anti-trafficking legislation. A lack of full compliance accompanied by legislative improvements toward compliance is an international trend as awareness of the human trafficking problem is gradually increasing. Some countries have only recently criminalized human trafficking and are still developing appropriate enforcement strategies.<sup>16</sup> For example, the Netherlands has continued to make legislative improvements, most recently in 2009, and Hungary extended its

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<sup>12</sup> Ibid., 151.

<sup>13</sup> United Nations, Office on Drugs and Crime, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, 2000, 4.

<sup>14</sup> Katalin Kelemen and Märta C. Johansson, "Still Neglecting the Demand That Fuels Human Trafficking: A Study Comparing the Criminal Laws and Practice of Five European States on Human Trafficking, Purchasing Sex from Trafficked Adults and from Minors," *European Journal of Crime, Criminal Law and Criminal Justice* 21, no. 3/4 (July 2013): 247.

<sup>15</sup> Ibid., 259.

<sup>16</sup> Ibid., 256.

trafficking legislation as recently as July 1, 2013. Sweden made substantial, effective changes in 2004 and again in 2010 to include intranational trafficking as well as all forms of international trafficking.<sup>17</sup> The transition from previously existing human trafficking legislation to laws compliant with the Palermo Protocol is a slow process that will take time to fully develop. However, countries are gradually creating laws that increasingly reflect the Protocol. This shows that countries may simply need more time to organize their anti-trafficking legislation.

## DESTINATION COUNTRY RESPONSIBILITIES

Unsurprisingly, many trafficked victims emigrate from underdeveloped countries seeking economic prosperity in a wealthier country. Political or social turmoil, population growth with an insufficient job market, and cultural bias against women are factors that make a country likely to become a sex slave supplier.<sup>18</sup> Trafficked persons, therefore, travel from underdeveloped countries to “destination” countries, which are states that attract trafficked victims and/or their traffickers due to their wealth, opportunity for an improved life, and demand for sex workers. A country can also become a destination country if there is a mass migration movement from a neighboring country. For example, Israel increased in popularity as a trafficking destination due to migration from the East to the West after the Soviet Union collapsed.<sup>19</sup>

Although the United States is portrayed in media and culture as having an enormous sex trade and being a popular destination country, the United States contains less than one percent of the world’s sex trade. Therefore, the many other countries that contain the international human sex trade must be scrutinized. Countries that have legalized prostitution, such as Italy, and countries with recent, rapid economic growth, such as Thailand, have a much larger issue with trafficking than the United States does.<sup>20</sup> Fortunately, some of these well-developed destination nations have the greatest legislative success against trafficking, primarily because they have the financial resources to create effective legislation.<sup>21</sup> These countries have the obligation to construct effective laws because they have the means to do so.

By contrast, impoverished countries that supply the trafficked victims may lack the financial and legislative ability to create effective anti-trafficking laws. Destination countries that lack financial stability may also have difficulty funding the creation of and enforcing effective anti-trafficking legislation. It may be

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<sup>17</sup> *Ibid.*, 261-62.

<sup>18</sup> Mandel, “Out of Sight, Out of Mind,” 210.

<sup>19</sup> *Ibid.*, 219.

<sup>20</sup> Smith, “Sex Trafficking,” 275-76.

<sup>21</sup> Mandel, “Out of Sight, Out of Mind,” 206.

debated whether countries that lack the means to develop such laws should be given grace, allowing them to have noncompliant legislation. However, these countries can simply copy the Article 3 definition verbatim into their laws to effectively maintain compliance; therefore, there is no excuse for countries to have noncompliant anti-trafficking legislation.<sup>22</sup>

Additionally, destination countries should expand their focus from finding trafficked victims to also prosecuting and convicting the traffickers and the male clients who provide the demand for sex slaves. Participating in the sex trade industry is currently a low-risk, high-reward endeavor. The low-risk atmosphere is caused by a lack of community and healthcare-responder awareness of trafficking warning signs, ineffective and unenforced anti-trafficking laws, and uninvestigated and unprosecuted trafficking crimes. Without the threat of arrest or conviction, there are no deterrents for trafficking propagators. For example, Israel has a deterrence issue. Their lack of enforcement regarding anti-trafficking legislation only encourages perpetrators to continue, while inappropriately light sentences given for sex trafficking offenses do not motivate perpetrators to stop such activities.<sup>23</sup>

Also, the human trafficking industry is a largely prosperous one, as billions of dollars are earned annually by traffickers worldwide.<sup>24</sup> One factor that may drive trafficking profits up is the underground nature of the market. The inconvenience of discretion and secrecy for traffickers can justify demands for higher commercial sex prices, which patrons are willing to pay. Furthermore, many traffickers may attempt to maximize their profits by reducing production costs, which leads to further victim abuse due to a lack of basic needs.

## ENFORCEMENT ISSUES

All 147 Palermo Protocol signatory countries have agreed, through Article 5, to enforce the Article 3 trafficking definition, outlined above. Many countries that have different definitions from the Protocol falsely report compliance with the international agreement.<sup>25</sup> Of the countries that are compliant in writing, forty percent have yet to enforce their anti-trafficking laws and make a single conviction.<sup>26</sup> The UN lacks enforcement power to guarantee that signatory nations adopt the Article 3 definition, as the anarchic nature of our international system makes enforcing compliance almost impossible. Additionally, the Protocol lacks explicitly stated levels of punishment for trafficking or related crimes covered

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<sup>22</sup> Dempsey et al., "Defining Sex Trafficking," 157.

<sup>23</sup> Mandel, "Out of Sight, Out of Mind," 220-27.

<sup>24</sup> UN, *Global Report on Trafficking*, 1.

<sup>25</sup> Dempsey et al., "Defining Sex Trafficking," 156.

<sup>26</sup> Smith, "Sex Trafficking," 283-84.

within the document.<sup>27</sup> Although this is standard for international agreements as it respects individual states' sovereignty, equal enforcement across the globe becomes a problem. Additionally, countries may misrepresent the prevalence of their sex trade and anti-trafficking legislation to receive aid, as explained in the next section, "Reporting Issues."

Even countries that are mostly compliant with the Palermo Protocol and have made steps toward such anti-trafficking legislation are not always effective in their enforcement of the Protocol. This negligence nullifies any attempts toward legislative compliance. For example, the United Kingdom (UK) and Israel have not been particularly effective in attempts to eliminate, or even reduce, human sex trafficking. The UK lacks a comprehensive law that holistically addresses human sex trafficking, and instead has formed various legislative pieces that, when compiled, address aspects of trafficking.<sup>28</sup> When the UK made public steps against sex trafficking, their national raids led to a mere twenty-two prosecutions and only fifteen convictions. Israel has not yet criminalized prostitution, and its anti-pimping legislation remains unenforced. During 2011, Israel convicted only seven traffickers, an unreasonably low number considering its large human trafficking market.<sup>29</sup> In Laos, steps toward criminalization are not being taken, and the government is actually moving backward as the Lao sex trafficking business is becoming increasingly deregulated. Public entertainment venues have subtly transitioned to places where remunerated sex can be obtained.<sup>30</sup> These states, and others, must take greater steps toward the enforcement of anti-trafficking legislation and prosecution of human sex trafficking in order to see a reduction in such activities.

## REPORTING ISSUES

Even though international organizations (IOs) and individual governments try to collect accurate data regarding the sex trade, as well as the legislation against it, their reports are often filled with false and misleading information. Some of these reports allow states to collect and self-report information regarding anti-trafficking measures, which often yields falsified data. For example, the United States has developed a tiered rating system to assess international anti-trafficking actions and laws. Grading factors include the quantity and quality of anti-trafficking legislation, compliance with the United States Trafficking Victims Protections Act (TVPA), and whether the quantity of trafficking victims increased

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<sup>27</sup> Kelemen and Johansson, "Still Neglecting the Demand," 278.

<sup>28</sup> Mandel, "Out of Sight, Out of Mind," 217.

<sup>29</sup> *Ibid.*, 220; 224-25.

<sup>30</sup> Sverre Molland, "'The Perfect Business': Human Trafficking and Lao-Thai Cross-Border Migration," *Development and Change* 41, no. 5 (2010): 839.



in the past year.<sup>31</sup> Although foreign governments, IOs, and nongovernmental organizations (NGOs) use this report, a primary issue with the data collected is that countries can self-report it. Because the United States provides financial incentives to countries that report active anti-trafficking legislation and activity, countries that rely on U.S. aid have an incentive to falsify information.

Other factors outside of self-reporting may lead to incorrect data. Cultural pressures, such as societies in which women hold extremely low positions, might lead governments to ignore trafficking or prostitution problems. This obviously leads to incorrect information regarding these countries' trafficking markets. Additionally, NGOs and IOs often find collecting accurate and current data about human sex trafficking difficult because it is a black-market economy; therefore, much of the market, as well as information about it, is hidden or muddled.<sup>32</sup>

The overlap of and state-by-state variations in the definitions and applications of "migration," "smuggling," "trafficking," and "slavery" also create challenges for countries and NGOs that wish to fight human trafficking.<sup>33</sup> For example, the definition of sex trafficking in the United States combines smuggling, where a migrant usually consents to being internationally transported, and trafficking, where the victim is exploited for profit without consent.<sup>34</sup> Because "migration" contains a voluntary component, NGOs, IOs, state governments, and trafficking prosecutors must determine whether the accused trafficker also illegally transported victims. Specifically, Sverre Molland (2010), a researcher and anthropologist at Australian National University, focuses on the cross-border human sex trafficking and migration between Thailand and Laos. He discovered that, within this region, governments and nongovernment associations are struggling to separate voluntary migration from trafficking. Primarily, this confusion occurs because many women voluntarily migrate from Laos to Thailand seeking more prosperous employment in the sex trade industry.<sup>35</sup> Frequently, these women move their work across the border to avoid community members or prevent their families from discovering their profession.<sup>36</sup>

In fact, some organizations that attempt to reduce and eradicate sex trafficking actually propagate such activity. For example, UN peacekeepers frequently hire prostitutes in their assigned crisis zones, obviously frustrating UN efforts to eliminate sex trafficking.<sup>37</sup>

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<sup>31</sup> Smith, "Sex Trafficking," 276.

<sup>32</sup> *Ibid.*, 279-80.

<sup>33</sup> *Ibid.*, 272.

<sup>34</sup> Mandel, "Out of Sight, Out of Mind," 207-8.

<sup>35</sup> Molland, "'The Perfect Business'," 832.

<sup>36</sup> *Ibid.*, 845.

<sup>37</sup> Smith, "Sex Trafficking," 282.

Victims, themselves, often do not report their trafficking situation, even if they are in a safe environment. This can be because they do not trust authorities or aid workers to maintain their privacy and prevent them from being arrested for prostitution or because they fear retaliation from their traffickers or imprisoners.<sup>38</sup> Furthermore, dependence on their traffickers and fear of authorities (due to potential deportation or judgment) can act as barriers to self-reporting by trafficking victims.<sup>39</sup>

Even Yury Fedotov, the executive director of the United Nations Office on Drug and Crime (UNODC), acknowledges the existing gaps in knowledge about human trafficking. In the Preface to the UNODC 2012 Global Report on Trafficking in Persons, Fedotov specifically asks states to assist the UNODC in gathering complete and accurate data about traffickers and their victims so that the UNODC can create effective policies and responses by criminal justice systems.<sup>40</sup>

## PROPOSED SOLUTIONS

Despite the problems and complaints regarding the Palermo Protocol, the document itself is not necessarily a bad piece of legislation. It is comprehensive and inclusive, and, if enforced, could show promising improvement in reducing or preventing the global problem of human trafficking. The primary problems with the Protocol are not, in fact, problems with the Protocol itself. Instead, the lack of enforcement and compliance with the Protocol provide the primary reasons for its failures.

Even though many issues exist regarding both the enforcement of and compliance with the Palermo Protocol, actions can be taken by individual states to increase the effectiveness of their fight against human sex trafficking. Rather than merely signing the Palermo Protocol and then writing different domestic laws, countries are obligated to voice dissent in order to improve the Protocol.<sup>41</sup> Unless countries voice their disagreement, changes will not be discussed to improve international legislation. Proposed changes to the Palermo Protocol can be used to rewrite it, but only if these concerns are voiced. Additionally, preemptively noting which signatory countries deviate legislatively from the Protocol, and then establishing a timeline to create and enforce the new laws, might aid in global legislative consistency.

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<sup>38</sup> Kelemen and Johansson, "Still Neglecting the Demand," 268.

<sup>39</sup> Konstantopoulos et al., "International Comparative Public Health Analysis," 1198.

<sup>40</sup> UN, *Global Report on Trafficking*, 1.

<sup>41</sup> Dempsey et al., "Defining Sex Trafficking," 161.

One solution that has been proposed is to change the Palermo Protocol's focus. Currently, the Protocol primarily focuses on the criminalization of trafficking acts. Instead, the Protocol should contain multiple foci that criminalize not only the trafficking of persons but also the purchase of sexual favors. In this manner, traffickers, pimps, and clients can be prosecuted and convicted effectively. This will hopefully reduce the demand for commercial sex. Moreover, the Protocol should include an element that provides support and assistance for rescued sex slaves.<sup>42</sup>

In certain countries where prostitution is legal, such as Italy and Israel, the criminalization of prostitution would deter women who otherwise voluntarily bring themselves into the market from further promulgating prostitution.<sup>43</sup>

As mentioned above, the demand for sexual services fuels the market and therefore the sex trafficking industry. Countries should create laws that ban the purchase of sexual services from trafficking victims. If states already have such legislation, then governments should enforce such laws to decrease the demand for prostitutes.<sup>44</sup> Of course, trying to prohibit the purchase of sex slaves, while leaving other forms of prostitution available, is extremely difficult. Some clients may be unaware that their prostitute is currently being held against her will, and most are unaware whether the prostitute came to her present location through migration or trafficking. For example, Finland criminalized purchasing sexual acts from trafficked victims; however, purchasers and local police find it difficult to determine which prostitutes are trafficking victims and which are not. One absolute way to decrease the demand for trafficked victims is to make the purchase of sexual services illegal, regardless of circumstance.<sup>45</sup> This guarantees a decrease in demand for trafficked sex slaves.

Many NGOs have accused certain governments of focusing on prosecuting criminals for trafficking-related offenses rather than trafficking itself, and contend that these governments do so because legislation for other crimes is firmer. This incomplete prosecution results in lighter punishments for the convict.<sup>46</sup> Using alternative or additional crimes as a prosecution technique, due to the difficulties of convicting someone under human trafficking legislation, has not improved the trafficking situation or increased protection.<sup>47</sup> In fact, such "easy prosecution" reduces trafficking risks and, therefore, might increase the human sex trade. Instead of merely prosecuting sex traffickers based on trafficking-related offenses, such as illegally smuggling foreigners into the country or

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<sup>42</sup> Smith, "Sex Trafficking," 282.

<sup>43</sup> Mandel, "Out of Sight, Out of Mind," 229.

<sup>44</sup> *Ibid.*, 229-30.

<sup>45</sup> Kelemen and Johansson, "Still Neglecting the Demand," 248-49.

<sup>46</sup> Mandel, "Out of Sight, Out of Mind," 226.

<sup>47</sup> Kelemen and Johansson, "Still Neglecting the Demand," 263.

abusing human rights of women in brothels or prostitution houses, prosecutors should try to convict the perpetrators for the trafficking offenses themselves. If the anti-trafficking laws of a country make such convictions a barrier to justice, then prosecutors must speak up in order to influence legislative change. However, transit countries (states that are neither destinations nor suppliers, but rather a human trafficking thru-way) should receive grace for convicting traffickers for trafficking-related crimes. Often, these governments have trouble sentencing traffickers because trafficking and exploitation have not yet taken place, so they can only convict the trafficker for applicable crimes, such as smuggling.

## CONCLUSION

This paper has demonstrated that the Palermo Protocol is ineffective in reducing global human sex trafficking due to disagreements on wording, inaccurate reporting, and the UN's inability to enforce compliance from Protocol signatories. Many countries have definitions differing from the Palermo Protocol regarding victim consent, transport, and compensation. However, all countries that have signed the Protocol are obligated to adopt the Article 3 human trafficking definition, per Article 5. Even though some countries have adopted broader trafficking definitions than that of the Protocol, which allows for greater prosecution of traffickers, most countries have developed narrower definitions that instead reduce the number of trafficking convictions. These countries are not sanctioned for lacking Protocol-compliant definitions of human trafficking because cooperation is unenforceable. Additionally, many countries that do not have compliant definitions for human trafficking actually report full compliance to NGOs, IOs, and governments collecting data for analysis. This may be due to financial or cultural pressures that motivate certain administrations to hide their lack of anti-trafficking legislation and exaggerate their number of trafficking-related convictions.

It is worth noting that the regulation of the prostitution market and industry within a country is strongly connected to state sovereignty. Because of this, states can create their own criminal legislation.<sup>48</sup> This international standard, although understandable, hurts attempts to standardize global legislation against prostitution and trafficking. In addition, some countries are worried that entirely criminalizing the sex industry, including voluntary prostitution, would drive the market even further underground, making it even harder to regulate and control.<sup>49</sup> Therefore, because prostitution-related legislation is in the control of individual states, no international body can force countries to criminalize prostitution.

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<sup>48</sup> Ibid., 271.

<sup>49</sup> Ibid., 276.

Clearly, the Palermo Protocol has been unsuccessful in creating a unified, internationally-recognized trafficking definition that is enforced by its signatories. Reliable data should be collected by IOs, NGOs, and governments to better fight the global human sex trade. In order for these organizations to collect dependable statistics, countries that have signed the Protocol are obligated to voice concern regarding the human trafficking definition so that improvements can increase the Protocol's effectiveness. Furthermore, educating businesses and the public will help people better identify trafficking victims and situations so they can actively participate in reducing the global sex trade. Additionally, countries should focus on legislation that both criminalizes prostitution to reduce the supply of sex industry participants, and incriminates traffickers and clients to reduce the demand for such services. Ultimately, the enforcement of anti-trafficking legislation is crucial to the reduction of the human sex trafficking market.

## Bibliography

- Dempsey, Michelle Madden, Carolyn Hoyle, and Mary Bosworth. "Defining Sex Trafficking in International and Domestic Law: Mind the Gaps." *Emory International Law Review* 26, no. 1 (April 2012): 137-62. EBSCO Academic Search Complete. Accessed February 4, 2014.
- International Labour Organization. "New ILO Global Estimate of Forced Labour: 20.9 Million Victims." June 1, 2012. Accessed March 7, 2015. [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_182109/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_182109/lang--en/index.htm).
- Kelemen, Katalin, and Märta C. Johansson. "Still Neglecting the Demand That Fuels Human Trafficking: A Study Comparing the Criminal Laws and Practice of Five European States on Human Trafficking, Purchasing Sex from Trafficked Adults and from Minors." *European Journal of Crime, Criminal Law and Criminal Justice* 21, no. 3/4 (July 2013): 247-89. Accessed February 4, 2014. doi: 10.1163/15718174-21042030.
- Konstantopoulos, Wendy M., Roy Ahn, Elaine J. Alpert, Elizabeth Cafferty, Anita McGahan, Timothy P. Williams, Judith P. Castor, Nadya Wolferstan, Genevieve Purcell, and Thomas F. Burke. "An International Comparative Public Health Analysis of Sex Trafficking of Women and Girls in Eight Cities: Achieving a More Effective Health Sector Response." *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 90, no. 6 (2013): 1194-203. Accessed February 4, 2014, doi: 10.1007/s11524-013-9837-4.
- Mandel, Jennifer W. "Out of Sight, Out of Mind: The Lax and Underutilized Prosecution of Sex Trafficking in the United Kingdom and Israel." *Tulane Journal of International & Comparative Law* 21, no. 1 (Winter 2012): 205-31. EBSCO Academic Search Complete. Accessed February 4, 2014.
- Molland, Sverre. "'The Perfect Business': Human Trafficking and Lao-Thai Cross-Border Migration." *Development and Change* 41, no. 5 (2010): 831-55. Accessed February 4, 2014. doi: 10.1111/j.1467-7660.2010.01665.x.
- Smith, Heather. "Sex Trafficking: Trends, Challenges, and the Limitations of International Law." *Human Rights Review* 12, no. 3 (2011): 271-86. Accessed February 4, 2014. doi: 10.1007/s12142-010-0185-4.

- United Nations Office on Drugs and Crime. *Global Report on Trafficking in Persons 2012*. 2012. Accessed March 15, 2014. [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf).
- . “Human Trafficking.” Accessed March 4, 2014. <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>.
- . *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*. 2000. Accessed March 15, 2014. <http://www.osce.org/odihr/19223?download=true>.