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Trafficking in Humans: The Slavery of Our Age

Marie Vlachová *

Trafficking in human beings has been widely recognized as an abhorrent form of modern-day slavery, and condemned as an act that gravely violates universal human rights. Treating people as commodities that can be bought or sold as slaves, that are exploited ruthlessly by those who remove their passports and visas and withhold their earnings to get victims under the trafficker's ultimate control, is one of the fastest growing international crimes worldwide. Enormous profits have created a global network organized by transnational criminal gangs that traffic in people in the same way as arms, drugs, or money. Although most of the world's countries eliminated slavery long ago, trafficking in human beings has become one of the most lucrative activities of organized criminal groups, who have proven to be highly effective in entering countries and regions impoverished by wars, armed conflicts, or badly managed transitions in government.

Regions with unstable social and economic conditions with a demand for illicit labor (including sex workers) quickly become targets of trafficking activities, as evidenced by the speed with which these gangs were created in or entered the countries of Central and Eastern Europe after the end of the Cold War.¹ The annual profits of trafficking are estimated to be between USD 7 to 10 billion by the United Nations.² What is more, the risks to these criminals are low, because most of their activities, although unanimously recognized as a crime and a grave violation of human rights, go unpunished.

This essay deals with human trafficking by describing its scope and indicating the growing danger of this global phenomenon. Attention is focused on those who fall victim because of their poverty, gender, or age, as well as on the risks to which they are exposed during recruitment, transport, and work for their "employers." The difficulties in identifying and prosecuting those responsible for the enslavement of women, children, and men are shown, with an emphasis on the diversity of actors and activities in combating the criminal practice of trafficking in humans.

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¹ To indicate the scope of the practice within the European Union, the findings of the International Organization for Migration (IOM) serve as potent testimony: in 1995, half a million women were trafficked into the EU countries from non-member states. In Western Europe, more than 100,000 Ukrainian women, many of them minors, have been working as prostitutes; up to 1,420 women per year are trafficked into the U.K. for sexual exploitation, according to L. Kelly and L. Reagan, *Stopping Traffic: Exploring the Extent of, and Responses to, Trafficking in Women of Sexual Exploitation in the United Kingdom* (London: Home Office, Police Research Series, paper 123, 2000).

² Luca Dall'Oglio, Permanent Observer to the United Nations, Speech to United Nations General Assembly, New York, 12 October 2004. This figure is confirmed by the estimation of the U.S. Federal Bureau of Investigation, according to which traffickers gain USD 9.5 billion annually. See U.S. Department of State, *Trafficking in Persons Report 2004*, 9.

The fact that the volume of trafficking worldwide increased by almost 50 percent from 1995 to 2000 shows the alarming growth of this phenomenon. The fresh data released recently by the U.S. Department of State estimated that anywhere from 600,000 to 800,000 people were trafficked across international borders worldwide in 2003, and the United Nations Crime and Justice Information Network (UNCJIN) came to a similar estimation of about 700,000 persons being trafficked worldwide annually.³ Some other sources introduce even higher figures. For instance, the United Nations Population Fund states that between 700,000 to 2,000,000 women and children are trafficked across international borders annually, and the Council of Europe has estimated that up to four million women are trafficked in the world every year.⁴ On the regional and state level, two sources can be quoted: the Organization for Security and Cooperation in Europe (OSCE) estimates that 50,000 young Russian women are trafficked abroad every year for forced prostitution, and the U.S. Trafficking Victims Protection Act claims that approximately 50,000 women and children are trafficked into the United States each year.

The variability in the figures on trafficking published in various sources indicates a serious lack of reliable data based upon valid indicators and a unified methodology of data collection and processing. The U.S. Department of State's 2005 report on human trafficking warns that there are millions of victims around the world, unnoticed by any statistics, who are trafficked within their national borders, usually from districts that are falling behind in economic development to those where the influx of tourists from richer countries has initiated the creation of a local sex industry. As already indicated, trafficking is highly gendered activity, with four-fifths of the victims being female. Minors—boys and girls under the age of 18—represent half of the trafficked persons, and according to some reports “trafficking in children has reached epidemic proportions and is escalating out of control.”⁵

Trafficking: Well Organized, Effective, and Highly Flexible

Although trafficking has gained a global dimension in recent decades, some areas are more affected because of strong push and pull factors: poverty, illiteracy, unemployment, weak or corrupt state institutions, the demand for illicit labor, the lack of brides, or the thriving economics of sex tourism. For the time being, Western and Northern Europe, North America, the United Arab Emirates, Saudi Arabia, Turkey, and Japan are considered the major destination countries for human trafficking, yet the clear division of supply and demand regions has begun to blur recently. Although the main global routes still follow South-North and East-West lines, trafficking also exists between na-

³ Quoted according to La Strada (Czech Republic), *Trafficking in Human Beings in Central Europe* (Prague: La Strada, 2005), 17.

⁴ UNFPA, *State of the World Population 2003*; available at www.unfpa.org/swp/2003/english/ch2/page4.html.

⁵ UNICEF, *Childhood Under Threat, The State of World's Children* (New York: UNICEF, 2005), 90.

tions in the original regions of supply, for instance from Brazil to Thailand, from Romania to Cambodia, from Mozambique to South Africa, and from Nepal to India. People are even trafficked within the same state. For example, the nongovernmental organization La Strada, which provides aid to traffickers' victims in Central Europe, refers in a 2005 report to many young Roma (gypsy) women being trafficked from the Moravian city of Ostrava to the night clubs of Northern Bohemia, which are attended mostly by tourists from Western countries.⁶

Within a region, people are moved from poor countries to wealthier ones, as is the case in Central Asia—a region that faced many uncertainties following the independence of the former Soviet republics in 1991—where the main regional trafficking routes lead from Uzbekistan, Tajikistan, and Turkmenistan to Kazakhstan, which is economically more advanced. It is not exceptional that a country which at the beginning of its transition had provided cheap labor later is able to accumulate the resources that will attract illegal laborers for new private enterprises and for the sex industry. Increasingly, these states are becoming typical countries of destination.

The changing geographical nature of trafficking facilitates the speed and flexibility of its organizers' ability to shift the 'trade' to areas of stronger demand in a short time, building up new transit routes from countries of supply, cunningly using the existing infrastructure of local travel and job agencies, and discovering a whole network of new middlemen and dubious entrepreneurs interested in the influx of illicit labor. The increase of trafficking in Finland shortly after Sweden adopted a new law to prosecute clients of prostitution in 1999, or the speed with which the chain of clubs, bars, and brothels was moved from Bosnia to Kosovo shortly after the decision to deploy international peacekeeping forces are clear examples of this flexibility.

Every year, the U.S. Department of State examines about 140 countries (where data about the scope, magnitude, and countervailing measures regarding human trafficking are available) in order to estimate the progress that has been made in achieving minimum standards of state intervention as laid out in the U.S. Trafficking Protection Act of 2000. In the 2005 report, twenty-four countries were marked as needing special attention, since their efforts were seen to be falling behind the requirements.⁷ Another fourteen countries were mentioned as those whose governments are not able or willing to

⁶ La Strada, *Trafficking in Human Beings*, 27–33; Moravia is a region in the eastern part of the Czech Republic.

⁷ The twenty-four nations are: Armenia, the Dominican Republic, Mexico, Slovak Republic, Azerbaijan, The Gambia, Nicaragua, South Africa, Bahrain, Greece, Niger, Suriname, Belize, Guinea, Philippines, Ukraine, Benin, Haiti, Russia, Uzbekistan, Cameroon, India, Rwanda, Zimbabwe, China, Mauritius, and Sierra Leone.

comply with minimum standards for combating trafficking.⁸ Both lists provide ample evidence of the geographical scope and diversity of trafficking in human beings.⁹

Perpetrators and Victims

The composition of the group called “traffickers” is most varied, encompassing transnational criminal gangs gaining enormous profits, through the whole chain of minor agencies (employment bureaus, transit hotels, travel and transport agencies, local brothels, bars, night clubs, and massage parlors), all operating at the micro level, to numerous individuals—recruiters, middlemen, pimps, and employers—that facilitate the movement and placement of trafficked persons. This complex and diverse chain enables traffickers to be quick, flexible, and adaptable in response to temporary conditions and changes in their local environment. Although, according to international law, anybody who profits from trafficking during the stages of recruitment, transportation, transfer, receipt, or employment should be subject to investigation and prosecution, in practice the separate chains of the trafficking networks are rarely punished, since local police and other authorities do not consider them responsible.

It is a sad reality that often parents, husbands, or relatives send their offspring, partners, and friends into the snares of traffickers. As reported by some NGOs, more than 80 percent of trafficked persons were sold by somebody whom they knew personally and who profited from their vulnerability, naiveté, and trust.¹⁰ This sale of children is perhaps an inevitable phenomenon of a world where economic profits are prioritized over the basic ethical rules of protecting those whose absolute dependency upon adults makes them extremely vulnerable to existing insecurities. Children represent at least half of the persons trafficked worldwide; according to some estimates, more than a million children are trafficked annually.¹¹ The main push factor for the sale of children is seen in the growing demand for cheap, illicit, unqualified labor: children can go either into the agriculture sector (for instance, in cotton fields and banana plantations), or into the production of goods such as bricks, silk, hand-rolled cigarettes, jewelry, hand-woven carpets, leather goods, and other commodities.

However, more and more often, the enslavement of children takes on the form of sexual servitude. It is estimated that 30 percent of the ten million prostitutes in Indonesia are children; in the Philippines, with about 400,000 female prostitutes, children make up one quarter; in Mexico the fast-growing sex industry makes use of at least 5,000 children; and Taiwan has about 60,000 girls aged twelve to seventeen working in

⁸ These fourteen nations are: Bolivia, Ecuador, Qatar, United Arab Emirates, Myanmar (formerly Burma), Jamaica, Saudi Arabia, Venezuela, Cambodia, Kuwait, Sudan, Cuba, North Korea, and Togo.

⁹ The U.S. Department of State, *Trafficking in Persons Report 2005*; available at www.state.gov/g/tip/rls/tiprpt/2005/46610.htm.

¹⁰ La Strada, *Trafficking in Human Beings*, 8–9.

¹¹ UNICEF website, at www.unicef.org/protection/index_exploitation.html.

the sex industry.¹² It is no secret that a large section of the sex industry is specialized in child prostitution and pornography. The impact of the Internet on the influx of child pornography certainly plays an important role in the fast-growing sex industry.

Children separated from their families because of war, destitution, the death of caregivers, or the break-up of their family represent a distinct group of victims. Illegal adoptions of children represent a profitable business, as evidenced by the thousands of children being sold from poor to developed countries. For instance, UNICEF states that 1000 to 1500 Guatemalan children are trafficked each year for adoption by couples in North America and Europe. Unregistered children (children without any legal documents), orphans, street children, children from broken families, or children left unaccompanied when their country is struck by an armed conflict or a catastrophic disaster are targeted by traffickers, primarily because of the diminished likelihood of being punished. Girls are paid special attention because of the value ascribed in some developing regions of Africa to having intercourse with a virgin as a cure for HIV/AIDS, or because of their value as child brides and domestic workers. But even when they are living under the protection of functioning state institutions children's safety can be put at risk, as is evidenced by numerous cases of orphans sold by the very child-care institutions that should protect them. The sharp increase of the number of children living in orphanages and the spread of human trafficking is a deadly combination, as reported from Russia, where over 380 crimes related to trafficking and coercion of minors into prostitution were investigated in 2004. According to some NGOs, this figure represents only the tip of the iceberg.¹³

Usually it is extreme poverty that forces parents to sell a child in order to gain the means necessary for the family's survival. Moreover, some traditional practices contribute to the increase of trafficking in children. For instance, in some African countries, debt bondages are passed from generation to generation, throwing children into bonded labor in a desperate attempt to pay off the debt of their parents or even grandparents. Traditional fostering—a practice common in some West African countries that allows a child to be sent to work for a member of the extended family in exchange for a promise of education and vocational training—can be named as another example. What began originally as solidarity networks to enable rural families to send their children to cities to improve their chances of education has degenerated into money transactions, out of which middlemen and slave masters take the biggest profit. Trafficking in brides is a common practice in some regions with a lack of young women, as is the case in China and in some parts of India, where infanticide of female fetuses and deliberate starvation

¹² Child and Women Abuse Studies Unit (CWASU), London Metropolitan University; available at www.cwasu.org.

¹³ According to a UNICEF report, the number of youth living in orphanages worldwide has risen from 400,000 to 600,000 in the last ten years; because of continued ethnic strife, poverty, neglect, abuse, and HIV/AIDS, many families resort to placing their children there. Russia ranks high as both a source country and a destination country for women and children sold into slavery; see Fair Fund website at <http://fairfund.org/prepare.asp>.

of newborn girl infants because of the preference for boys have caused a demographic imbalance between the sexes.¹⁴

Often it is very young girls that are trafficked and sold as brides. In some Muslim countries, underage girls are sold across borders as third or fourth wives, as has been reported recently from Tajikistan and Uzbekistan.¹⁵ In the developing world, especially in Africa and Latin America, many children are trafficked for prostitution, beggary, or domestic work, the conditions of which do not much differ from slavery. Most notably in Africa, but also in Myanmar and Colombia, children are trafficked for soldering, abducted by rebel groups, and forced into combat and servitude. As the number of children used in armed conflicts is not diminishing—the latest estimation goes as high as 300,000 children—the trend to abduct and traffic children for various paramilitary forces will certainly continue.¹⁶

Yet certain wealthy states have also recently received media attention as destination countries for the sale of children. Thousands of very young boys have been trafficked from South Asian and African countries to the United Arab Emirates to ride camels in a traditional sport popular among the local elite. The boys are kept in harsh living conditions, deliberately being underfed so as not to put on weight; they have to work long hours, risking their health in the dangerous races. When they grow up, they are disposed of without any other skills but camel riding, often even not being able to speak their native language. There is a hope that this form of children's slavery will disappear soon, since some of the states have promised to use robots as camel jockeys, and a law was introduced in the UAE in April 2005 to forbid the use of jockeys under the age of fifteen from taking part in the sport.¹⁷ Unfortunately, such a solution is far beyond the possibilities of most developing countries.

Trafficking affects men as well as women and children, although not to such a great extent. In many transitional countries, due to economic decline accompanied by high unemployment, men are forced to seek jobs in wealthier countries where a demand for unskilled labor exists. These migrants are lured into the snares of traffickers who arrange for their visas, transport, and placement, leaving them in a destination country with huge debts to work off. Although these migrants are necessary for economies that lack manual workers, most of them live and work in degrading conditions of second-class labor, exposed to exploitation and social isolation. Probably because of the blurred distinction between trafficking and illegal immigration, the attention paid to trafficking in men is much less, and—except for anecdotal information and fragmentary data—very little is known about the true extent and impact of trafficking in men. Nev-

¹⁴ UNICEF, *Children on the Edge: Protecting Children from Sexual Exploitation and Trafficking in East Asia and the Pacific* (New York: UNICEF, 2001).

¹⁵ Liz Kelly, *The Fertile Fields: Trafficking in Persons in Central Asia* (Vienna: IOM, 2005), 62.

¹⁶ UNICEF, *Childhood Under Threat 2005*, 44.

¹⁷ There are up to 40,000 child jockeys working across the Gulf, many of them having been trafficked from South Asia. "Robot jockeys to ride camels in the Gulf," *BBC News*, 10 April 2005; available at http://news.bbc.co.uk/go/pr/ft/-/2/hi/middle_east/4430851.stm.

ertheless, even where these illicit workers are not considered as typical victims of trafficking, those who organize their transport and remain abroad violate international labor and immigration codes as well as public health and human rights standards.

There is some evidence that the recruitment and transport of men for forced labor is organized in the same cunning way as trafficking in women and children, with men being transferred from one country to another if needed. Besides the personal suffering of trafficked men, there are grave consequences in terms of tax evasion by those who employ illicit workers, and in the level of corruption of state officials, especially the policemen, immigration agents, consulate workers, and labor bureau clerks that are bribed in order to provide “help” to black-market workers. It was estimated that, due to the labor nomadism of hundreds of thousand Ukrainians, including men mostly working in construction companies, the Czech state had been robbed of taxes of six billion Czech *korunas* annually. In 2005, the Czech police repatriated about 12,000 illegal immigrants from Ukraine, but no Czech officials—to say nothing of the entrepreneurs who had employed illegal migrants—were prosecuted.¹⁸

Causes and Costs

The main root causes of trafficking are linked with uneven economic development and, consequently, with the dynamics of demand/supply processes in the world labor market. Poverty in the developing world, accompanied by unemployment affecting large layers of the population and aggravated by wars, conflicts, and poorly managed governmental and economic transitions, create a supply of cheap unskilled workers matching the parallel demand for such labor in the industrialized world and in prosperous, developing countries. Moreover, stability and economic growth contribute to the development of leisure industries like the form of tourism oriented to sexual entertainment. Population mobility increased markedly in the last decades of the twentieth century, as indicated by the statistics of the International Organization for Migration, according to which the number of international migrants rose from 82 million in 1970 to 175 million in 2000, more than doubling over the course of thirty years.¹⁹

Globalization of communications, transport, and travel contribute both to the creation of an image of the golden West/North as well as to a relative ease of mobility for those who—encouraged by information about job possibilities and high living standards—yearn for a better life abroad. For the vast majority of people, migration to a richer country represents the only possibility for modest enhancement of their lives and

¹⁸ Pavel Máša, “The Czech Republic will profit from legalization of the Ukrainians,” *Lidové noviny* (25 July 2005), v.

¹⁹ International Organization for Migration, *World Migration Report for 2005* (Vienna: IOM, 2005), 393; available at www.iom.int/documents/publication/wmr_sec03.pdf.

sometimes even of mere survival. It is no wonder that especially young people, who often have a dim perspective of the future, wish to work abroad.²⁰

Desperate situations in internal labor markets (including the local sex industry, where prices are much lower than abroad and the risk of stigmatization by the local community much greater)—along with those few successful women who have managed to return home with some money—give women hope that triumphs over bad experience. This is supported by the perhaps astonishing fact that half of all female repatriates interviewed in an IOM study in Central Asian countries intended to try to work abroad again.²¹

In spite of limited knowledge of its true extent, organizational structures, and mechanisms of operation, it is clear that the sex industry has been evolving into a global phenomenon that poses an extreme threat to women and children, whose exclusion from job opportunities and social benefits makes their enslavement through trafficking much easier. There is a direct link between trafficking and prostitution, since it thrives in societies with patriarchal social structures, in which women are considered primarily as commodities, servants, or sex objects. The prevalence of female victims of trafficking indirectly reflects discriminatory gender relations.

The breakdown of law and security regimes in war-torn countries or countries in transition creates a breeding ground for trafficking in human beings. For instance, in South Eastern Europe, a wide range of criminal organizations has been reported, ranging from cell-like structures to loose networks involved in variety of transnational criminal activity, including human trafficking. The cohesion of these groups can be based on former political and economic liaisons, on ethnicity or kinship, and—with the use of corruption, violence, and exploitation of public services—on the steady links that have been built up between legal and illegal enterprises.²²

Even those who bring peace to these countries sometimes—whether directly or indirectly—contribute to creating an environment favorable to trafficking. The deployment of large numbers of peacekeepers itself creates a demand for sexual services that fuels markets for trafficked persons in both local brothels and domestic labor. Local criminal groups controlled by transnational networks rushed to build up local chains of brothels targeting peacekeepers as clients, as happened in Kosovo, where a chain of brothels had

²⁰ According to a reliable report, only 9 percent of young Moldovans wish to live in Moldova, one of the many countries stricken by extreme poverty, huge unemployment (the latest reports speak of a 75 percent rate), and the breakdown of social networks. See UNICEF/OHCHR/OSCE/ODIHR, *Report on Trafficking in Human beings in Southeastern Europe* (June 2002); quoted from Helga Konrad, “Trafficking in Human Beings – The Ugly Face of Europe,” *Helsinki Monitor* 13:3 (March 2002): 260–71.

²¹ Kelly, *Fertile Fields*, 50.

²² Jhama Chatterjee, *The Changing Structure of Organized Crime Groups* (Ottawa: Royal Canadian Mounted Police, 2005), 12; available at <http://dsp-psd.pwgsc.gc.ca/Collection/PS64-9-2005E.pdf>.

already been opened before the arrival of the first peacekeepers to the region.²³ In some cases, peacekeepers were directly implicated in trafficking activities, through transporting victims and providing support to the contractors, as has been reported in Bosnia, Kosovo, Afghanistan, East Timor/Leste, Sierra Leone, and the Democratic Republic of Congo.

The risks for trafficked persons are numerous, since the victims are usually not familiar with the language, customs, laws, and practices of the destination country. Their social isolation and absolute dependence upon intermediaries and unscrupulous employers make them extremely vulnerable to psychological and physical harm, to drug abuse, and to violence, which is often used in order to control them. Children without schooling and education lose their future economic opportunities, which in turn increases their vulnerability to being re-trafficked. Women trafficked for sex services risk that they will not be able to earn the money they expected, since the 'business' is organized in a way that guarantees maximum profit with minimum costs. Huge bondage debts paid to the traffickers for gaining the job that must be worked off diminish victims' chances to remit money home. For instance, a woman working in a Central Asian brothel has to pay back a debt of 18,000 Euros, with daily earnings of about 400 Euros, under the condition that she services fifteen to twenty clients a day. But it is the pimps or brothels owners that are paid by the clients; the women are given only modest pocket money, at least during the first year of the contract. In this way, even a small brothel in the region can have a yearly turnover of 1.5 million Euros.²⁴

Aside from the obvious suffering of enslaved individuals, trafficking has serious societal consequences for public health, security, and moral values. Because of a high prevalence of sexually transmitted diseases among prostitutes, trafficking contributes to the increase of the incidence of HIV/AIDS and its subtypes (mutations) that hinder both its treatment and the quest for an ultimate cure. Moreover, trafficking undermines public health by contributing to the spread of some other, less frequently mentioned diseases such as tuberculosis and scabies that are fostered by cruel working and living conditions.

The profits of trafficking in human beings have a negative impact on nations' level of security by fuelling money laundering; fraud and tax crimes; document forgery; smuggling of drugs, arms, or stolen vehicles; the sale of human organs; and other criminal activities. The findings from war-torn or unstable regions show that, by undermining legal labor markets and impeding governments in economic and political transition or post-conflict reconstruction, trafficking contributes to the maintenance of an unstable and fragile political environment. The fact that such grave violations of the human rights of millions of victims goes largely unpunished indicates a major erosion of all the efforts to enforce human rights protection as a leading principle of justice and the rule of law.

²³ John Piccarelli, *Trafficking Slavery and Peacekeeping: The Need for Comprehensive Training Program, A Conference Report* (Turin: UNICRI and TraCCC, 2002).

²⁴ Kelly, *Fertile Fields*, 102.

Combating Trafficking in Human Beings: The Actors

Combating human trafficking has become an objective of many actors—having various authorities and capacities—that are involved in the prevention of trafficking, the provision of protection and assistance to the victims, and the prosecution of the perpetrators. The power to pass national legislation, to foster the struggle against trafficking by means of law enforcement institutions, to investigate and prosecute traffickers, and to provide assistance to the victims places state actors—parliaments, governments, security institutions (especially police, border guards, and immigrant agencies), judiciary systems, and social and health services—on the front lines of that struggle. Trafficking in human beings is thriving in the regions and countries where security sector institutions are dysfunctional and weakened by corruption. Progress in the democratic transition of these institutions in countries struggling with post-war reconstruction or regime change is an important prerequisite of success.

Short-term measures in the enhancement of the operational potential of security sector agencies are being seen in providing special training and education to personnel about trafficking issues; in cross-national cooperation of border guards; in more transparent visa and immigration policies; in closer cooperation of security institutions with civil society agencies relevant to human trafficking; in the implementation of codes of conduct for the military and civilian personnel deployed in peacekeeping missions; and in the creation of special local units within these missions devoted exclusively to the fight against human trafficking (an effort in which more women should be included). Without investments in high-tech equipment for police and border guards, these goals cannot be achieved. Nor is success possible without the commitment of parliaments and governments to place pressure on the security sector to pay more heed to human trafficking. Undoubtedly, the growing awareness of the impact of trafficking on the level of security for which states are primarily responsible will increase the responsibility of state institutions for fighting the practice.

For the time being, the most visible efforts in monitoring and aiding the victims of trafficking are being made by civil society agencies, mainly by NGOs, the media, and academia. Their irreplaceable role in assisting governments in promoting the protection of victims “through comprehensive and non-stigmatizing social and appropriate economic assistance” has been highly appreciated by major international actors.²⁵ Besides providing practical assistance to the victims—especially those who fear to seek aid from the state authorities—NGOs operating in the regions affected by traffickers’ activities substantially contribute to the level of knowledge about the phenomenon, monitoring the situation, collecting data, and testing the true power of existing international laws. There are dozens of international organizations with both global and regional programs that provide assistance to trafficked persons. To name just several of them: La Strada operating in Central Europe; the Foundation Against Trafficking in

²⁵ UN General Assembly Resolution 58/137, “Strengthening international cooperation in preventing and combating trafficking in persons and protecting victims of such trafficking,” A/RES/58/137, 2.

Women, a Dutch international organization assisting women in several continents; a broad international network of nongovernmental organizations established in 1994 and called the Global Alliance Against Trafficking in Women (GAATW); the Coalition Against Trafficking in Women (CATW), which operates mainly in the United States and Australia; as well as the world's oldest organization against forced servitude, the Anti-Slavery International founded in 1839 and located in the United Kingdom.²⁶ Some renowned human rights organizations, such as Human Rights Watch or Save the Children, also devote themselves to the struggle against human trafficking.

With regard to its complex transnational nature, trafficking in human beings requires cross-border measures. Recently, considerable regional initiatives were taken in Europe. The European Union concentrates on harmonizing national legislation covering jurisdiction, prosecution, and the standing of victims in judicial proceedings, and prepares policies, practices, and cooperation between EU members and prospective member states. In 2005, the European Commission will evaluate the measures taken in the past years in order to enhance the exchange of best practices and to improve cooperation, not only between EU members, but also with candidate states and third countries, among them primarily the United States. The sexual abuse of trafficked children will be emphasized in relation to some new forms of trafficking, especially those related to the fight against child pornography on the Internet.

In 1999, trafficking issues became one of the priorities for the Organization on Security and Cooperation in Europe (OSCE), and in the following year the growing concern about the proportions of trafficking in humans all over Europe led to the establishment of the Stability Pact for South Eastern Europe Task Force for Fighting Trafficking in Human Beings. This political initiative is an example of a significant regional initiative working as a coordinating instrument for streamlining national anti-trafficking activities, with an aim to create a strong regional anti-trafficking structure in South Eastern Europe. The Council of Europe has been drafting a regional convention that would determine legal norms for trafficked victims and enhance the process of monitoring the phenomenon within Europe. Similarly, within the framework of training and educational programs for peacekeeping staff, both military and civilian, NATO has developed guidelines to avoid further scandals involving peacekeeping personnel enmeshed in trafficking.

The major international actors are represented by the United Nations organizations dealing with human rights protection, labor and migration issues, or the present situation in the struggle against organized crime: the Office of the UN High Commissioner for Human Rights (UNOHCHR), the Office of the UN High Commissioner for Refugees (UNOHCR), the International Labor Organization (ILO), the International Office for Migration (IOM), the organizations protecting children and women rights (UNICEF, UNIFEM); the UN Office on Drug and Crime (UNODC); and the UN Commission on Crime, Prevention, and Criminal Justice (UNCPCJ). Since 2004 a Spe-

²⁶ A comprehensive list of regional NGOs working in the areas can be found at www.humantrafficking.org/ngos/.

cial Rapporteur on Trafficking in Persons, Especially Women and Children has been appointed for a period of three years and empowered to gather information, formulate recommendations, and provide expertise and guidance to the UN agencies and other relevant national and regional bodies.²⁷ The vast array of the UN agencies' activities covers a continuous monitoring of the trafficking situation, conducting research, leading awareness campaigns, accepting legally binding documents on trafficking, and advocating for their implementation among member states.

Solutions

Among the actors involved there is an increasing recognition of the necessity to address the root causes of trafficking, i.e. the phenomena that lie behind the supply/demand aspects created by global inequalities in distribution of jobs and resources. Poverty, underdevelopment, and cultural stereotypes in gender relations can be named as the main root causes of this modern-day slavery. There is an increasing conviction that the world's scientific, intellectual, and economic resources can be mobilized to eradicate these main scourges of our age. During the World Economic Forum held in Davos last year, all global leaders agreed that poverty and injustice are the world's main problems, and some representatives of rich countries, reacting to the evaluation of progress in reaching the United Nations Millennium Development Goals (MDG), promised to fulfill their obligations regarding the provision of financial aid to developing countries. A report produced by the Earth Institute at Columbia University under the leadership of Professor Jeffrey Sachs and submitted to the UN Secretary-General in January 2005 claims that due to advances in science and technology, all the problems targeted by the MDG are solvable.²⁸ The report names three conditions necessary for an improvement:

- Bridging the gap in financing the Millennium Development Goals by pushing the rich states to fulfill their obligations and promises;
- Addressing the real needs of developing countries by investing funds in close cooperation with the recipients of concrete aid;
- Sensitizing the populations of wealthy nations to the plight of the world's children to increase the public awareness of the real causes of destitution, so that amplified pressure is placed on major international actors and national governments to invest development funds in more balanced and rational way.

The report also points out the necessity to examine the real roots of poverty and to abandon simplified arguments about bad governance as the main cause of the failure to fight poverty in the developing world. Many African countries—such as Ghana, Burkina Faso, Mauritania, Mali, and Ethiopia—have good governments but simply not

²⁷ The position is held by Ms. Sima Huda, president of the Bangladesh National Women Lawyers' Association and current board member of the Coalition Against Trafficking in Women, Asia Pacific.

²⁸ Jeffrey D. Sachs, *The End of Poverty: Economic Possibilities for Our Time* (New York: Penguin, 2005).

enough money to break the cycle of poverty and to initiate the process of economic growth. In order to invest USD 195 billion in the next ten years (the sum needed for achievement of the MDG), annual investments of rich countries into development aid must be doubled. But even this amount of money should not be difficult to achieve, taking into consideration the world's annual defense investments, which amount to USD 900 billion.

Short-run measures against trafficking in humans concentrate on three areas—prevention, protection of victims, and prosecution of perpetrators—and cover a broad array of strategies concerning information, legislation, law enforcement, and coordination of activities on various levels. Most of the experts agree that there is a momentous lack of data regarding the scope of trafficking in human beings. In spite of some reliable databases that have emerged recently (UNESCO, IOM, UNODG, Eurostat, EUROPOL, the U.S. Department of State), most of the data is sparse, fragmented, non-systematic, and not statistically comparable because of a low level of unification. With regard to the crime's clandestine nature, the majority of statistics are victim-oriented and originate from police records, court statistics, and NGOs, primarily referring to sexually exploited women, while data on children (and especially men trafficked for forced labor) are scant. A systematic, methodologically unified mode of international cooperation in data collection and exchange is needed in order to gain a better understanding of new patterns, the operational mechanisms of traffickers, as well as the consequences for individuals and societies.

The present legal framework—represented primarily by the Palermo Protocol on Trafficking, the Optional Protocol to the Convention on the Rights of the Child, the ILO conventions (No. 92, 182) against illicit labor, the U.S. Trafficking Victims Protection Act, and the EU Brussels Declarations on trafficking in human beings—is generally thought to be sufficient, although recently some criticism of the legislation has appeared from the NGO community.²⁹ The UN Palermo Protocol definition has been widely accepted as a good tool for unifying terminology and enabling the avoidance of misunderstanding and confusion about the nature of the practice.³⁰ It covers any forms of sexual abuse, forced labor or service, or any practices similar to slavery or servitude, including organ removal. It clearly distinguishes trafficking from smuggling, which is the criminal practice of illegally transporting persons across international borders. In smuggling, both the smugglers and persons smuggled across borders are transgressing laws, while in trafficking only the traffickers are prosecutable, even if a trafficked person consented to be transported and employed abroad. The exclusion of the aspect of

²⁹ The Palermo Protocol is officially known as the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime (United Nations, 2000).

³⁰ Here trafficking is defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of 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.”

consent from prosecution represents another salient element of the definition, providing for the possibility to criminalize the perpetrators, not the victims. The Palermo Protocol also elucidated the association between trafficking and labor migration, clearly stating that, when migration results in drudgery or slavery, it becomes trafficking—a criminal act and a grave violation of human rights.

The definition covers the three main elements of trafficking: the steps by which victims get into the snare of criminals (recruitment, transfer, transportation, harboring or receipt of a person); the usage of deceit and force to control them; and a clear intention to exploit them. Based on their practical experience with new methods used by traffickers, some NGOs claim that reading these three conditions as the only inevitable markers of a criminal act can be insufficient when confronted with such a complex and diverse practice. More and more often, local agencies and individuals are hired to take care of separate steps in the entire process of recruitment, transfer, and receipt; thus, clearly defining an unbroken chain of connected individuals has become more difficult, if not totally impossible. There are ambiguities about how to treat these third parties surrounding whether they should be criminalized in the same way as the organizers and how to deal with situations where a case might have jurisdiction in one country, evidence in another, and witnesses yet in another. Moreover, the force used in trafficking can range from direct physical assault to more sophisticated forms of control that weaken the awareness of risks, such as deceit regarding the kind of work or earnings offered, and debt bondage.

Another problem arises from the variety of reasons why people—especially women and girls—are trafficked. In some countries, practices quite similar to human trafficking are used to gain brides for forced marriages, to hold young migrants for ransom, or to use women as a resource to settle disputes among warlords, as was reported some time ago from Afghanistan.³¹

The complex nature of trafficking, which makes the formulation of an unambiguous and generally acceptable definition so difficult, also has a considerable impact on the implementation of international law into regional and national legislation. Enhancement of mechanisms for victim protection is one of the core issues of the present discourse on how to combat trafficking in human beings. In order to prevent their further victimization and criminalization, it is recommended to treat victims of trafficking in accordance with international standards; to provide for a wide range of psychological, legal, medical, and social assistance in disengagement from their slave-masters; and to aid them in returning home and reintegrating into their community.

But to implement these seemingly indisputable requirements into a nation's law is not so easy, as evidenced by the Czech criminal code which, in paragraph 242, defines the crime of trafficking, the position of perpetrators and victims, and their role as a witness. The code applies only to trafficking for the purpose of sexual exploitation; the transnational aspect of trafficking is not mentioned at all, and psychological coercion

³¹ Statement by IOM Chief of Mission on release of the report *Trafficking in Persons in Afghanistan*; available at <http://www.iom.int>.

used for the purpose of control of victims is not included as a prosecutable act. Legislation that is inconsistent with the realities of trafficking substantially influences the will and ability of police and other relevant institutions to protect victims and persecute perpetrators. Harmonization of national and regional legislation with established international standards—especially regarding the treatment of victims—is considered vital in the intensification of the fight against trafficking. As concerns trafficked children, their abuse is unambiguous and clearly defined in Article 3 of the Palermo Protocol. The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered a crime, whether or not force, coercion, and deception are involved.

Although efficient methods of screening and identifying trafficking activity have been developed and are commonly used (for instance, in the United States or Canada), the most frequent avenue of redress in cases of trafficking is repatriation of the victims, usually without any social assistance or request for them to stand witness against their slave-masters, to say nothing of indemnification. Even if some provisions to protect victims of trafficking exist in national law, only very rarely are they applied, since states are hesitant in prolonging or even legitimizing the stay of aliens on their territories. It can be envisioned that, with the threat of international terrorism, restrictive immigration policies will be enlarged, making the protection of victims even more difficult. Such attitudes, together with the commonly shared opinion that illegal migrants deserve their fate due to their avarice or immoral behavior, contributes to the fact that traffickers in human beings enjoy wide impunity almost all over the world. When they are brought to justice at all—and then mostly because they were caught in the act of some other form of trafficking (drugs, arms, money laundering)—traffickers in human beings are rarely prosecuted for that crime. When prosecuted for human trafficking, especially in Europe, they mostly receive only conditional sentences. The owners of local facilities (night clubs, bars, etc.) that profit from human trafficking are rarely criminally liable; the prosecution of pimps relies on the prevailing public attitude, based on a widely shared conviction that prostitution is an unpleasant yet tolerable scourge that can be controlled by the police.

There is a need to analyze how police, border guards, and courts in the regions and countries affected by human trafficking investigate and prosecute offenders and what reasons are behind the lax sentences. A change in public attitude—from tolerating prostitution, or closing one's eyes to its realities—is needed, so that instead of prosecuting the women involved in prostitution, the clients who are buying sexual services from somebody who has been deceived, transported across Europe, beaten, and raped as a means of breaking her down are condemned and prosecuted. In the long-term perspective, such a change of outlook and the increase of public awareness of the gravity of the problem could reduce the demand that fosters trafficking for sexual exploitation.

Trafficking in human beings is a transnational crime, and only the concerted efforts of all actors involved will succeed in diminishing its frequency and scope. Almost all recent international documents on human trafficking accentuate both the urgent need for cooperation within states, engaging governmental and non-governmental organizations, and also call for much broader international cooperation in sharing methods in training

of personnel; data and information on incidence rates and trafficking mechanisms; and expertise on legislation, prosecution, and social assistance. The unwillingness of state institutions to legitimize the migrants' stay, and the negative public attitudes towards them, play straight into the hands of traffickers who—in cases where measures of law enforcement are applied—have developed a flexible system of labor agencies that can move people between countries in the region. For both governments and civil society, the key is to generate the necessary political will to directly confront the pernicious nature of trafficking, and to reverse for good the pervasive criminalization of its victims.

Trafficking Trends, Formal Law Enforcement Cooperation, and Future Perspectives: The Cases of Belarus and Ukraine

*Fredric Larsson **

Introduction

Belarus and Ukraine are two countries heavily affected by the traffic in human beings, particularly in women and children for purposes of sexual exploitation. At the same time, these countries have been at the forefront of the fight against this crime, and have made progress in developing strategies and taking political action to combat this crime. Both countries have distinct laws against human trafficking and specialized law enforcement units to address the problem, as well as progressively greater numbers of criminal cases filed and traffickers convicted.

Yet law enforcement agencies in these two countries are still hampered in their efforts by numerous and varied obstacles stemming from their specific national contexts, as well as by shared problems, including a lack of adequate financial resources allocated to counter-trafficking efforts, legislative difficulties created by ambiguous provisions within current laws, limited national inter-agency cooperation, and a severe lack of responsiveness on the part of international law enforcement agencies in countries that are destinations for the victims of human trafficking. The latter issue often has its foundation in the fact that many of the home nations of victims of human trafficking lack certain law enforcement capacities and are still working on developing their own mechanisms of response to international law enforcement agencies. But it is equally due to the persistence of outdated and overly bureaucratic systems for the formal communication of operational and evidentiary information in the international law enforcement community. This severely handicaps the law enforcement response, and lessens the possibility of effective investigations and prosecutions across borders, which further frustrates and demoralizes those in the law enforcement community who are seeking to combat human trafficking.

This essay will examine the specific issue of the effectiveness of formal law enforcement cooperation and its possible relation to current conditions and trends in human trafficking, in particular related to the formal exchange of operational and evidentiary information. This is recognized as a major problem and a constant point of frustration for law enforcement agencies in countries of origin, and one that is frequently raised by law enforcement representatives in various forums. However, little has been done to address this widely recognized problem, in particular with regard to the documentation and analysis of formal law enforcement cooperation. It is not the intention of this paper to provide any comprehensive overview of human trafficking as such, nor the law enforcement response to it in these two countries.

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It is my self-evident assumption that effective action against human trafficking and transnational crime requires that national measures be coordinated and combined with international measures, and that avenues should be promoted and enhanced that will encourage dialogue and formal exchange between officials of countries of origin and destination and will facilitate the sharing of operational and evidentiary information. A direct positive correlation between effective law enforcement activity and cooperation and a decrease in trafficking must be assumed. Similarly, inactivity and lack of international cooperation will only continue to provide for an environment conducive for the criminal activities related to human trafficking to continue, diversify, and expand. Finally, it is the ambition of this paper to provide recommendations for actions intended to enhance and stimulate a law enforcement response and to promote cooperation in filling currently identified gaps and needs, with the hope that this may contribute to the evolution of current efforts.

Methodology

This essay will look at quantitative information derived from the International Organization for Migration (IOM) caseloads regarding assisted victims of trafficking, countries of destination, and formal law enforcement cooperation, with particular attention paid to mutual legal assistance requests dispatched from Belarus and Ukraine to countries of destination. Furthermore, it draws conclusions from the caseload of victims of trafficking that have been provided with direct assistance by IOM in the two countries, in total some 2600 individuals. Although no valid estimates can be made as to the actual numbers of people being trafficked to different countries, the caseload is sufficient to make valid estimates with regard to specific trafficking trends.

Furthermore, this article uses available statistical data as received from the Ministries of Internal Affairs in Belarus¹ and Ukraine² concerning formalized international law enforcement cooperation, in particular requests for mutual legal assistance. The data related to the Belarus situation is particularly comprehensive and detailed.

Two types of formal law enforcement communication will be examined:

1. Mutual legal assistance (MLA) requests are requests for official information, in accordance with bilateral/multilateral agreements or international regimes governing such processes, and may be sent through the General Prosecutors Office (GPO), Ministry of Justice, etc., depending on the specific country in question, and usually through the diplomatic post.
2. Information requests are requests for basic information related to specific criminal cases—i.e., information related to bank accounts or individual suspects. They are usually sent through Interpol. (Data regarding information requests was not available for Ukraine.)

¹ Provided by the Directorate on Investigation of Crimes against Human Beings of the Main Directorate for Preliminary Investigation.

² Provided by the Main Investigation Department.

The paper specifically examines the situation related to the six main destination countries for victims of trafficking from Belarus and Ukraine respectively.

This essay had its genesis as a response to the problems regarding practical law enforcement cooperation across borders that were identified by law enforcement practitioners at the Minsk, Kiev, and Chisinau conferences on *International Perspectives on Law Enforcement Cooperation in Combating Trafficking in Human Beings*.³ In particular, it draws on the specific recommendations for international operational and judicial cooperation derived from the discussions at these conferences, as well as numerous practical and qualitative accounts of difficulties that law enforcement officials in these two countries have confronted.

Background

Since 2000, the International Organization for Migration has provided direct assistance—such as aid with medical, psychological, housing, family and legal issues—to more than 2600 beneficiaries in Belarus and Ukraine. The number of assisted victims of trafficking has increased progressively over the last couple of years. Nonetheless, it is important to note that this increase should not necessarily be seen as evidence of an actual increase in trafficking from these countries, but rather as a result of greater capacity and scope of national referral systems.

The Republic of Belarus

In the Republic of Belarus, IOM has provided direct assistance to over 500 beneficiaries since 2003, who had been trafficked to twenty-seven different countries. Nonetheless, 49 percent of the individuals had been trafficked to only two countries, Russia and Poland, and 77 percent to the six main destination countries: Russia, Poland, Turkey, Germany, Cyprus, and the United Arab Emirates. 11.5 percent of all victims assisted in 2004–2005 were men. The average age of those assisted was almost twenty-five years of age. 23 percent of the beneficiaries assisted had been trafficked for the purpose of non-sexual forms of exploitation, primarily labor.⁴

Belarus dispatched requests for information to various international law enforcement counterparts in 143 cases related to trafficking in human beings between 1 January 2001 and 8 June 2005. These 143 cases can be divided into information requests (75 cases) and formal mutual legal assistance requests (68 cases). They are broken down by country in the table below.

Only 32 percent of the MLA requests related to trafficking in human beings dispatched from Belarus were responded to within a period of three months.⁵ It is noteworthy that less than 24 percent of the requests dispatched to the countries of the European Union had been responded to within a period of three months.⁶ Twenty-four requests

³ The conferences were held in Minsk (May 2003), Kiev (May 2004), and Chisinau (May 2005).

⁴ 2004–2005 IOM caseload.

⁵ Excluding request dispatched in May/June.

⁶ Excluding request dispatched in May/June.

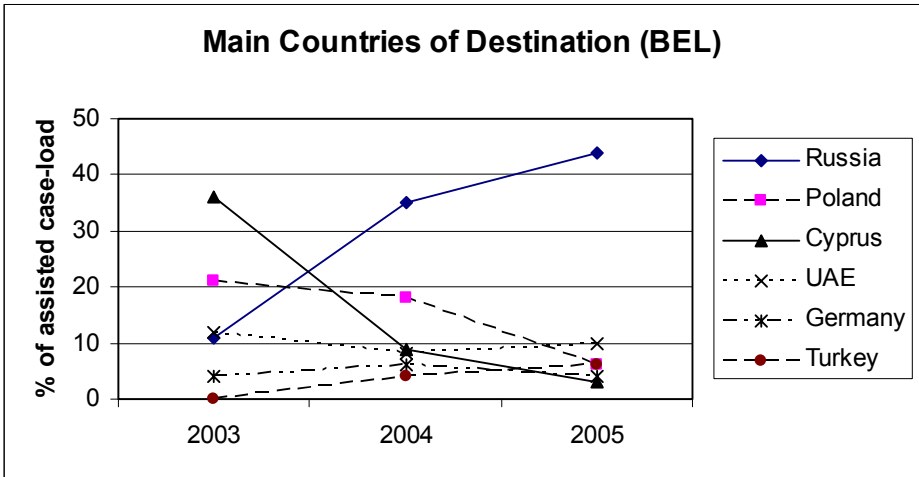


Figure 1: Main Countries of Destination of Victims of Human Trafficking from Belarus

Table 1: Information Requests from Belarus, 2001–2005

Type	Total dispatched	Response received within three months	Response not received within a period of three months/or request not executed	Response not received at the moment of handling the case in court
Mutual Legal Assistance request	68	20	42 (+6)⁷	13
- EU country	27	5	21 (+1) ⁸	5
- <i>Poland</i>	8	0	8	4
- <i>Germany</i>	5	3	2	0
- <i>Lithuania</i>	3	0	3	1
- Russia	20	8	7 (+5) ⁹	3
- Other	21	7	14	5
Information request	75	49	19 (+7)¹⁰	15

⁷ Six requests dispatched in May/June.

⁸ One request dispatched in May/June.

⁹ Five requests dispatched in May/June.

¹⁰ Seven requests dispatched in May/June.

were dispatched to various CIS countries;¹¹ 54 percent were responded to within three months.¹² Forty-one MLA requests were sent to the six major destination countries. 64 percent of the requests dispatched to these six countries were not executed within a period of three months.¹³

The authorities in Russia, the main destination country for victims of trafficking from Belarus, had executed and responded to eight out of twenty of the dispatched mutual legal assistance requests within a period of three months.¹⁴ The Russian authorities had executed twelve requests, and three requests were without response at the time that court proceedings were initiated. With respect to the information requests, six out of eight had been responded to within a period of three months. Two of these responses had not been received at the time of the court proceedings.

Eight mutual legal assistance requests were sent to Poland, the second largest destination country. Poland has responded to three of these requests, none within a period of three months. Five requests—or more than 60 percent—had not been executed at all. For four criminal cases, no response had been received when the case was handled in court. An additional two information requests were dispatched, to which the Belarusian authorities received one response within a period of three months.

The Cypriot authorities responded to one of the two MLA requests dispatched, and this within a period of one month. One MLA request was sent to the UAE, and no response had been received when the case was brought to court. An additional five information requests were dispatched; of these, two were executed by the responding party (two of the requests were sent during May/June 2005, shortly before the writing of this essay).¹⁵

Of the six major destination countries, Germany stands out as the most positive example. German authorities executed and responded to all mutual legal assistance requests within a period of four months, and executed ten out of eleven information requests, nine of them within a period of two months. Only one information request had not been executed when the criminal case was brought to court.

Five MLA requests were sent to Turkey, only one of which was executed within a period of three months. In addition, seven information requests were sent; five of these were executed within one month.

Finally, it should be mentioned that six MLA requests related to trafficking were sent from Belarus to its neighbor Ukraine. Five of these six requests were executed within a period of three months.

Ukraine

In Ukraine, IOM has provided direct assistance to more than 2100 individuals since the year 2000. These beneficiaries had been trafficked to forty-seven different countries

¹¹ Excluding request dispatched in May/June.

¹² Excluding request dispatched in May/June.

¹³ Excluding request dispatched in May/June.

¹⁴ Five requests dispatched in May/June.

¹⁵ Two requests dispatched in May/June.

across the globe, truly reflecting the global nature of this crime. Nonetheless, more than 50 percent of the caseload had been trafficked to only three countries: Turkey, Russia, and Poland and more than 65 percent to these three countries plus Italy, Macedonia, and the Czech Republic.

Turkey has been the main country of destination for human trafficking from Ukraine since the beginning of the comprehensive direct assistance program and the establishment of the national referral system in 2001. Since 2001, there has been a progressive increase in trafficking to Russia and Poland. From representing only 7 percent of the caseload in 2001, trafficking to Russia has quadrupled, and now accounts for more than 27 percent.¹⁶ Directly related to the increase of trafficking to Russia, there has also been an increase in the numbers of trafficked minors, in particular for the purpose of sexual exploitation. Trafficking to Poland has seen an even more dramatic increase, from 2 percent in 2001 to 18 percent of the overall caseload in 2005.¹⁷

The caseload of victims assisted in Ukraine includes 235 individuals—or 11 percent of the total—of other nationalities from different CIS countries, foremost Moldova. Most of these individuals had been trafficked to Turkey and deported to the port of Odessa in Ukraine.

Although the victims are of all ages and from all strata of society, the average age of the female victims assisted is 26.4 years, and many have complete or partial higher education. 14.7 percent of all referrals in 2004 were men. The recorded incidents of trafficking in men were cases of forced labor in different countries, including the Russian Federation, Turkey, the Czech Republic, Portugal, and Spain.

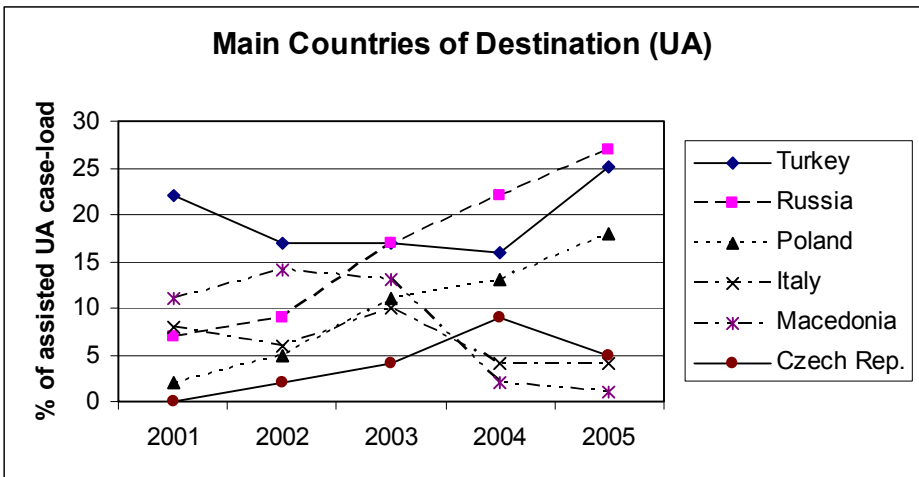


Figure 2: Main Countries of Destination of Victims of Human Trafficking from Ukraine

¹⁶ Excluding third-country nationals.

¹⁷ Excluding third-country nationals.

Of the individuals assisted by IOM in Ukraine in 2004–2005, 34 percent had been trafficked for purposes of labor exploitation, an additional 2 percent to serve as beggars, and one case of trafficking for the purpose of criminal activities.¹⁸ In addition, 6 percent of the caseload had been trafficked for mixed forms of exploitation. The remainder of the victims had been trafficked for purposes of sexual exploitation.

The data available for Ukraine regarding formal law enforcement requests are less comprehensive and detailed than the statistics available for Belarus. Nonetheless, the data available reveal that seventy-eight MLA requests have been sent related to Article 149 of the Ukrainian Criminal Code (which deals with human trafficking) to twenty different countries for the period from January 2002 to June 2005. Only thirty-two requests, or 41 percent, had been executed by the responding party within a period of three months. No information is available related to information requests. Of the twenty-one MLA requests sent to ten different EU countries, 43 percent were executed within three months. Thirty-seven requests were sent to various CIS countries, 65 percent of which were completed within three months. 39 percent of the requests sent to the six main destination countries for persons trafficked from Ukraine—Turkey, Russia, Poland, Italy, Macedonia and the Czech Republic—were not completed (no MLA requests were sent to Poland).

Eleven MLA requests were sent to Turkey, the main destination country. No requests were executed within a period of three months. Eight requests, or 72 percent, had not been completed when the case was brought to trial.

Russia, the second-largest destination country, was the main recipient of MLA requests from Ukraine. Thirty-two requests were sent, and twenty-two of these were completed within a period of two months. Ten requests, or 31 percent, had not been completed.

Surprisingly, no request for MLA had been sent to Poland, the third-largest destination country, and the destination to which trafficking is increasing most rapidly. No explanation was available for this at the time of writing this paper.¹⁹

Three requests for assistance were sent to Italy, one of which was executed within a period of three months. One request was sent to Macedonia, which has not been executed. Four requests had been sent to the Czech Republic; all of them were completed, and three of them within a period of three months. Finally, two requests had been sent to Belarus. One was completed within one month, while the second was not yet executed at the time of writing.

Conclusion

As stated above, a direct relationship between effective law enforcement activity and cooperation and the decrease in trafficking must be assumed. Similarly, inactivity and lack of international cooperation will provide for an environment that is more congenial to the criminal activities related to human trafficking, one that is more likely to allow

¹⁸ Up to 31 March 2005.

¹⁹ There are indications that the statistics received might not be complete in this regard.

the transnational crime to continue, diversify, and expand. Effective action against trafficking requires that national measures be combined with international measures through the development of adequate cooperation and investigation mechanisms across borders, and that the nature of the law enforcement response in both countries of origin and countries of destination reflect the severity of the crime involved. Currently, there seems to be a gap between political commitments and intentions and actual action, resulting in a response that does not fit the crime. Unfortunately, the current international law enforcement response has shown itself to be impotent in the face of the complex nature of the crime and the new investigative challenges posed by trafficking in human beings, mostly due to a failure to adapt to the new, transnational criminal environment. The weak response in countries of destination as well as origin is often explained by law enforcement agencies as being the product of procedural regulations, linguistic problems, data protection issues, prioritization of crime, and lack of financial resources, as well as corruption and general non-reliability amongst counterparts. Nonetheless, it could be perceived that chalking up difficulties to these more intractable causes has resulted in the consolidation and preservation of current systems of operation, and the denial of actual and chronic systemic problems that could be addressed.

The main conclusion from the data provided and the simple analysis made in this paper clearly shows that current law enforcement cooperation and procedural systems are not working satisfactorily, with very few exceptions. Furthermore, it reveals that measures must be taken if the international response to combating this serious crime and abuse of human rights—one that mostly affects women and children—is to be taken seriously and have any tangible effect.

Bilateral and multilateral agreements directed at facilitating improved law enforcement cooperation are important. Nonetheless, any form of agreement is of limited value if cooperation is not aggressively pursued by law enforcement agencies in countries of both destination and origin.

The data clearly indicate that the presence of administrative, historical, cultural, and linguistic borders seem to be directly related to the effectiveness of cooperation (or lack thereof). Unfortunately, these are the challenges that are faced when investigating trafficking cases, as these “borders” are present in most criminal cases. It is particularly important to recognize that these fictive borders will not disappear. Therefore, even if law enforcement agencies perceive themselves as bound by borders of an administrative, political, or cultural nature, using these international distinctions to justify their own inaction should not be accepted.

A major paradox emerges from the basic analysis conducted in this essay. The same counterparts that now are contributing significant financial support aimed at the eradication of human trafficking in many countries of origin are the same actors who are amongst those that are most lax in their efforts to cooperate on the practical level in countering this transnational crime. This results not only in a political and practical paradox, but also in many—what must be assumed—puzzled taxpayers, who wonder where their taxes are being spent.

A further important conclusion that can be drawn from this paper is that quantitative evidence and verifiable indicators as related to the effectiveness of law enforcement co-

operation can be gathered. In order to be able to address some of the needs and gaps identified in this paper effectively, and to be able to make a more detailed analysis in the future, such information should be gathered in a regular and structured manner. Only through such measures can greater accountability be placed on law enforcement agencies related to transnational crimes. And it is only this accountability that can ensure that the structures of law enforcements will possess continued relevance and effectiveness in a world of transnational crime, as well as legitimacy in the eyes of their citizens.

At present, few comprehensive overviews are available related to the scope of human trafficking, and there are even fewer means of effectively influencing state responses towards the problem, even if the quantitative information (as presented above) is available. Currently the best—and only—form of accountability and real influence is the U.S. State Department’s annual “Trafficking in Persons” report. This report identifies as one of the critical indexes of “serious and sustained efforts to eliminate severe forms of trafficking in persons ... [w]hether the government of the country cooperates with other governments in the investigation and prosecution” of human trafficking.²⁰

Furthermore, there seems to be some evidence that shows a direct link between law enforcement inactivity and trends related to human trafficking. Nonetheless, the available information is inconclusive, and should be interpreted carefully, primarily due to the limited data available and the multiple factors influencing this issue.

In conclusion, we must again emphasize that to be able effectively to combat trafficking in human beings, law enforcement agencies need to think beyond national borders and work corporately rather than territorially, seeing this as a challenge and opportunity rather than a barrier. The law enforcement community must aggressively seek cooperation across borders, and should work to reform systems of cooperation that are no longer effective, to combat this modern-day slave trade.

Recommendations

Below are listed some key recommendations for action that will help improve the international law enforcement response to human trafficking. Governments and other relevant stakeholders should endeavor to:

- Promote relevant organizational changes and more aggressively pursue a policy of joint investigations and cooperation. Just as important, a less defensive approach towards innovative measures must be adopted, in order to increase the effectiveness and relevance of current cooperation mechanisms and structures and help them adapt to the rapid evolution of trafficking and organized crime in the twenty-first century.
- Take steps to systematically collect comprehensive quantitative and qualitative information related to law enforcement agencies’ exchange of operational and evi-

²⁰ Trafficking Victims Protection Act of 2000, Div. A of Pub. L. No. 106-386, § 108, as amended in U.S. Department of State, “Trafficking in Persons Report” (June 2005), 252.

dentiary information and the results thereof on a national level as well as on an international level (by governments and relevant international bodies responsible for such exchange). In addition, states must be able to validate the effectiveness of current responses and the usefulness of current systems.

- Allocate sufficient human and financial resources to be able to comply and swiftly respond to mutual legal assistance requests related to trafficking in human beings as a matter of priority.
- Establish and enhance vehicles that encourage dialogue between officials of the countries of origin and destination—across administrative, historical, cultural, and linguistic borders—to effectively share intelligence and operational and evidentiary information.
- Effectively reform structures to combat organized crime. Transparency and accountability must be promoted regarding international law enforcement cooperation.
- Encourage language training for law enforcement officers.²¹
- Further increase exchanges of liaison officers.²²
- Develop “a system of national centralized bodies designated to process mutual legal assistance requests.”²³
- Develop “direct secure electronic transmission of mutual legal assistance requests between central authorities.”²⁴
- Provide “a progress report on the execution of the Letter of Request and acknowledgement of receipt within twenty-eight days of receipt within the requested state; a specific deadline for the completion of the request set by the prosecutor, or other relevant party, who prepares the Letter of Request and which reflects the date by which any failure to execute the request would place the prosecution at risk of failure; and specific grounds setting out why the request may be urgent.”²⁵

²¹ Recommendation No. 6, Minsk Recommendations for International Operational and Judicial Cooperation in Combating Trafficking in Human Beings, International Law Enforcement Conference: “International Perspectives on Law Enforcement Cooperation in Combating Trafficking in Human Beings,” Minsk, 16 May 2003.

²² Recommendation No. 17, *ibid.*

²³ Recommendation No. 34, *ibid.*

²⁴ Recommendation No. 37, *ibid.*

²⁵ Recommendation No. 32, Kiev Recommendations for International Operational and Judicial Cooperation in Combating Trafficking in Human Beings, Second Annual International Law Enforcement Conference: “International Perspectives on Law Enforcement Cooperation in Combating Trafficking in Human Beings,” Kiev, 20 May 2004.

- Develop and implement “a system of prioritizing Letters of Request ... as a matter of urgency.... Trafficking of human beings should receive high priority status, and the trafficking of children should receive the highest priority of all.”²⁶
- Further “increase the use of existing liaison networks to facilitate the faster return of evidentiary documents obtained during the execution of Letters of Request.”²⁷
- Create mechanisms so that “the conduct of mutual legal assistance provisions should be monitored to ensure compliance with the requirements of legal instruments.... If necessary, a ‘blacklist’ of those countries that repeatedly fail to execute these requests appropriately could be published by the monitoring mechanism. In addition and where appropriate, administrative sanctions should be applied against those staff members that fail to conduct mutual legal assistance in accordance with the rules.”²⁸
- Facilitate “a comprehensive evidentiary review of problem areas and areas of best practice by each counter-trafficking criminal justice unit (operational units, investigative units, and prosecution units) over the course of the next twelve months, by collecting and analyzing factual data ... in the conduct of international operational and judicial cooperation.”²⁹

²⁶ Recommendation No. 33, *ibid.*

²⁷ Recommendation No. 36, *ibid.*

²⁸ Recommendation No. 37, *ibid.*

²⁹ Recommendation No. 43, *ibid.*

An Analysis of the Legal Framework Governing Prosecution of Traffickers and Victim Protection in Central Asian Countries

*Katerina Badikova **

Slavery, along with other institutions and practices similar to slavery, has a long history of existence in Central Asia. These traditions were practiced during ancient times and the Middle Ages, and many of them continued to exist, albeit illegally, under the Soviet regime. In fact, the penal codes of the Soviet Socialist Republics of Central Asia included articles on the abduction of individuals, illegal detention, rape, forced marriage, marriage with more than one person, and sexual relations with a minor. Such acts were legally punishable in the Turkmen, Tajik, Kazakh, Kyrgyz and Uzbek Soviet republics. However, the observance of some traditions similar to slavery persisted, and the majority of the population continued to participate in some of these traditions, even under the risk of criminal prosecution. These traditional practices included such rituals as payment of *kalym* for the bride and arranged marriages.¹ Bride kidnapping rituals were also widespread. At the time, it was impossible to prosecute anyone on charges of human trafficking, because as a phenomenon or a legal concept it was generally unknown, and therefore was not addressed in the criminal legislation.

In the early 1990s, the newly independent republics of the former Soviet Union tried to amend the legislation inherited from the Soviet era, adapting it to the new social and economic conditions of independence. However, amended Soviet laws were still inadequate in reflecting the emerging social realities in Central Asian countries and therefore, by the middle of the decade, the governments introduced a set of new legislation that included new penal codes, codes on criminal procedures (investigation and prosecution), codes on administrative misdemeanors, civil codes, codes of civil trial procedures, tax codes, and customs codes.

These new and improved legal codes more or less corresponded to the new conditions of life in the independent Central Asian republics, but further development demonstrated that in some countries the new legislation reflected the economic and social realities and met the needs of society better than in others. In Kazakhstan and Kyrgyzstan, for example, the new legal regime facilitated the development of a free-market economy, in spite of weak enforcement of some laws, high levels of bureaucratic procedure, and corruption, all of which hindered small and medium-sized businesses from developing rapidly. In Uzbekistan, agriculture and heavy industry continued to be controlled by the state, and the development of a small-business sector was curtailed by high taxes and strict government control. The government in Turkmenistan took control over all sectors of the economy. In Tajikistan, the nation's economic development was

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¹ *Kalym* is a traditional form of "bride-price," or a payment made by a man or his parents to the parents of the woman he wishes to marry.

seriously impeded by civil wars that plagued the country during the mid-1990s. As a result, the differences in the levels of economic, social, and political development in the five countries became more and more obvious. In recent years, Kazakhstan has demonstrated stability and progress in its economy, especially in comparison with its neighbors Kyrgyzstan and Uzbekistan. At the same time, much significant commercial activity operated under conditions of a shadow economy, especially in Uzbekistan, whose high income taxes forced many people to seek unofficial modes of employment. This situation has created the conditions for organized criminal activities in the region in general, and for the successful development of human trafficking networks and structures in particular. In this context, human trafficking has become one of the most profitable economic activities in Central Asia, along with illicit drug trafficking and other kinds of organized crime.

The main forms of human trafficking that have been seen up to this point in Central Asia are trafficking for labor and sexual exploitation. Men are most vulnerable to becoming victims of the first form, while women and under-age girls are at the highest risk for the second.

Central Asia is a source, transit, and destination region for trafficking in persons. During the period from September 2003 to May 2005, the International Organization for Migration (IOM) registered 370 victims of trafficking—66 male and 304 female—who were trafficked from, through, and within Central Asia for sexual and labor exploitation. Among them, 292 persons were sent abroad from nations in Central Asia, and 44 were trafficked from one country to another within the region. There were also 34 victims of in-country trafficking registered.

The registered cases were divided along gender lines, with the majority being young women who were mainly trafficked to the United Arab Emirates, Turkey, Israel, South Korea, Greece, Thailand, Malaysia, and, more rarely, Western Europe. Incidents of internal trafficking cases involving people being brought from provincial centers to larger cities and to Astana, the new capital of Kazakhstan, are on the rise as well. However, it is difficult to calculate the actual total number of trafficking cases, due to deep social misgivings that confuse the phenomenon of human trafficking for purposes of sexual exploitation with voluntary prostitution. This stigma—along with maltreatment of trafficking victims by the authorities and the lack of any widespread public understanding of human trafficking as an issue of human rights abuse—discourages victims from reporting the crime or relating their experience, even to their closest friends and relatives. Moreover, law enforcement often fails to recognize trafficking cases as such if the victim has not been subjected to physical abuse, but rather is coerced into an exploitative situation through psychological pressure. Therefore, many trafficking cases go uncounted.

In addition to trafficking of young women from Central Asia for sexual exploitation abroad, information collected by telephone hotlines dedicated to human trafficking has revealed cases of young and middle-aged men being recruited for labor in slavery-like

conditions in other states.² Furthermore, cases of Uzbek, Kyrgyz, and Tajik girls being trafficked to Kazakhstan have been reported, as well as cases of the existence of unacceptable working conditions for Uzbek and Kyrgyz workers on tobacco and cotton plantations in southern parts of Kazakhstan and construction sites all over the country.

Central Asian traffickers establish connections with each other and form networks with the criminals who exploit victims in the countries of destination. Central Asian countries, especially Kazakhstan and Kyrgyzstan, also serve as transit territories. A trafficking victim recruited in Uzbekistan may leave for the United Arab Emirates with a false Kyrgyz passport from an airport in Kazakhstan.³ Many Tajik and Uzbek labor migrants who are subjected to severe exploitation in Russia cross Kazakhstan on their way from their native countries to their destination.

Despite some visible progress in adopting legislation criminalizing human trafficking, the official criminal statistics from Central Asia reflect that few prosecutions have taken place. In 2004, Kyrgyzstan and Tajikistan passed amendments that included an article on “Trafficking in Persons” into their penal codes. In 2003, Kazakhstan strengthened the law that punishes recruitment of individuals for sexual and other exploitation, and developed a number of amendments to other laws in order to bolster victim protection mechanisms and to improve the capacity of law enforcement to prosecute the crime of trafficking. These amendments were presented to the parliament in May 2005. Uzbekistan has not yet passed any counter-trafficking legislation, but has been trying to prosecute traffickers relying on the articles of the penal code that punish recruitment for exploitation and pimping. In Turkmenistan, the government agreed to participate in a workshop on the prevention of human trafficking in 2005, which can be viewed as a positive development for a country where human trafficking has never before been treated as a politically acceptable term or a relevant problem for the state.

Within the framework of existing legislation, it is difficult to prosecute all those involved in the Central Asian trafficking network (from recruiters to exploiters to corrupt officials). Usually, law enforcement agencies may only charge criminals on separate charges individually; it is difficult to prosecute a network. Active legislation in the sphere of social protection also provides little in terms of steps to aid in the reintegration and rehabilitation of victims.

According to the “Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children,” which is a supplement to the UN Convention Against Transnational Crime, the crime of human trafficking involves numerous aspects, including recruitment, facilitation of dependency, and exploitation. The protocol urges states to establish human trafficking as a criminal offense under their national legisla-

² The IOM, in close cooperation with its partner NGOs, started establishing counter-trafficking hotlines in Central Asia in 2001. Currently, NGOs operate twelve hotlines in Kazakhstan, eight in Tajikistan, and ten in Uzbekistan. During the period from September 2003 to May 2005, the hotlines handled over 40,000 phone calls.

³ Presentation by the representatives of the Committee for National Security of the Republic of Kazakhstan at an IOM workshop for prosecutors and investigators, Medeo/Almaty, April 2003.

tions and introduce measures that would uphold protection of victim's rights and recognize their special status. However, at the present moment—despite recommendations from national and international legal experts—the criminal codes of Kazakhstan and Uzbekistan still lack an article that addresses “human trafficking” as a specific and autonomous crime.

The UN Convention Against Transnational Organized Crime (the so-called UNTOC Convention) was signed by Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan, and was ratified—along with its counter-trafficking supplementary protocol—by Kyrgyzstan (2004) and Tajikistan (2005). After the ratifications, the two countries made amendments to their national legislation, and now trafficking in persons is punishable as a specific crime according to the penal codes of Kyrgyzstan and Tajikistan.

In June 2001, Uzbekistan signed the UN protocol against human trafficking. In subsequent, the government of Uzbekistan passed a law on 29 August 2001 (Law No. N 254-II), which imposed tougher sentences for crimes that have direct relevance to human trafficking. However, this law failed to introduce any amendments to the country's criminal code that would allow consideration of human trafficking activity as an autonomous crime whose definition would reflect that included in the protocol. Uzbekistan announced the ratification of the protocol in 2003, but this ratification of the document contained a number of reservations referring to its already existing laws covering the prosecution of organized crime and the confiscation of criminal incomes. As a result, despite the theoretical legal possibility of confiscating assets obtained from criminal acts in Uzbekistan, in practice such confiscations are not carried out.

Kazakhstan is planning to ratify the UNTOC Convention and to sign its supplementary protocol by the end of 2005. In October 2004, the necessary amendments to Kazakhstan's current criminal legislation were submitted to the parliament. The amendments included:

- Incorporating the definition of human trafficking as a separate article in the penal code of Kazakhstan;
- Sentencing traffickers to no less than eight years of imprisonment;
- Confiscating traffickers' assets that were acquired as a result of activities directly or indirectly related to their trafficking activities;
- Protecting trafficking victims from various threats during the investigation, trial, and after sentencing;
- Providing rehabilitation and reintegration assistance to trafficking victims by government bodies and local executive bodies in cooperation with NGOs and IGOs;
- Protecting trafficking victims who serve as witnesses from immediate deportation and/or charges for their illegal stay in the country, and giving them the right to stay in-country legally at least for the duration of their testimony in court.

To date, these amendments have not yet been passed.

Currently, certain articles included in the penal codes of Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan can be invoked in the prosecution of crimes involving traf-

ficking (in Kyrgyzstan and Tajikistan), or at least separate stages of the trafficking process. In Kazakhstan and Uzbekistan—the countries which have not passed laws allowing prosecution of trafficking as autonomous crime—not all of the interconnected acts mentioned in the UN protocol as being correlated with the crime of human trafficking can be regarded as illegal under the law. For instance, Article 128 of the Penal Code of Kazakhstan and Article 135 of the Criminal Code of Uzbekistan deal with the “recruitment of persons for the purposes of sexual or other exploitation committed by using deception.” Clearly, this is an act that is often part of the larger crime of human trafficking. Yet these articles address only the act of recruitment, and require proof of intent to deceive, the fact of which is very difficult to argue in court. Therefore, recruiters often escape responsibility, and transporters or exploiters cannot be charged at all under this article, unless it can be proven that they were committing the act of transportation for the purpose of “illegal limitation of a person’s freedom,” which is criminalized in other articles of the penal codes.

In Kyrgyzstan and Tajikistan, the articles that allow prosecution of human trafficking as an autonomous crime contain all the elements of the definition of trafficking in persons as it is set out in the UN protocol. However, investigators and prosecutors often try to avoid prosecution of traffickers under these articles, and instead choose to initiate criminal investigations under other articles that do not require such a complicated procedure of gathering evidence of all the different stages of the crime of trafficking, from recruitment to exploitation. Practically all of the noted methods of exploitation and facilitation of dependency are illegal according to the Kazakh, Kyrgyz, Tajik, and Uzbek criminal codes. These include such crimes as “selling or buying a child” (specified as a crime in Kazakhstan and Tajikistan only), “death threats and use of force,” “abandonment in a dangerous situation,” rape, “satisfaction of a sexual urge in an unnatural way using force,” forcing a woman to consent to sexual intercourse, intercourse with or seduction of a minor under the age of sixteen, extraction of organs and human tissue, kidnapping of a person, fraud, and abuse of a position of power or vulnerability.

In addition, other general criminal acts committed against victims of trafficking during the trafficking process can also be prosecuted under the criminal codes of Central Asian countries. These crimes include:

- Causing physical harm and injuries of varying degrees of severity;
- Murder or causing a suicide;
- Coercing a woman to have an abortion;
- Involving a minor in antisocial behavior;
- Coercion of a woman to enter into marriage or hindering her from entering into marriage;
- Intentional harm or destruction of assets;
- Accepting and giving bribes;
- Abetting in the process of bribery;
- Production, use, or distribution of forged documents, stamps, or forms.

As a result, despite the absence of the definition of human trafficking as an autonomous crime in Kazakh and Uzbek legislation, it appears that the existing legislation in Central Asia offers a broad base for the law enforcement authorities to prosecute the crime of trafficking in its entirety and to convict traffickers. In practice, however, the necessity to invoke a large number of different laws in order to bring charges against traffickers complicates the prosecution of the crime of human trafficking in its entirety. As a result, it is only possible to convict a portion of traffickers, and only for a portion of the acts they have committed, leaving the majority of offenders—and particularly the organizers of the trafficking process—to go free.

At the initial stage of the trafficking process—recruitment—the offender committing the act of recruitment can theoretically be charged with recruitment for the purposes of exploitation. In practice, in order for a person to be charged for this crime, the prosecution must provide proof that the fact of recruitment—which can consist of active dissemination of information about alleged lucrative employment opportunities abroad, or offering services for the organization of departure—was committed with the goal of exploiting the recruited individuals. Considering that the fact of exploitation usually occurs in the country of destination, and thus outside the legal jurisdiction of the country of origin, it is extremely difficult to obtain sufficient evidence of exploitation to obtain a conviction.

Moreover, the necessity to wait for the recruited individuals to be exploited in the country of destination in order to have evidence to prosecute the crime of recruitment involves a high risk of victimization of the recruited individuals and does not guarantee their release, even if the recruiter is charged and convicted in the country of origin. Also, the recruiter can use the gap in time between the moments of recruitment and exploitation to escape the country or hide from the authorities.

Another problem emerges due to the absence of a legal definition of the term “exploitation” in the criminal codes of Kazakhstan, Tajikistan, and Uzbekistan. As a result, the term is subject to the individual interpretation of a judge, and thus can be construed in divergence from the minimal standards dictated by the UN protocol. Cases have been recorded where the fact of sexual exploitation was used to acquit the offenders, when victims confessed that they were aware that they might have to engage in prostitution as part of the transportation or employment arrangement. The fact that a victim had no choice but to submit to the conditions of exploitation was not considered. Similarly, in cases of trafficking for labor exploitation, the fact that victims left the country voluntarily has been used as evidence of consent to future exploitation.

Another problem in convicting traffickers emerges when the prosecution must prove the existence of a relationship between the recruiter and exploiter, and show that they have acted on an agreement to recruit and exploit the victim – in essence, the prosecutor must prove the existence of a criminal network. If it cannot be shown that such an agreement was made between the parties, then it is impossible to argue that the goal of recruitment was exploitation. Proving such interdependency is difficult even in cases of in-country trafficking. When the nature of the crime is transnational, requiring the collection of evidence outside of the jurisdiction of Central Asian countries—assuming

that the victim was able to return back home—victim and witness testimonies often become the only proof that exploitation occurred.

As a result, many criminal cases initiated under the articles punishing human trafficking (in Kyrgyzstan and Tajikistan) and recruitment for the purpose of exploitation (in Kazakhstan and Tajikistan) are either dismissed or closed during investigation for lack of sufficient evidence. The cases that have made it to court and were tried and convicted often resulted in lighter sentences, if not in outright amnesties, in which case the recruiter was freed directly from the courtroom and was able to continue his or her criminal activity. Hence, it is not surprising that investigators either try to avoid bringing charges under articles against “trafficking in persons” completely, or try to strengthen the accusation by bringing charges on other articles in order to raise the likelihood of conviction in court.

Convictions of traffickers on charges of kidnapping are also very rare, because victims of trafficking are not usually kidnapped. Human trafficking is a well-organized activity in Central Asia and, thanks to the convincing work of recruiters, the majority of the trafficking victims make a decision to travel abroad for work independently, without physical coercion.

Articles punishing the illegal detention of an individual become relevant only after the victim has been recruited, and the traffickers must ensure that the victim is kept in conditions that he or she cannot escape. Thus, these articles can be applied in cases where victims are forcefully kept at the place of exploitation or transported there by force. Yet, once again, the forced transportation or detention of the victim occurs rarely in the country of origin, and forced transportation or detention of the victim in the countries of transit or destination is often outside of the jurisdiction of the Central Asian states. To be sure, this article is applied in cases of internal trafficking, but courts often interpret the term “illegal detention of an individual” to mean physical limitation of a person’s ability to move (keeping the person locked up, beating the person, limiting his or her connection with the outside world, etc.). Such an interpretation ignores other types of psychological or economic manipulation that traffickers often rely on to facilitate victims’ obedience without necessarily locking them up. Examples of such psychological and economic manipulation include debt-bondage, blackmail, threats, etc.

In cases of human trafficking for sexual exploitation, articles against brothel-keeping and pimping are used. These articles are best applied only in cases of in-country trafficking, where the exploiter is present in the country of origin and derives direct profit from the exploitation of prostitution of victims of trafficking. In order to gain a conviction under this article, it is necessary to present evidence that a trafficker keeps a brothel and receives revenue from operating the brothel. This means that it is impossible to use this article to prosecute cases of transnational trafficking.

Considering that one or several criminal groups have to cooperate closely in order to successfully execute the crime of human trafficking, prosecution of traffickers is possible under any one of the articles mentioned against the qualified crimes that call for harsher sentences for the perpetration of the act by an organized criminal group. However, proving that a criminal agreement exists, verifying the organization of a trafficking network, and tracing the relationships between the network’s actors are very diffi-

cult tasks, especially in cases where different stages of trafficking occur in different jurisdictions.

Other shortcomings of the criminal law system that complicate the prosecution and prevention of human trafficking are the lack of a proper mechanism for the protection of victims and witnesses in court or during investigation, and the absence of any robust legal foundations for victims to seek compensation for moral harm or physical and material damages. This discourages the already reluctant victims of human trafficking from reporting their cases to the police and initiating proceedings against their traffickers.

The legislation of the countries under consideration in this essay contains a number of articles that criminalize acts committed by *victims* of human trafficking as a result of their situation of dependency on traffickers. One such example is Article 190 in the Code of Administrative Misdemeanors in Uzbekistan, which deals with prostitution. Persons that are arrested on prostitution charges are subject to fines and, in cases of multiple convictions, the amount of the fine increases. Considering that neither the administrative nor the criminal code of Uzbekistan criminalize the acts of persuading or coercing a person to engage in prostitution, the exploiter risks nothing in forcing a victim to engage in prostitution, because even if the victim is arrested for the provision of sexual services, it is the victim and not the person who coerced her into prostitution who bears the responsibility for the act. On the other hand, the victim is discouraged from seeking assistance from law enforcement authorities to protect her from the exploiter's actions out of fear of prosecution.

In Central Asia, victims of human trafficking can be prosecuted for the following offenses:

- Spreading a venereal disease;
- Illegal crossing of state borders;
- Using forged documents.

In practice, when victims are charged with the violations described above, considerations of the particularities and dependencies inherent to the situation of human trafficking are not taken into account. Thus, the facts that a victim was forced to commit an illegal act or that she was deceived about the consequences of her voluntary offense are not considered.

Paradoxically, however, a victim of human trafficking who is being prosecuted for certain offenses has greater protection and guarantees of her legal rights during the hearing of the case than a victim involved in a trial as a plaintiff or a witness. This apparent contradiction is explained by the fact that following the accepted standards of conducting criminal trials dictates that the right to protection must be guaranteed for each person suspected or accused of committing a criminal act. Guarantees of protection for plaintiffs are expected to follow from the work of investigative services and the court. The legal right to protection for all parties involved in a court action is guaranteed by the codes of criminal law procedures, which state that the honor and dignity of all parties involved in the criminal process must be upheld through the state protection of the parties' rights and freedoms. Yet special emphasis is placed on the protection of

the rights of the accused, implying that victims' rights are somehow automatically protected through the fact of government prosecution of the crime. This means that first the investigator and then the prosecutor will act to protect and uphold the rights of the victim. However, practice shows that the mixture of the functions of prosecuting traffickers and protecting victims often interferes with the observation of the adversarial principle inherent in a criminal trial. Moreover, both the investigator and the prosecutor are so fully focused on proving the case that they often lack the time or opportunity to ensure that victims or witnesses are provided with adequate protection.

Moreover, when victims of human trafficking in Central Asian states report their cases to the police, the latter often view the victim as a criminal for having violated the border crossing regime or the immigration laws of the country of destination. Or they may view them as having participated in illegal prostitution abroad, but not as a victim of a transnational organized crime. Even when a criminal case is initiated, the police and other law enforcement agencies are often unable to collect necessary evidence due to their insufficient experience in investigating trafficking cases and their insufficient or nonexistent cooperation with law enforcement agencies in the countries of transit and destination. Thus, victims that are trafficked from one country to another within Central Asia, or who return to the region from abroad, fear recriminations from either traffickers, border guards, customs agents, or law enforcement officers, and as a result have little faith in the ability of the law enforcement system to protect them and bring the traffickers to justice.

In recent years, when local police apprehended foreign citizens that were trafficked to Kazakhstan from neighboring countries, they immediately deported them back to their country of origin as illegal migrants. Few other alternatives are available to Kazakh law enforcement agencies in treating such cases because Kazakhstan lacks clear legal procedures to allow the victims to remain in the country for the duration of the investigation and court hearing. Moreover, law enforcement agencies have no facilities, except for detention centers and jails, where the victims could safely stay before returning to their home country.

This situation has been changing slowly since 2003, when police in Kazakhstan began to bring criminal cases against traffickers who imported victims from a neighboring state to subject them to sexual exploitation in Kazakhstan.⁴ Approximately at the same time, law enforcement agencies in Kyrgyzstan, Tajikistan, and Uzbekistan started investigating a number of trafficking cases related to trafficking of their citizens abroad. These investigations focused almost exclusively on cases of trafficking for sexual exploitation, while labor exploitation cases were almost completely ignored.

The brief analysis presented above is not complete by any means. I have primarily considered criminal legal procedures relevant to counter-trafficking. Meanwhile, a more comprehensive examination of the issues connected with providing assistance to victims

⁴ In the past, the police did nothing in response to such cases.

of human trafficking would entail a detailed analysis of laws regulating social and labor relations. To develop substantial recommendations on issues relating to the detection and prosecution of human trafficking cases, it would be necessary to review not only criminal law, but also financial, tax, and citizenship law as well. Such an extensive analysis is possible only within the framework of a larger research project on jurisprudence—work I intend to continue in the future—and not in the context of a brief article such as this.

As for the IOM and the current legal framework for the regulation of efforts to counter human trafficking, the IOM always includes a legal component in its projects, participating in the development of national legislation through the organization of training programs and seminars for law enforcement personnel and lawyers. These events take place under the rubric of a currently active IOM project on counter-trafficking efforts in Central Asia. In the future, the IOM plans to continue organizing such events.

A crucial next step is to attract the attention of lawyers and other relevant counterparts from the countries of destination in order to develop a foundation for future cooperation on the harmonization of legislation between the countries of origin, transit, and destination, which would facilitate better and more inclusive prosecution of all actors involved in the criminal networks that conduct human trafficking. This would also ensure better protection of the rights and lawful interests of victims of trafficking at every stage of this transnational crime.

Turkey's Efforts to Fight Human Trafficking in the Black Sea Region: A Regional Approach

*Marielle Sander Lindstrom **

The Black Sea region, with more than twelve major nations and thousands of kilometers of coastline, is still struggling to achieve sustained economic prosperity. To the north, the former states of the Soviet Union remain in transition, or are stuck in cycles of despair and poverty. To the south, Turkey has emerged as an engine of relative prosperity, particularly for the tens of thousands of labor migrants that flow across its borders every year. This dynamic region, with its striking disparity between rich and poor, is now situated at the center of a major fight to combat human trafficking. At the root of the problem is the acute poverty of the northern post-Soviet states. The citizens of these nations—notably Ukraine, Moldova, and Russia—are increasingly seeking entry into the Turkish economy, drawn by the false promise of financial gain. Strikingly, the push factors for the high rates of labor migration into Turkey are proving to be the same as those for trafficked individuals.¹ The traffickers are exploiting the vulnerability of individuals who have few economic options, and are willing to take any chance to escape from communities with few jobs, and even fewer prospects for the improvement of one's standard of living.²

Since the beginning of 2005, the Turkish government has adopted an innovative regional approach to the problem of human trafficking. International Organization for Migration (IOM) field offices, media organizations, and local NGOs in Moldova, Ukraine, and Romania (statistically the main source countries for victims of trafficking in Turkey) are working together with the Turkish government to promote Turkey's own telephone helpline for victims of trafficking. The motivation for this is twofold. On the one hand, the Turkish authorities would like to encourage potential victims to verify the job opportunities that they have been offered by checking in with their national helplines, to find out whether or not the job offered actually exists. On the other hand, Turkey believes that if a person does fall prey to human traffickers in Turkey, they will be more likely to call a helpline number that they are already familiar with—as is being proven by the success of Turkey's 157 helpline. Strikingly, Turkey is the only major destination country to adopt such a radical approach in an effort to offer potential victims an avenue to escape if they find themselves in danger. By establishing trust from the very beginning, the Turkish authorities expect to increase the chances for collabora-

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¹ Many victims of trafficking in Turkey, as in other countries, start off as part of a smuggling process, and end up in a situation of exploitation and human rights violation, hence becoming victims of trafficking.

² Interviews with victims of trafficking in Turkey indicate that poor socio-economic conditions in their home countries are a strong push factor for them to seek work abroad.

tion with the victims against the traffickers once they are apprehended. The lesson learned from the countries of origin in the past decade is that, while the root causes of human trafficking remain the same, significant efforts must be made regionally and internationally to protect the human rights of the victims and prosecute the traffickers.

The Case of Moldova

Moldova remains a major source country for victims of trafficking that are brought to Turkey for many reasons, with economic hardship being the main push factor. In a recent report on migration and remittances in Moldova, most emigrants interviewed cited the difficulty of earning a living wage as their main reason for emigrating.³ The Moldovan study reflects the situation of many citizens in the region, and is supported by statements from victims of trafficking from other countries that have been identified in Turkey.⁴ The desperate need for money drives individuals from transitional economies to look outside their own communities for work. With little or no reliable information on the realities of migration, most people turn to informal networks of family and friends who sometimes turn out to be traffickers to secure a job that will enable them to remit funds back to their home communities. It is not surprising to note that the most difficult issue for prospective emigrants is finding the money to fund their travel abroad. 51 percent of the respondents in the Moldovan study lacked the necessary funds for departure. Many borrowed money from black market lenders to cover these expenses, at 10 percent interest per month. If a migrant is deported from the destination country, he or she is still responsible for repaying the initial debt, so they have little choice but to go abroad again illegally. It is little wonder, then, that many turn to recruiters who can promise not only a job, but also a means to reach the destination country. Many of these people fall prey to traffickers.

Foreign remittances to Moldova in 2003 were estimated at USD 461 million (23.5 percent of GDP). Official estimates of the National Bank in Moldova show that gross remittances for 2004 grew to USD 701 million (27 percent of GDP). According to the same report, the majority of families with members who had emigrated mentioned that their situation improved after their migrant family member began supporting those left behind. As a result, their lifestyle improved, and many were, for example, able to receive proper medical treatment. Interviews with victims of trafficking in Turkey confirm this picture. Many Moldovans have no heat, running water, or access to social services. People in poor villages see what the money sent by successful emigrants can bring; they see that their neighbor has repaired his roof, and that his daughter has a new coat. Why should they not want the same? Most do not trust the press or their government, but they listen to stories from people who have been outside Moldova and who send money home. If they have no access to information on how to improve their life, if there are no jobs to be had, if economic development has not reached their village, then

³ IOM Moldova, "Migration and remittances in Moldova," European Commission Food Security Program, Moldova, International Monetary Fund Office in Moldova, July 2005.

⁴ IOM Turkey statistics and interviews with victim of trafficking, 2004–2005.

people will listen to those who can promise them a chance for a better future. It is only after some time that the migrants become aware of the potential risks to themselves, and for some it is too late, as illustrated in the case study below, which is testimony from a thirty-one-year-old Moldovan woman:

I was born in Moldova in 1974 and have two living children. The economy is so bad there that when a friend offered me work in Turkey, I didn't hesitate to accept because I couldn't afford to support my family. I planned to work for a while and then come back and take care of my children. My friend took care of all the arrangements, the passport, the tickets, the visa, and took care of all the expenses. I was told that someone named Veysel would meet me at the Antalya airport and take me to my new job. I thought Veysel was someone that my new employer sent to help me. Instead, he took my passport and took me to a village. They took me to a house where there was a Moldovan woman who told me that I'd been brought here to work in the sex industry. I said I didn't want to do that and I wanted to go back home. They put a gun to my head and threatened me, and then they beat me. They told me if I didn't consent, they would kill me.

They kept me locked in the house and brought customers to me. There were a few other girls in the house, too. Once, when there were only three of us in the house, nine clients came. One girl took one client, the next girl took two men, and then I had to have the remaining six men. One day, the Moldovan woman took me to a hotel for a client. I called the La Strada hotline in my country and asked for help. La Strada told me to call 157, the helpline in Turkey. I called 157 and told the operator where I was and that I needed help. The 157 helpline operators called the Antalya police, and they came and rescued me. I was taken to a shelter in Istanbul. I wanted to go back home. I declared that I voluntarily wished to return to Moldova. All I wanted was to be with my mother and children.⁵

For some, the experience of trafficking is not a deterrent. Some are willing to continue risking their lives to find work abroad because there are no alternatives at home. Even victims who have been through a reintegration program insist that if they can't find a job at home, they would try to go abroad again. Inevitably, if there is no other source of income, a victim will risk braving the traffickers another time. The potential victim is less concerned about the risk of exploitation and abuse than with the primary goal of finding work. This desire for a better life—and, in the case of rural Moldovans, that means a minimal existence—will push people to try again and again until they succeed or die in their attempt to earn money.

Turkey as a Destination Country

Turkey has enormous economic potential, and even for an illegal immigrant earning USD 300–400 per month, that is better than the USD 50–100 they would be lucky to earn at home. It is easy to get to Turkey, which is a country that welcomes Russian-speaking tourists. Looking at the countries in the Black Sea region, Turkey stands out both in terms of political stability and economic potential. The per capita GNP in Tur-

⁵ IOM Turkey victim interview, 2005.

key stands at USD 2,790 or almost five times that of Moldova, at USD 590.⁶ Despite the element of risk involved in working as an illegal immigrant, the potential victim of trafficking—who is already vulnerable and desperate—does not acknowledge the potential danger to herself during the recruitment process. Turkey’s easy visa regime allows citizens of the former Soviet Union to buy a USD 10 visa upon arrival in Istanbul, a far more dignified procedure than the risk of becoming part of the refusal statistics (85 percent for Moldovan citizens) for applicants for Schengen visas to the EU States, or being forced to pay up to USD 4000 to a smuggler to gain access to the EU.

Victims of trafficking identified in Turkey generally claim that they had been recruited for work as nannies, care-givers, waitresses, sales assistants, and dancers. Indeed, most irregular Moldovan migrant workers in Turkey do work in these sectors, with domestic work and caring for the elderly being particularly common occupations. A recent report prepared for IOM Turkey cites the example of Gagauz women who voluntarily use illegal networks to “commute” to work as domestic servants in upper-class Istanbul homes.⁷ The women from this category who do fall victim to trafficking currently constitute the majority of cases assisted by IOM Moldova. These women come to Istanbul to work as domestic servants, but the places they frequent in Istanbul, particularly on their days off, may overlap with women who have come to do “buying-selling” (“*alis-veris*”) of goods, and perhaps those who have come, knowingly or not, to engage in prostitution.

The Role of Organized Crime in Human Trafficking

Where there is demand, supply soon follows, and in the absence of effective control mechanisms there is ample opportunity for criminals to exploit the most vulnerable for potential profit. A trafficker can make a considerable amount of money in the trafficking business. The women trafficked for sexual exploitation that IOM Turkey has assisted handle between ten and forty clients each day. At USD 100–300 per client, the 266 women identified in 2004 by the Ministry of the Interior in Turkey as having been trafficked to work as sex workers have earned organized crime close to USD 300 million. That figure is based only on the women who have been rescued; if we assume that they may represent only some 10 percent of the total number of women trafficked for sexual exploitation, the actual figure becomes over USD 2 billion – and that is for Turkey alone.

Where does this money go? For the Department for Organized Crime at the Ministry of Interior in Turkey, human trafficking is a relatively new area of interest, and the degree of crossover between traffickers and organized crime is unknown. However, it is highly likely that human traffickers use the same routes and the same contacts to move women (and most likely men) as they do for drugs, weapons, and other items dealt in by organized crime. The money changing hands between criminal groups—whether they

⁶ GNP from 2003, World Bank Report.

⁷ Gagauzia is an autonomous region in Moldova where the majority of the population speaks a dialect of Turkish.

are small family businesses or organized transnational networks—lines the pockets of people who are free to move between countries and continents to buy and sell their way into legal businesses to turn them into cover operations for money laundering. All the while, the trafficked women, men, and children are earning nothing compared to the income they generate. In many instances, the victims find themselves in a debt-bondage situation that they themselves don't fully recognize, because they believe that after they have repaid their debt to the trafficker they will begin earning income for themselves, as in the following case of a cook from Romania:

I was trained as a cook. I'm a Romanian citizen, and my family doesn't have enough to live on. I was promised work as a dancer in a casino. Before I left Romania, I signed a contract to work in Turkey. All the travel expenses and my boarding expenses were included in the contract. I came to Turkey, but when I arrived, I was told that I was liable for all the expenses. Everything: my housing, medical expenses, even the cigarettes that I smoked were included in my debt. In order to pay off my debt, I was told that I had to work as a bar girl. I refused. I felt it was a violation of my human rights. I wanted to return home. They didn't permit me to leave, and I didn't have enough money to return home. Before I left Romania, I had gone to the Turkish Embassy in Romania to get my Turkish visa. At the entrance, they were distributing brochures about the 157 trafficking victims' helpline number.

I remembered that the helpline had operators who could speak Russian and Romanian, and I right away called 157 and explained my problem. IOM and the Turkish police worked with me, and they rescued eight other Romanian women. Since the other women didn't want to return to their families empty-handed, they didn't want to return home and they refused to testify against the exploiters. They are still hoping that they will be able to pay off their debts and get a little money. IOM has helped me to return home to my country. I'd rather live on nothing than return to Turkey.⁸

Profile of a Victim of Trafficking

Who are those most at risk of being victims of trafficking? A disproportionate number of the victims identified in Turkey have also been victims of domestic violence or abuse in their countries of origin. Some also come from orphanages or boarding schools, or have mental disabilities. Up until July 2005, most trafficked persons rescued in Turkey were from eighteen to twenty-five years of age, with an increasing number of minors, which may point to a new trend. Most are recruited through a network of friends (figures from the Moldovan report show that more than half of those surveyed rated friends and family as their main source for reliable information on migration). Ukraine, the second main source country for victims of trafficking identified in Turkey, shows the same trend. Anya, a twenty-two-year-old from Ukraine, was recruited by a person from her home town, a friend of a friend. Anya was seven months pregnant when she was offered a job in Turkey for two months as a babysitter. Anya thought the money would come in handy for the baby, since both she and her husband were unemployed.

⁸ IOM Turkey victim interview, 2005.

The Trafficking Process

Like Anya, most victims assisted by the IOM were recruited by direct contact. The proportion of female recruiters has increased; the conclusion we draw is that the traffickers feel that women are more likely to establish trust faster. Statistics from Turkey show a few cases of international trafficking for forced labor, but young Eastern Europeans and Central Asians are predominantly exploited for their sexual services.

Anya had two traffickers – a couple. She was sold into prostitution the day she arrived in Turkey. She was beaten when she tried to escape. Like Anya, 98 percent of the victims of trafficking assisted by the IOM were sexually exploited, with the remaining 2 percent exploited for forced labor. 80 percent had no freedom of movement, while 20 percent were allowed movement with supervision. For those that had already been recruited by traffickers in the source country, debt bondage is common. There is no freedom of choice, no choice of clients, and little chance for negotiation regarding safe sex.

Anya was earning her trafficker USD 2000 per day, but the work was too hard. She was also pregnant, and seven months into the pregnancy she hemorrhaged, and the baby was born prematurely in an elevator. The traffickers kept her baby and made Anya go back to work the next day. For fun they stuffed chewing gum down the baby's mouth to watch it turn blue. When the little girl died, she was placed in a box on the balcony. Anya herself was finally rescued in a police raid and was taken to the shelter for victims of trafficking in Istanbul to receive medical assistance and counseling.

Prevention and how Victims of Trafficking See Themselves

Despite very clear indicators that she was a victim, at the shelter in Istanbul Anya did not identify herself as a victim of trafficking; that is a label imposed on her by others, mainly organizations working in the field of counter-trafficking. Anya and the others at the shelter think of themselves as labor migrants that have been seriously exploited. Of course they feel that their rights have been violated, and they feel abused and cheated, but the initial reaction of the women is to identify themselves as labor migrants, *never* as victims of human trafficking.

Experience from Moldova underlines the above point. In 2003, the IOM bought the rights to the feature film *Lilya 4-ever* in order to show it to people like Anya who matched the profile of a trafficked victim (aged sixteen to twenty-five years, low level of education, unemployed) and to promote the anti-trafficking hotline.⁹ To our amazement, although the film increased understanding of the human trafficking phenomenon and built empathy for the victims, not a single viewer out of the 60,000 who saw the film thought of themselves as a potential victim of trafficking. However, close to 90 percent saw themselves—if anything—as a potential migrant, either irregular or regular. That influenced future information campaigns and led to a shift towards a more positive, empowering approach, including providing information on legal migration channels. The response was immediate, and there was a 200 percent increase in calls to the hotline (whose name was changed from the “trafficking” hotline to “information” hot-

⁹ *Lilya 4-ever*, dir. Lukas Moodysson, Memfis Film, Sweden (2002).

line). What did we learn from this? In order to give people information they *need*, we must give them the information they *want*. Equally, it demonstrates the need for effective protection mechanisms in destination countries, as even the best prevention messages and information campaigns in source countries appear to have a limited impact. Turkey, in partnership with the IOM, has taken the additional step of incorporating information about its protection mechanisms into the source country campaigns.

Applying Lessons Learned: Turkey's Response to Fighting Human Trafficking

Taking note of the fact that human trafficking in Turkey is largely a cross-border phenomenon, the authorities have chosen to fight human trafficking by reaching out to potential victims before they leave their countries of origin.¹⁰ In coordination with IOM offices in Moldova, Ukraine, and Romania, Turkey is promoting the local helplines in the countries of origin as well as Turkey's own 157 helpline. The 157 helpline is open twenty-four hours a day, seven days a week, and is manned with Russian, Romanian, English, and Turkish-speaking operators. In its first six weeks of operation the Turkish helpline facilitated the rescue of nine victims of trafficking from Moldova and Ukraine.

A second activity in Turkey's regional response to fighting trafficking was to mobilize NGO networks in Moldova and Ukraine to distribute small flyers. The flyers are printed in Russian, Romanian, Turkish, and English. They contain a positive and empowering message in order to attract the attention of the potential victim who believes that Turkey offers a chance for her to improve the lives of her family members back home. Readers will reject any campaign that is perceived as negative, frightening, or not matching expectations about life in Turkey. The flyers are distributed across the target countries, and also at the main seaports and airports in Ukraine. Upon arrival in Istanbul, Antalya, and Trabzon, Turkish immigration officials hand the same flyer to members of our target group. At the same time, an advertising campaign in the four languages at the ports of entry is supported by billboards, posters, and stands in the most frequented areas of the arrival halls.

Since most victims of trafficking enter Turkey legally on tourist visas, this is the one chance Turkey has to reach out to the potential victims of trafficking, giving them the phone number of the helpline and informing them of the organizations in Turkey that can help them if they are in trouble. Establishing trust from the outset is important; if there is trust from the beginning, then the victim is more likely to collaborate with law enforcement agencies to prosecute the trafficker after being rescued. Turkey has realized the need for a regional effort to fight human trafficking within its own borders, and is in the forefront of destination countries in developing such innovative approaches.

Although much remains to be done, Turkey has made giant strides forward in fighting human trafficking, with the number of victims identified tripling in the last three

¹⁰ Internal trafficking also exists. Contrary to human smuggling, trafficking in persons does not necessarily entail crossing an international border – it is a crime against a person, not against a state.

years (instead of reflecting an increase in the rate of trafficking activity, this is more reflective of improved enforcement efforts—more victims are being helped). Turkey also acknowledges the problem of internal trafficking: 27 of the 266 women identified last year as victims of human trafficking were Turkish nationals. A rapid assessment by the IOM of internal trafficking in Turkey will be finalized by the end of 2005.

With the entering into force of the new penal code in Turkey, videotaped testimonials and stiffer penalties for traffickers are now possible. The code also allows for assets to be seized. Training for law enforcement officers continues, resulting in improved capacity for law enforcement agencies to differentiate between human trafficking, migrant smuggling, and other forms of irregular migration. This rights-based training has been extended to the armed forces, and in 2005 representatives of the Turkish military, through the Partnership for Peace initiative, have toured most of Eastern Europe and the CIS to conduct training programs for law enforcement, police, and military personnel on human trafficking, terrorism, and migrant smuggling. This initiative is aimed at building bridges between source and destination countries that will support anti-trafficking activities in the future, and further sensitize source countries to the links between trafficking and other forms of organized crime, including money laundering, in order to target the criminals where it will hurt them the most – their bank accounts.

The Human Cost of Trafficking

For transition economies like Moldova, losing 39 percent of the nation's working-age population to migration—and human trafficking—also means losing those members of society that are most needed for the economic development of their country. Most migrants report experiencing harsh working conditions, where they are often exposed to serious health risks. In the case of victims of human trafficking, merely the short-term medical, psychological, legal assistance, and other associated costs average roughly USD 2000 per beneficiary. But this cost does not include the life-long counseling needed to recover from the psychological trauma, or the fact that only 30 percent of victims of human trafficking recover sufficiently to lead normal lives. Of equal concern are the children of the victims who, because of their dysfunctional family structure, are in the highest-risk group for being trafficked themselves. Lives lost, collapsed societal and family structures, and non-productive citizens are a heavy burden for a country in transition.

Another human cost of migrant smuggling is the damage that is done to the image of migrants, and an increase in xenophobia. Up until now, unmanaged migration flows in destination countries have resulted in a perception by the general public that migrants are to blame for the growth in organized crime. But migration is an issue that affects us all; it is and always has been a natural human phenomenon. That is why it cannot be left to criminals to manage migration for us.

The Way Forward: Strengthening Cooperation on Migration Management in the Black Sea Region

Statements from victims rescued in Turkey support the need for a regional response to human trafficking. Their reluctance to identify themselves as victims of trafficking, seeing themselves rather as labor migrants, and their determination to migrate despite being made aware of the risks they face, continues to pose an enormous challenge to the international community. The generally accepted approach to combating human trafficking—incorporating and emphasizing the three “Ps” of prevention, protection, and prosecution—may be the best way to assist the victims and address the immediate and egregious human rights violations that define the trafficking phenomenon, but it does nothing to break the cycle of empty promises, dashed hopes, and ruined lives. If we truly have concern for Anya from Ukraine and the thousands of other victims of human trafficking, then we must begin to listen to them more closely and try to address their immediate need to earn a living and provide for their children and families.

The ideal long-term solution, of course, is economic development in the source countries, but in the meantime—and with the legacy of almost two decades of empty promises—people will continue to choose migration as the quickest and easiest way toward bettering their lives. For that reason, there must be a mechanism in place to enable states to better manage these migration flows and counteract the influence of criminal groups. If no effective measures are in place to protect migrants and safeguard the interests of the source and destination states, organized crime is free to maneuver in the resulting vacuum. Turkey’s recent efforts to reach out to potential victims of human trafficking have proven to be immensely successful, underscoring the value of a regional approach to reducing the risks of irregular migration. The challenge now is to be equally bold in establishing a dialogue between the states in the Black Sea region as a means toward managing migration in a way that provides economic and social benefits for both the source and destination countries, while countering human rights abuses and transnational organized crime. By taking this course, states will be recognizing what the victims of trafficking are telling us: that in order to truly protect their human rights, ultimately we must provide them with an opportunity to earn a living in safety and with dignity.

Human Trafficking in South Eastern Europe

Lucia Ovidia Vreja *

Trafficking in persons is a crucially important issue in today's world, as it represents both a serious transnational threat to security and a critical challenge in the areas of human rights and law enforcement. Although the definition of trafficking in persons continues to be a subject of debate, this essay applies the definition of trafficking in human beings as stated in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, which is a supplement to the UN Convention Against Transnational Organized Crime."¹ The Protocol defines trafficking as "the recruitment, transportation, transfer, harboring or receipt of persons, by the threat or use of force, by abduction, fraud, deception, coercion or the abuse of power or by 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."

Equally open to debate—in part due to the complexity of the phenomenon of human trafficking, in part due to disputes over the differences between trafficking and smuggling—are the estimations of the scope of this phenomenon at the national, regional, and global level. For example, the estimates released annually by the U.S. State Department regarding the scope of the traffic in persons worldwide every year vary anywhere from 700,000 to 4 million in 2002, to 800,000–900,000 in 2003, to 600,000–800,000 in 2004 and 2005.² Besides the variation in the methods used for gathering data on human trafficking, the complexity of the phenomenon is also responsible for these fluctuations, as it is very hard (if not impossible) to detect and uncover every act of trafficking and every victim.

Statistics issued by the International Organization for Migration in 2001 indicate that an estimated 700,000 to 2 million women and children are trafficked globally each year, generating total worldwide revenue amounting to about USD 9.5–10 billion a year.³ Whatever numbers one chooses to use, then, it is evident that the real dimensions of the phenomenon of human trafficking are worrisome. When we take into considera-

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¹ Liz 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* (Vienna: International Organization for Migration, 2005), 237–38; available at www.iom.int/documents/publication/en/Data_and_Research_on_Human_Trafficking.pdf.

² Ibid, 239. See also *Trafficking in Persons Report* (Washington, D.C.: U.S. State Department, June 2002; June 2003; June 2004; and June 2005), available at: www.state.gov/g/tip/rls/tiprpt/.

³ International Organization for Migration, "2001 Trafficking in Migrants," *Quarterly Bulletin* 23 (April 2001). See also Irena Omelaniuk, "Trafficking in Human Beings," United Nations Expert Group Meeting on International Migration and Development, UN/POP/MIG/2005/15, 8 July 2005, 3; available at www.un.org/esa/population/publications/ittmigdev2005/P15_IOMelaniuk.pdf.

tion the fact that, of the total number of people trafficked across international borders every year, 70 to 80 percent are female, 50 percent are children, and the majority of these women and girls are trafficked for sexual exploitation, the scale of the crime of human trafficking becomes difficult to comprehend.⁴

At the regional level in South Eastern Europe, the traffic in human beings—as is true of most other forms of organized crime—“represents a very serious and growing threat, not only for the countries in the region, but also for the rest of Europe,”⁵ since “the Balkans have become the gateway to Europe for organized criminals.”⁶ Human trafficking is an issue of critical importance in South Eastern Europe not only because it infringes upon and challenges the protection of human rights, but also because it has the potential to undermine the process of democratization, discredit the rule of law, weaken efforts to reform and build institutions, promote corruption, and even to threaten the stabilization process in the region.

With respect to the scope of human trafficking in South Eastern Europe, it is worth mentioning that the five most common countries of origin in the database of the International Organization for Migration are in this region: Moldova, Romania, Ukraine, Belarus, and Bulgaria. Likewise, the four most important destination countries or regions where IOM has offered assistance to victims are the Former Yugoslav Republic of Macedonia, Bosnia-Herzegovina, Kosovo, and Albania – all also in South Eastern Europe.⁷ This traffic in persons has become one of the main lines of business of organized criminals in the region. It is estimated that, till 2003, Balkan criminal networks have been responsible for the trafficking of 200,000 to 700,000 persons worldwide, mainly for forced prostitution.⁸

Root Causes of Trafficking in Persons in South Eastern Europe

Without being exhaustive, and in no order of importance, the following factors have been identified as the most common roots of human trafficking in Southeastern Europe.

1. The Transition to a Free-Market Economy

The process of economic transition in the countries of South Eastern Europe has led to a decrease in the quality of life and the accelerated spread of poverty to a large portion of the population. For example, in Romania, the poverty rate reached 44 percent in

⁴ *Trafficking in Persons Report* (Washington, D.C.: U.S. State Department, June 2005); available at www.state.gov/g/tip/rls/tiprpt/2005, 6.

⁵ *The London Statement*, delivered at “Defeating Organized Crime in South Eastern Europe,” Lancaster House Ministerial Conference, London, 25 November 2002.

⁶ David Blunkett, Home Secretary, Speech at “Defeating Organized Crime in South Eastern Europe,” Lancaster House Ministerial Conference, London, 25 November 2002.

⁷ IOM, *World Migration 2005*, Section 3, International Migration Data and Statistics, 418; available at www.iom.int/documents/publication/wmr_sec03.pdf.

⁸ EU, “A Secure Europe in a Better World – European Security Strategy,” Brussels, 12 December 2003; available at <http://ue.eu.int/uedocs/cmsUpload/78367.pdf>.

2000, compared to 7 percent in 1989.⁹ Women from Eastern Europe and the former Soviet Union have been particularly vulnerable to trafficking networks because the post-socialist transition has displaced many women, and because the “feminization of poverty” has been particularly acute in these former socialist countries.¹⁰ At the same time, the transition process in the countries of South Eastern Europe has led—as a secondary effect—to the weakening of state institutions. At the same time, these institutions also became even more vulnerable in the face of widespread corruption; it is estimated that the degree of the increase in criminal activity in most countries in the region is inversely proportional to the successes that the respective states have achieved in implementing democratic and market economy reforms.¹¹ Therefore, the difficult economic conditions in the countries of the region have made both the victims and the traffickers highly susceptible: the victims to the promise of a better life, and the traffickers to the possibility of gaining huge sums of money with minimal or no investment.

2. *The Opening of the Borders*

It is known that much of the “new” trade in human beings has emerged from the former socialist bloc since the opening of the borders at the beginning of the 1990s, after the end of the Cold War.¹² Trafficking in persons is not a new phenomenon.¹³ Yet, starting in the 1990s, it dramatically increased in scope. For example, in the case of Romania, the number of persons and vehicles crossing the state’s borders increased by a factor of three, while the number of illegal crossings of the border increased by a factor of sixty. Since then, clandestine migration has continued to grow and become more diversified, both in terms of the practices used and the people trafficked.¹⁴

⁹ *White Book of Government* (Bucharest: Government of Romania, 1999). See also *Trafficking in Children Report – Romania* (in Romanian) (Bucharest: Save the Children-Romania, March 2004), 3; available at www.salvaticopiii.ro/romania/resurse/rap_trafic_Romania.pdf.

¹⁰ Valentine M. Moghadam, “The Feminization of Poverty and Women’s Human Rights,” available at http://portal.unesco.org/shs/en/file_download.php/1ec293d182a88561926ecaac403c5642Feminization+of+poverty.pdf.

¹¹ “Transnational organized crime – a threat to the global market” (in Romanian), Romanian Intelligence Service, 2003; available at <http://www.sri.ro/pdfuri/1-12-2002-crima%20organizata.pdf>.

¹² Louise Shelley, “Human Trafficking: Transnational Crime and Links with Terrorism,” Statement to the House Committee on International Relations Subcommittee on International Terrorism, Nonproliferation and Human Rights, 25 June 2003; available at http://usinfo.state.gov/eap/Archive_Index/Human_Trafficking_Transnational_Crime_and_Links_with_Terrorism.html.

¹³ “Human Beings Trafficking for Sexual Exploitation” (in Romanian), Recommendation No. R (2000) 11, adopted by the Committee of Ministers of the Council of Europe on 19 May 2000; The Explicative Report, available at: [www.coe.int/T/E/Human_Rights/Equality/PDF_Rec\(2000\)11_Romanian.pdf](http://www.coe.int/T/E/Human_Rights/Equality/PDF_Rec(2000)11_Romanian.pdf).

¹⁴ *Some Aspects on the Evolution of Criminality in Romania in 1990–2003* (in Romanian) (Bucharest: Institute for the Study and Prevention of Criminality, Romanian Police, 2003); available at www.politiaromana.ro/Prevenire/studii.htm.

Migration to the countries of Western Europe, be it legal or illegal, represents for most migrants mainly a solution to poverty, and offers a chance of living a better life. Against this background, it is obvious that many persons could very easily fall victim to traffickers when searching for assistance in migrating, or in finding a job abroad. Moreover, the opening of the borders has led not only to the increase of cooperation at all levels between countries in countering illegal immigration, but also to the rise of organized criminal activity, including human trafficking.

3. *The Existence of a Developed “Black Market”*

As is the case of all forms of organized crime, the existence of a developed “black market”—even since the communist period—has played a major role in the establishment and development of illegal networks and routes of traffic. All the centralized economies of Eastern Europe harbored developed black markets, due to the incapacity of the official economies to meet consumers’ basic needs.¹⁵ Against this backdrop, after 1990 different criminal groupings began to appear, taking advantage mainly of the weakness of the state and the corruption of state structures.

It is clear that traditional patterns of trade and investment also shape the trade in human beings, much as they do with the trade in other “commodities.”¹⁶ Usually, the traffickers that transport people across state borders are involved in several other forms of trafficking.¹⁷ Moreover, people involved in the traffic of other commodities can easily become traffickers in persons as well, due, on the one hand, to their familiarity with existing networks and known routes, and, on the other hand, to the high revenues generated by human trafficking, at a relatively low risk.

4. *The Wars in the Former Yugoslavia*

The collapse of Yugoslavia and the wars that emerged led to the increase of organized criminal activities in South Eastern Europe. The need to finance the many war efforts of the various groups involved in the conflict in the region led to the appearance of a so-called “war economy,” which generated its funds from illegal activities.¹⁸ The networks and markets established during the war were maintained even after the war ended, as they had proved themselves to be very efficient. Sometimes even the peacekeeping forces were involved in such activities (mainly human trafficking and prostitution).¹⁹ Moreover, in addition to their occasional active involvement, the peacekeeping forces formed an important consumers’ market for the products of these criminal groups.²⁰ The

¹⁵ “Transnational organized crime – a threat to the global market.”

¹⁶ Shelley, “Human Trafficking: Transnational Crime and Links with Terrorism.”

¹⁷ W. Bruggeman, “Security and Combating International Organized Crime and Terrorism,” paper presented at the European Community Studies Association, December 2002, available at www.ecsanet.org/ecsaworld6/contributions/session1/Bruggeman.doc.

¹⁸ Mary Calder, “Razboaie noi si vechi (New and Old Wars),” *Antet* (1999): 117–27.

¹⁹ “Trade with Poverty, Human Beings Trafficking” (in Romanian), Report on the Human Beings Trafficking in the Balkans, Romanian Center for Journalism of Investigation, September 2003, available at www.proiect.ns/archives/000032.html.

²⁰ *Ibid.*

ethnic, religious, social, and national differences that are supposedly so deeply rooted in the Balkans disappear when it comes to the money generated by these illegal activities. For example, evidence suggests a strong link between Albanian and Serbian gangs, who saw the stabilization of the region as being against their interests.²¹

Factors Favoring the Rise of Human Trafficking

There is a long list of different factors that have contributed to the increase of human trafficking since 1990 in South Eastern Europe. The most relevant will be discussed in this section.

Social Factors

Family Situations. Many researchers have written that most of the victims of human trafficking usually come from families with low levels of education that take little or no care to promote their children's educational advancement.²² In particular, the most vulnerable females come from families with histories of abuse and domestic violence, or from homes with alcoholic parents.²³ The familial environment of the victims is also characterized by a lack of communication between parents and children, and by a general lack of care on the part of the parents for their children's future.²⁴ Many of the victims are also formerly institutionalized or "street" children, with little or no experience of domestic harmony or parental care.²⁵

Zone of Provenance. A very large portion of the victims come from poor regions of the source countries, characterized by an acute lack of employment opportunities (either big cities or poor rural areas) and by heightened levels of migration to seek work abroad.²⁶ Both the social conditions at home and the "success stories" of people who have managed to make a living abroad, or the "mirage" of a better life outside the country, are very important factors in determining a person's decision to trust a recruiter and leave home.

Lack of a Culture of Migration. The environment where the most victims come from is very often characterized by a lack of public information on institutions involved in

²¹ Glenn E. Curtis (Project Manager), *Nations Hospitable to Organized Crime and Terrorism*, Report Prepared by the Federal Research Division, Library of Congress, under an Interagency Agreement with the United States Government, October 2003, 32; available at: <http://loc.gov/rr/frd>. See also the keynote address delivered by Antonio Maria Costa, Executive Director of the United Nations Office on Drugs and Crime at the ISPAC Annual Conference (3-5 December 2004); available at http://www.unodc.org/unodc/en/speech_2004-12-03_1.html.

²² International Organization for Migration Mission in Romania, "Who is the Next Victim? Vulnerability of Young Romanian Women to Trafficking in Human Beings," August 2003, 5-6; available at: www.iom.int/documents/publication/en/Romania_ct.pdf.

²³ Ibid.

²⁴ *Trafficking in Children Report – Romania*, 21.

²⁵ Ibid.

²⁶ Ibid.

the process of migration and on the legal possibilities of getting a job abroad.²⁷ Moreover, the potential victims have little or no information on employees' rights, or about the country to which they want to emigrate for work. In general, victims of human trafficking have an unreal image of life in Western countries, an image that recruiters do little or nothing to dispel.²⁸

Economic Factors

The high level of poverty affecting an increasingly large part of the population in South Eastern Europe, including low standards of living and low wages, make both the victims and the traffickers—including government officials—very vulnerable in the face of the temptations offered by criminals and criminal activities. The high unemployment rate in most countries in the region, coupled with very low wages for unskilled labor (many of the victims having no special training) and the insecurity of most jobs, render a substantial portion of the population of those countries—particularly women—vulnerable to becoming victims of human trafficking. For example, of the total number of 2,791 victims identified in the IOM's database in July 2004, representing thirty-five nationalities, 30 percent had had no work experience at all before they emigrated, while 57 percent had had some work experience. Half of all victims of human trafficking in this sample were employed at the time of recruitment.²⁹ Yet, for those who had work, the wages were extremely low: less than USD 50 per month for 45 percent of all victims, between USD 50–100 for 12 percent, and between USD 101–500 for only 5.25 percent of the victims.³⁰

Social Policy Factors

Most countries in the region are faced with a lack of efficient strategies and social policies to combat unemployment and poverty, as well as with a deficient educational system in relation to the requirements of the job market.³¹ The countries in the region are also characterized by a relatively new institutional framework combating human trafficking and the crimes associated with it, as well as by insufficient budgetary allotments for the implementation of national plans of combating both poverty and human trafficking.³²

Legislative Factors

An ambiguous and very often inadequate legislative framework for combating all forms of organized crime, including human trafficking, can be observed in most of the countries in the region. For example, Romania adopted a law on preventing and combating human trafficking (Law 678/2001) only in December 2001. Also the main law directed

²⁷ Ibid.

²⁸ Ibid.

²⁹ IOM, *World Migration 2005*, Section 3, International Migration Data and Statistics, 418.

³⁰ Ibid, 419.

³¹ *Trafficking in Children Report—Romania*, 21–22.

³² Ibid.

at preventing and combating organized crime (Law 39/2003) defines, among other very serious felonies, pandering, human trafficking, and slavery. However, despite the measures taken in recent years by the countries of the region in the field of combating trafficking in persons, the weak performances of the official institutions of the state are still evident, both because of corruption and because of the lack of specialized personnel and equipment.³³

Corruption

South Eastern Europe is faced with a high level of corruption at all levels of society, and institutional corruption is a catalyst for producing an environment where transnational criminality can flourish.³⁴ Without the help provided by corrupt law enforcement, consular officials, diplomats, and lawyers the traffic in human beings in the region would virtually cease to exist.³⁵ Also central to the success of traffickers is the corruption of border guards, police, and personnel in the security and transport sectors. Without employees in the airports and railroad industry turning a blind eye, often after the payment of a significant sum, this form of organized crime could not proceed.³⁶

Moreover, it is not only the case that the official police in the countries of South Eastern Europe are in many cases incapable of stopping the phenomenon of human trafficking, but in certain cases police officers or other high officials are managing their own trafficking networks.³⁷ For example, in the summer of 2003, high-ranking government officials in Montenegro, including the Deputy General Prosecutor, Zoran Piperovici, were accused of direct involvement in a trafficking network; due to pressure from the international community, the case was taken over in July 2003 by an OSCE investigative commission.³⁸ And this is not a singular case.

Dimensions of Human Trafficking: The Romanian Case

Although it is hard to estimate the real scope of human trafficking in the region, some figures compiled by the Romanian police could be significant for assessing the trend of the phenomenon in recent years. For example, the findings of the Romanian police regarding illegal migration and trafficking in human beings and organs for the period 2001–2003 are as follows: the police recorded 423 offenses and 524 persons involved in 2001; 665 offences and 581 persons involved in 2002; and 1,829 offences and 1,396

³³ *Trafficking in Persons Report*, U.S. State Department, June 2005; available at: www.state.gov/g/tip/rls/tiprpt/2005.

³⁴ Transparency International, "The 2004 Corruption Perception Index," Internet Center for Corruption Research; available at: www.icgg.org/corruption.cpi_2004_data.html.

³⁵ Louise Shelley, Hearing on "Combating Transnational Crime and Corruption in Europe," Statement to the Subcommittee on European Affairs, United States Senate Committee on Foreign Relations, 30 October 2003; available at <http://www.american.edu/tracc/resources/publications/shelle03.pdf>.

³⁶ *Ibid.*

³⁷ "Trade with Poverty, Human Beings Trafficking."

³⁸ *Ibid.*

persons involved in 2003.³⁹ Regarding only the felony crime of trafficking in human beings, in 2003 the Romanian police arrested 187 persons under the law on preventing and combating human trafficking and dismantled 283 criminal trafficking networks.⁴⁰

Although Romanian judges sentenced forty-nine individuals in 2003 as compared to zero in 2002, the penalties in twenty-seven cases ranged from one to ten years in prison, and in the remaining twenty-two cases were a year or less.⁴¹ Based on these data, it is not hard to assume that a one-year or less prison sentence is an easy punishment for a trafficker, who could easily resume his activity after serving his time.

With respect to the involvement of government officials in human trafficking, in 2003 the Romanian authorities sent two trafficking-related corruption cases for prosecution, and investigated fifteen police officials for trafficking-related corruption crimes. These investigations resulted in two dismissals; the other thirteen investigations were still ongoing at the time of the report.⁴²

In 2004, the Romanian police arrested 107 persons for trafficking in persons, of which 100 were Romanians and 7 foreigners. They also dismantled thirty criminal trafficking networks, which were responsible for having trafficked 210 women for purposes of prostitution, and 1,676 persons for the purpose of begging.⁴³ Romanian judges convicted 109 traffickers. In addition, 81 police officials were investigated for trafficking-related corruption cases, resulting in administrative sanctions for thirty-one officials, ten dismissals, and forty cases sent forward for prosecution.⁴⁴ One's attention is drawn to the relatively high number of officials involved in human trafficking cases in 2004, which is clear evidence of the importance of corruption in perpetuating this crime and of the huge attraction this criminal activity can exert upon people—including those paid for combating it—due to the large sums of money that can be gained with relatively little or no investment.

Recent Trends in Human Trafficking in South Eastern Europe

The numbers in the IOM database on the victims of trafficking assisted in the countries of South Eastern Europe, although far from revealing the real number of victims, are conclusive in showing the recent trends in trafficking in persons in recent years. The following table shows some broad estimates of the number of identified and assisted victims of trafficking in South Eastern Europe based on the data gathered by the IOM

³⁹ *Some Aspects of the Evolution of Criminality in Romania in 1990–2003*.

⁴⁰ *Trafficking in Persons Report*, U.S. State Department, June 2004, 166; available at www.state.gov/g/tip/rls/tiprpt/2004.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *The activity of the Romanian police in the operational field – 2004* (Bucharest: Ministry of Administration and Interior, 2005); available at <http://www.mai.gov.ro/Documente/Bilant%20MAI/Plan%20Operational.pdf>.

⁴⁴ *Ibid.*

and the Counter-Trafficking Regional Clearing Point working within the Stability Pact for South Eastern Europe Task Force on Trafficking in Human Beings.⁴⁵

Although these numbers do not come close to representing the actual magnitude of the phenomenon—including victims who are not able to return to their home country either because of the lack of opportunity or because of fear, or who do not want to talk about what happened to them—at first glance the table could be read as indicating that the phenomenon of trafficking in persons has decreased in the region. This downward trend was also noticed by the non-governmental and international organizations carrying on activity in this field. In the second half of 2003, IOM and other agencies were confronted with a noticeable decline in the number of victims referred for protection and assistance in the Balkan countries.⁴⁶

Table 1: International Victims Assisted

<i>Country</i>	1999	2000	2001	2002	2003	March 2004
Bosnia-Herzegovina	14	200	214	283	53	-
Albania	7	137	64	29	15	-
Kosovo	-	13	135	86	45	-
FYROM (victims repatriated)	-	106	262	214	141	-
Moldova	-	308	364	292	235	31
Romania	-	163	261	243	111	-
Bulgaria	-	46	96	164	46	-
TOTAL	21	973	1396	1311	646	31

⁴⁵ “First Annual Report on Victims of Trafficking in South Eastern Europe,” Counter-Trafficking Regional Clearing Point, Vienna, September 2003, 10; available at: www.icmc.net/files/rcp2003full.en.pdf. See also “Changing Patterns and Trends of Trafficking in Persons in the Balkans Region,” International Organization for Migration, July 2004; available at www.iom.int/documents/publication/en/balkans_trafficking.pdf. In spite of the large differences of the data of the two entities, they are sufficiently conclusive in showing the downward trend of the number of assisted victims in the region. The numbers for Bosnia-Herzegovina, Albania, Kosovo, FYRO Macedonia, and Moldova are based on the figures delivered by the IOM missions in these countries, while the numbers for Bulgaria and Moldova are based on the figures delivered by the Counter-Trafficking Regional Clearing Point, whose methods of gathering data include statements provided by victims, non-governmental organizations, and international organizations.

⁴⁶ “Changing Patterns and Trends of Trafficking in Persons in the Balkans Region,” 5.

The effective measures taken by governments in the region, including proper legislation and efficient implementation of laws by national police and border guards, combined with proficient regional cooperation in anti-trafficking activities, could constitute a legitimate and expected explanation of this decrease in the number of trafficked victims. However encouraging these figures may seem related to the effort to combat this phenomenon, and however effective and efficient the regional governments' measures might have been in the last several years, the traffic in human beings is still robust and, unfortunately, on the increase.⁴⁷ Yet in the early years of this century it became less visible, as the criminal networks have adapted themselves more quickly to the new realities than the authorities, and have diversified their methods and changed their routes.

In terms of new trafficking methods, they are more subtle, and thus harder to detect.⁴⁸ For example, traffickers increasingly now use legal or quasi-legal modes of transportation, with real visas on either fake or real documents. Although transporting the victims legally could imply higher costs for traffickers, this sum of money is low compared with the gains a trafficker can obtain from a victim that can be forced into prostitution. The "legal" transport of the victims could also be facilitated by officials, either by diplomatic or consular personnel in getting visas, by border guard personnel in "omitting" a stringent search at the border, or by police officials in getting passports and other travel documents.

Contributing to the ease of these legal methods of trafficking is also the fact that, since 2002, citizens from Romania and Bulgaria do not need visas to enter the Schengen area, which means that victims from these countries can very easily cross the border legally. Even more important, to further ease the transportation of victims across the border, the traffickers financially sponsor the girls to get the travel documents (passports, medical insurance, the sums of money necessary to demonstrate when entering the European Union states), ensure the travel arrangements, and to get them a "proper" wardrobe, aimed at raising their morale and making them more attractive.⁴⁹

The exploitation of modern infrastructure is also increasingly used by traffickers, as "trafficking has moved into private apartments" instead of bars or brothels, where both victims and traffickers were most vulnerable to police raids in the past. Moreover, the connection between traffickers and "customers" is often made via the Internet or mobile telephones, since it is very hard to detect the users of these means of communication.⁵⁰ Another important methodological change has also been to improve the victims' living conditions, by offering them small payments thus avoiding the victims to bear evidence for the state, or by ensuring them modest housing facilities, under conditions that could be even better than those the victims were used to in their home countries.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ "The Evolution of Criminal Trans-Frontier Phenomena," report presented by the Romanian Minister of Administration and Interior to the Romanian Parliament's House of Deputies, December 2003; available at: <http://www.cdep.ro/interpel/2003/r1671A.pdf>.

⁵⁰ For a detailed picture of the changes in methods used by traffickers in countries of the region see "Changing Patterns and Trends of Trafficking in Persons in the Balkans Region."

The above-mentioned new practices of traffickers, while by no means a comprehensive list, offer clear evidence of the fact that transnational criminal organizations have modified their strategies and actions in order to adapt their methods to new counter-trafficking measures taken by governments and regional institutions.

With respect to new routes of human trafficking, several alternative trafficking routes have emerged in South Eastern Europe—alongside the traditional ones—which generates difficulties for security forces and police in detecting the new transit points.⁵¹ Nevertheless, Romania remains at the center of the transit process for victims of trafficking, with two main routes starting from or passing through Romania: one that goes north to Hungary and from there to Serbia and Montenegro and Albania, then on to Western Europe; and another one goes south through Bulgaria and FYRO Macedonia towards Greece.⁵²

Romania is first of all a country of origin for the victims of trafficking, due to the existence of a large number of poor people. But it is also a transit country, due to its geographic position, for victims trafficked from Moldova and Ukraine (and even from Asian countries) to Bosnia-Herzegovina, Serbia and Montenegro, FYRO Macedonia, Kosovo, Albania, or Western Europe for sexual exploitation.⁵³

Until 2002, the Balkans represented the main destination region to which women and girls from Romania and Moldova were trafficked, especially to Serbia, Montenegro and Albania; from here the women were sent to other Balkan countries, or to Western Europe (most often Belgium, Luxembourg, Italy, and France). Since 2003, the main destination countries for Romanian, Moldovan, and even Ukrainian victims are Spain, Italy, France, Netherlands, Austria, Greece, or Cyprus.⁵⁴ This change of destination is linked primarily with patterns of migration for jobs, but also with the cancellation of visa requirements and other barriers to migration in these countries.

Nevertheless, intentional changes in routes of trafficking and points of destination seem to be part of the traffickers' response to actions taken by governments and non-governmental or international organizations to combat this phenomenon. Criminal organizations adjust their methods of operation in response to changes in their operating environment in order to avoid being detected and increase their profit. Therefore, in spite of the evident decline in the number of IOM referrals in the region, new findings show that the main reason for this decline is more the ability of traffickers and trafficking routes to adapt rapidly and effectively to changing conditions in the various countries, than it is a real decrease of the magnitude of this phenomenon in the region.

⁵¹ Ladan Rahmani, "Invisible Routes. Changing Patterns and Trends in Trafficking Routes in the Balkans," *Migration* (June 2005): 22–24; available at http://www.iom.int/documents/publication/2005%20Migration_Jun_en.pdf.

⁵² *Ibid.*, 23.

⁵³ *Trafficking in Persons Report*, U.S. State Department, June 2002; available at www.state.gov/g/tip/rls/tiprpt/2002.

⁵⁴ *Trafficking in Persons Report*, U.S. State Department, June 2003, June 2004 & June 2005; available at <http://www.state.gov/g/tip/rls/tiprpt/>.

Links with Other Forms of Organized Crime and Terrorism

Besides the human, social, economic, and political pressures that the practice of human trafficking exerts on any society, a crucially important issue related to this phenomenon is its possible link to other forms of organized crime, and even international terrorism. According to experts in the field, illegal trafficking in virtually any commodity and terrorism are linked in some parts of the world, as trafficking is a large and significant component of the illicit economy where these links with terrorism exist. These regions might include the Balkans, as well as parts of the former Soviet Union.⁵⁵ According to institutions that deal with this issue, it is certain that organized crime, and especially drug trafficking, represents the most important source of financing for terrorist groups, providing up to 30–40 percent of their funds.⁵⁶ In the Balkans, trafficking is a major source of profits for organized crime groups.

Although the lack of data on the link between trafficking in persons and other forms of organized crime and terrorism make any accurate assessment impossible, according to the analysis of organized crime, criminal activities linked to trafficking in persons are continuously expanding, evolving, and specializing.⁵⁷ According to UN estimates, human trafficking is the “third largest criminal enterprise worldwide,” generating a profit of about USD 9.5 billion in annual revenues. The practice is also closely connected with money laundering, drug trafficking, document forgery, and human smuggling.⁵⁸

Aside from these crimes that often take place during the human trafficking process, criminal groups do not usually limit themselves to a single criminal activity, as the routes that they rely on could be used for any kind of trade.⁵⁹ Moreover, trafficking in persons, drugs, arms, or stolen cars is becoming “less open to ordinary crime” due to the rigorous and sometimes very costly efforts taken by the traffickers to elude the laws and penetrate national borders. Therefore, the barriers to entry in this field of crime are higher, so the potential profit to organized criminal networks must be maximized, which often involves conducting other forms of illegal trafficking along the same routes and using the same methods.⁶⁰

Although certain sources suggest that human trafficking in some regions of the world “links with the funding of terrorism in the intermingled world of the illicit economy,” there is no clear evidence of such connections in any of the countries in South Eastern Europe.⁶¹ Yet, for terrorists, trafficking of any kind could be quite an easy way to earn substantial sums of money, as well as to gather or distribute large sums of cash

⁵⁵ Louise Shelley, hearing on “Combating Transnational Crime and Corruption in Europe.”

⁵⁶ “Combating the Financing of Terrorist Organizations,” Romanian Intelligence Service; available at <http://www.sri.ro/pdfuri/1-6-2003-combaterea%20finantarii%20organizatiilor%20teroriste.pdf>.

⁵⁷ Louise Shelley, hearing on “Combating Transnational Crime and Corruption in Europe.”

⁵⁸ *Trafficking in Persons Report*, U.S. State Department, June 2005; available at www.state.gov/g/tip/rls/tiprpt/2005.

⁵⁹ W. Bruggeman, “Security and Combating International Organized Crime and Terrorism.”

⁶⁰ *Ibid.*

⁶¹ Louise Shelley, hearing on “Combating Transnational Crime and Corruption in Europe.”

without being detected by authorities, given the well-organized and hard-to-detect financial networks of the illicit trade.

The magnitude of the phenomenon of organized crime in South Eastern Europe, the existence of well-established networks, and the huge profits obtained through organized criminal activities could constitute significant incentives for terrorists and terrorist groups. A very important dimension of combating terrorism is the targeting of its financial resources; trafficking in any commodity, but especially drugs, constitutes a very important source of financing for terrorist groups.⁶² Equally important for terrorist groups' involvement in organized crime is the existence of well-organized networks that are already in use by criminal groups, which could be exploited by terrorist individuals or organizations for extending their infrastructure; recruiting new members; moving people, equipment, and funds without being detected; and establishing new training bases.

All these are important arguments on the possible links between trafficking in persons and terrorism. Even without any clear and incontrovertible evidence of such links, the issue should not be neglected.

An Efficient Strategy for Combating Organized Crime?

Trafficking in human beings, along with all other organized criminal activities, has reached a high level in South Eastern Europe, with major implications for all levels of society, in every state in the region. In this context, any successful strategy for combating this phenomenon depends on a determined and joint effort of the national governments in the region and the international community. The national governments have the crucial role in the process of drawing up a proper and solid strategy to combat human trafficking through passing proper criminal legislation and implementing the laws. At the same time, regional and international cooperation plays a very important role in coordinating the efforts and resources that will give substance to the national measures.

Yet, to be effective, any successful anti-trafficking strategy must be a three-pronged one, developed to include measures regarding all the sides of this equation: the victims, the supply/supplier side (the traffickers), and the demand side (the "sex buyers" side).⁶³ Nowadays, most of the funds allotted by different governments (especially United

⁶² In 2001, it was estimated that the traffic in illegal drugs in the Balkans was part of the Taliban's estimated USD 8 billion annual income from global drug trafficking, predominantly in heroin, of which Osama Bin Laden is alleged to have administered a substantial portion through Russian Mafia groups for a commission of 10–15 percent, or around \$1 billion annually. Moreover, it is estimated that Al Qaeda's "Balkan-directed funds" from "humanitarian" agencies and local banks, without "explicitly counting the significant drug profits," reached anywhere from USD 500 million to 700 million between 1992 and 1998. Yossef Bodansky, the former director of the U.S. House of Representatives' Task Force on Terrorism and Unconventional Warfare, quoted in Marcia Christoff Kurop, "Al Qaeda's Balkan Links," *Wall Street Journal Europe*, 1 November 2001.

⁶³ *Trafficking in Persons Report*, U.S. State Department, June 2005; available at www.state.gov/g/tip/rls/tiprpt/2005.

States and Western European countries) and international security organizations (mainly the UN, EU, or OSCE) for anti-trafficking assistance that are provided either to certain countries in need or to non-governmental organizations acting in those countries are directed towards victims' assistance, thus dealing with the results of this phenomenon rather than with its root causes and enabling factors. The same is true of the funds earmarked by national governments for combating trafficking.

On the victims' side, prior to being trapped in the snares of the traffickers, national governments could play a very important role by promoting general information campaigns on the risks potential victims are exposed to if they accept offers of working abroad from unofficial sources. The governments should also conduct targeted campaigns, focused on both the vulnerable categories of citizens (unemployed females with low education level) and the zones of origin (the poorest parts of the source countries). Crucially important in the long run are efficient national strategies for combating poverty, increasing living standards and employment opportunities, and improving and expanding the educational and economic opportunities that are available to vulnerable groups.

On the supply/supplier side, both the activity of national institutions and international cooperation could lead to the decrease of this phenomenon, including the adoption of strict and effective legislation against human trafficking and harmonization of the different laws of the countries in the region as well as the effective enforcement of the existing laws. Fighting institutionalized corruption, which both facilitates and profits from the traffic in persons and is one of the major problems facing the entire region of South Eastern Europe, represents a "duty" of the national governments, towards which all available efforts should be directed.

Regional and international cooperation should also be aimed at identifying and dismantling trafficking networks and routes through better methods of gathering and sharing intelligence, though common training and operation for security and police personnel, and through the coordination of broad-based enforcement efforts.

On the demand side, the efforts of the countries in the region are modest, since very often customers for commercial sex are difficult to identify. It is even harder to prove that they knowingly took advantage of a very vulnerable and weak person who is a victim of human trafficking. The demand side plays an important part in the perpetuation and development of this phenomenon, as there would be no trafficking activity—and, by implication, no victims—without the existence of a market for "exploitable" human beings (be the exploitation sexual or of some other nature). Therefore, stringent legislation incriminating and punishing people who exploit victims of trafficking must be adopted, combined with efforts to raise awareness among people in the destination countries, so that the phenomenon can no longer be overlooked or covered up.

South Eastern Europe, with the help of the international community, should do more in the field of combating this modern form of slavery, as this phenomenon represents a real threat not only to the security of the countries in the region, but also to the security of all of Europe. All the citizens of this region, including the poor ones, have the right to be in control of their own lives, and the right to economic and social development.

Human Trafficking: Breaking the Military Link

*Keith J. Allred **

Over 140 years after slavery was outlawed in the United States,¹ and nearly eighty years after world leaders signed the Slavery Convention, human slavery and enforced servitude continue to doom millions to lives of involuntary servitude in our day.² The U.S. State Department's 2005 Report on Human Trafficking estimates that 600,000–800,000 persons are trafficked across international borders every year.³ Many more, perhaps millions, are trafficked within the borders of their own nations.⁴ The International Labor Organization estimates that there are about 12.3 million people enslaved in various kinds of forced or bonded labor, sexual or involuntary servitude at any given time.⁵ Some are kidnapped, while others are enticed by promises of good jobs abroad. Some are sold to traffickers by their parents or husbands; many simply migrate of their own accord in search of work, and find themselves in the hands of traffickers. Like the slaves of times past, many labor in fields and factories, yet a more pernicious form of human bondage has become the most common form of servitude: sexual slavery.⁶

Like slave owners of old, modern traffickers use violence, threats, intimidation, the confiscation of travel documents, and physical restraint to keep slaves at their tasks. Yet modern human trafficking seems more pernicious than the chattel slavery of the past, in part because it is so thoroughly the province of transnational organized crime. Human trafficking is considered to be the third-largest source of criminal income worldwide, generating an estimated \$9.5 billion per year.⁷ It is also closely linked with money laundering, document forgery, drug trafficking and human smuggling, and international ter-

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¹ The Emancipation Proclamation, which was signed in September of 1862 and became effective on 1 January 1863 for those Confederate states that had seceded from and not returned to the Union, was the first definitive step taken by the United States federal government toward abolition of slavery within its borders, http://www.archives.gov/exhibits/featured_documents/emancipation_proclamation/. Slavery was finally abolished by the Thirteenth Amendment to the U.S. Constitution, ratified on 6 December 1865.

² The Slavery Convention entered into force on 9 March 1927; the Protocol of 7 December 1953 entered into force on 7 June 1955, with 95 parties to the Convention; see www.unhcr.ch/html/menu3/b/f2sc.htm.

³ U.S. Department of State, Trafficking in Persons Report, 2005 (Introduction); available at www.state.gov/g/tip/rls/tiprpt/2005/46606.htm (accessed July 2005).

⁴ Ibid.

⁵ Ibid.

⁶ The State Department estimates that 80 percent of persons trafficked each year are women, and that 70 percent of these are trafficked into sexual slavery. Ibid.

⁷ U.S. Department of State, "Trafficking in Persons Report 2004," 14; available at www.state.gov/g/tip/rls/tiprpt/2004/34021.htm.

rorism.⁸ This panoply of modern horrors is a plague that wreaks havoc upon society beyond the damage done to the lives of those who are enslaved.

Ironically, there continues to be a demand for cheap crops harvested by trafficked farm workers, cheap textile products produced by trafficked garment workers, and cheap sexual services provided by trafficked sex workers. While on one level society recoils at human trafficking and strives to destroy it, on another level society provides the demand, knowingly or not, for the cheap goods and services that trafficked persons provide. Yet in recent years the scourge of human trafficking has come increasingly before the public eye. Governments and international organizations have begun to recognize trafficking as a growing and pernicious evil. As it has come to be seen as a source of funding for crime and terror, governments and other organizations have begun to attack the factors that support it. This article will address only one aspect of the problem of human trafficking: the role of military personnel in creating demand for trafficked persons. Both the United States Army and UN peacekeeping forces have recently experienced embarrassments suggesting an unacceptable relationship between trafficked women and their soldiers abroad. The reactions of both organizations to these revelations have been both positive and strong. NATO, another significant source of troops deployed around the world, has joined the effort in a similar way. There is reason to hope that the combined initiatives of these three military forces will do much to reduce the demand for trafficked women and to increase the pressure placed on those who make commerce of trafficked persons. While the “war” on human trafficking must be fought on several fronts—including prevention, prosecution, and protection, and including enslaved individuals ranging from sweatshop and agricultural workers to child soldiers, and even camel jockeys⁹—there are movements afoot that hold the promise of removing deployed military personnel as a significant factor in the demand for trafficked women.

The United States

Military personnel deployed away from their homes have been a long-standing source of demand for sexual services from local populations. During the Vietnam years, United States military personnel inspected and certified local prostitutes for service in Thailand, Vietnam, and the Philippines, and organized “Rest and Recreation” facilities for U.S. troops that included easy access to prostitutes. In some cases, an overly close proximity between U.S. troops and brothels has exposed the Army to allegations that it was essentially operating its own military houses of prostitution.¹⁰ Today, the United

⁸ Ibid.

⁹ In its 2005 Trafficking in Persons Report, the State Department indicates that humans are trafficked for all of these reasons.

¹⁰ See, e.g. Emily Nyen Chang, “Engagement Abroad: Enlisted Men, US Military Policy and the Sex Industry,” *Notre Dame Journal of Law, Ethics, and Public Policy* 15 (2001): 621, 626–32; Katherine H. S. Moon, *Sex Among Allies* (New York: Columbia University Press, 1997); Susan Brownmiller, *Against our Will; Men, Women and Rape* (New York: Simon and Schuster, 1975), 93 et seq.

States has nearly 250,000 members of its military forces deployed in combat and peacekeeping operations around the world.¹¹ If the number of troops normally resident abroad is added to this total, there are nearly 350,000 Americans stationed in nearly 130 countries around the world.¹² These sheer numbers may tend to make deployed U.S. military personnel one of the largest sources of demand for sexual services around the world, some of which would likely be provided by trafficked women. And yet the United States Army has begun to take steps to ensure that its troops do not contribute to this demand.

In May of 2002, Fox News broadcast a story suggesting that U.S. Army patrols of the red light districts in Korea were actually providing protection to establishments where trafficked women were “employed.”¹³ The suggestion that the U.S. Army was involved in facilitating the trafficking of sexual slaves was unmistakable, and provoked a strong reaction in Congress. Thirteen U.S. Congressmen asked the Inspector General (IG) of the Department of Defense to organize a thorough and comprehensive investigation into the relationship between U.S. armed forces and prostitution, including the prostitution of trafficked women. The IG responded quickly, with separate investigations into Korea and the Balkans. These reports, issued in July and December of 2003, did not find that U.S. troops were protecting the brothels or facilitating the trafficking of persons, but did agree that the Army’s relationship with those establishments was “overly familiar” and that concerns about human trafficking had been overlooked.¹⁴ But the report also determined that many of the women working in those establishments had been trafficked, and that they had suffered such offenses as confiscation of personal identity papers and physical violence.¹⁵

Even the Inspector General’s conclusion of an “overly familiar” relationship between human traffickers and the U.S. armed forces resulted in a pronounced response. The Defense Department established a “zero-tolerance” policy, which prohibited U.S. troops and the contractors who support them from being “complicit in any way in the

¹¹ See www.globalsecurity.org/military/ops/global-deployments.htm.

¹² Ibid.

¹³ Sarah E. Mendelson, *Barracks and Brothels; Peacekeepers and Human Trafficking in the Balkans* (Washington, D.C.: Center for Strategic and Security Studies, February 2005), 40–42; Commission on Security and Cooperation in Europe News Release (15 September 2004), available at www.osce-ngo.net/040919.html; see also William H. McMichael, “Fighting Sex Slavery in Korea; Joint Command has Done Well Trying to Halt Practice of Human Trafficking, Report Says,” *Navy Times* (23 August 2003), 26; Anni P. Baker, *American Forces Overseas* (Westport, CT: Praeger, 2004), 164.

¹⁴ Department of Defense Inspector General, “Assessment of DOD Efforts to Combat Trafficking in Persons, Phase I-Korea,” page 10; available at www.dodig.osd.mil/aim/alsd/H03L88433128PhaseI.PDF; “Phase II-Bosnia Herzegovina,” available at www.dodig.osd.mil/aim/alsd/HT-Phase_II.pdf, accessed 21 July 2005. See also, Inspector General Joseph E. Schmitz, “Remarks as delivered to the OSCE Forum for Security Cooperation,” Vienna, 17 November 2004; available at www.dodig.osd.mil/IGInformation/Speeches/OSCE_Forum_112204K.pdf.

¹⁵ DoD Inspector General, “Phase I-Korea,” 8–10.

trafficking in persons.”¹⁶ The policy defines trafficking to include involuntary servitude and debt bondage, as well as sexual slavery. The commander of the U.S. forces in Korea also responded to the investigation with an expansion of the use of “off-limits” areas, prohibiting U.S. personnel from patronizing establishments that had been placed “off-limits” for suspected involvement in human trafficking.¹⁷ Military patrols of off-limits areas are now clearly instructed to prevent U.S. personnel from patronizing these establishments, and the appearance of U.S. forces providing protection for them is no longer remotely acceptable.

The zero-tolerance policy and expanded use of off-limits areas has been combined with an expanded education campaign for all U.S. troops reporting for duty in Korea. In testimony before the House Armed Services Committee given on 21 September 2003, General Leon LaPorte noted that all new arrivals, including U.S. Navy ships visiting Korean ports, are exposed to counter-trafficking training that alerts troops and sailors to the issue of trafficking, identifies off-limits areas, emphasizes the zero-tolerance policy, and describes potential disciplinary measures for violations.¹⁸ Other initiatives to reduce U.S. troops’ patronage of establishments that may be involved in human trafficking include expanded recreational activities for military personnel on base; expanded cultural, service, and educational opportunities both on and off-base; a 24-hour hotline where military personnel can report businesses suspected of trafficking; self-produced TV advertisements seen by both U.S. and Korean populations that discuss the issue of trafficking; and a “Prostitution and Human Trafficking Identification Guidebook” that helps military personnel identify and avoid establishments that appear to be engaged in human trafficking. Courtesy patrols and undercover operations in areas where trafficking may be occurring further monitor the presence of U.S. personnel in these areas and discourage their patronage of prostitutes.¹⁹

The Army’s embarrassed reaction to human trafficking in Korea may also have been on President Bush’s mind when he addressed the United Nations General Assembly on 23 September 2003. He identified human trafficking as a “special evil” that merited the

¹⁶ Policy Memorandum “Combating Trafficking in Persons in the Department of Defense,” 30 January 2004, signed by Deputy Secretary of Defense Paul Wolfowitz. See also Secretary Donald Rumsfeld memo of 16 September 2004, available at www.marshallcenter.org/site-graphic/lang-en/page-mc-policy-1/static/xdocs/opa/static/SD%20091604.pdf.

¹⁷ Statement of General Leon J. Laporte, Commander, United Nations Command, Commander, Republic of Korea-United States Combined Forces Command, and Commander, U.S. Forces Korea before the House Armed Services Committee, and Commission on Security and Cooperation in Europe of 21 September 2004, 1; available at www.defenselink.mil/dodgc/olc/docs/test04-09-21LaPorte.pdf (accessed 21 July 2005).

¹⁸ *Ibid.*, 2.

¹⁹ *Ibid.*, 3–6. The general also reported that, between January and September of 2003, five military personnel had been punished for soliciting prostitution, and 398 had been given administrative punishments for violating curfews and off-limits area boundaries (*ibid.*, 7). More than 600 bars, restaurants, and entire areas of town have been placed off limits. Rick Maze, “Army Targets Prostitution,” *Army Times*, 4 October 2004; available at www.armytimes.com/print.php?f=1-ARMYPAPER-370025.php.

UN's attention, devoting a substantial portion of his remarks to the topic.²⁰ In February 2004, the President issued Executive Order 13257 establishing a task force to combat human trafficking.²¹ Later that month he issued a National Security Presidential Directive on trafficking that gave additional emphasis to the army's initiatives.²²

In another remarkable innovation, on 15 September 2004 the Department of Defense's Joint Service Committee on Military Justice proposed several changes to the Uniform Code of Military Justice (UCMJ), a federal criminal code that applies to active duty military personnel worldwide, at all hours of the day, regardless of their deployment status.²³ Under the UCMJ, U.S. military personnel can be tried for military offenses such as disrespect and failure to obey orders, as well as the more traditional criminal offenses.²⁴ Among the proposals was a suggested new criminal offense of "patronizing a prostitute," intended to completely eliminate U.S. forces from the equation of demand for paid sexual services anywhere worldwide. Under the proposed legislation, patronizing a prostitute would become a crime for all military personnel after 1 July 2005.²⁵ The new offense would punish the soldier-customer even if the sex act is consensual and prostitution is legal in the country where the act occurs.²⁶

²⁰ President George W. Bush, "Remarks to the General Assembly of the United Nations," 23 September 2003, available at www.whitehouse.gov/news/releases/2003/09/20030923-4.html.

²¹ Executive Order 13257 (18 March 2004) implements the Trafficking Victims Protection Reauthorization Act of 2003; available at www.whitehouse.gov/news/releases/2004/03/20040318-7.html.

²² Trafficking in Persons National Security Presidential Directive, 25 February 2003, available at www.whitehouse.gov/news/releases/2003/02/20030225.html.

²³ Uniform Code of Military Justice, 18 USC 801, et. seq.

²⁴ 69 Federal Register 55600, at 55603–604. The elements of the offense of Patronizing a Prostitute will be:

- a) That the accused had sexual intercourse with another person not the accused's spouse;
- b) That the accused compelled, induced, enticed, or procured such person to engage in such act of sexual intercourse in exchange for money or other compensation;
- c) That this act was wrongful;
- d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

A summary of the public comments received through 5 January 2005 is published at 70 FR 1877. For a detailed discussion of the development of these offenses, and the possibility that they might be imitated by other nations, see Michael F. Noone, "Trafficking in Women: The US Tactic: Prosecuting Military Customers. Could it be Exported?" (unpublished paper in possession of the author). On 5 January 2005, the proposal was forwarded, with public comments, to the Department of Defense. 70 Fed. Reg. 1877–1881, 11 January 2005; available at <http://frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=945440211+0+0+0&WAISaction=retrieve> (accessed July 2005).

²⁵ As of the date of this writing, the proposal has yet to become law. It was transmitted to the Department of Defense with public comments on 5 January 2005 for consideration.

²⁶ See 70 Fed. Reg. 1877–1881, 11 January 2005; available at frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=945440211+0+0+0&WAISaction=retrieve (July 2005).

NATO

NATO has taken similar steps intended to remove its troops from proximity to, or an “overly familiar” relationship with, human trafficking, particularly for purposes of sexual slavery. In July 2003, the issue of NATO involvement in human trafficking appears to have been first raised by then-U.S. Ambassador to Moldova Pamela Smith, who indicated that peacekeepers stationed in the country created demand for prostitutes, which translated into demand for trafficked women.²⁷ In March 2004, the U.S. and Norwegian Ambassadors to NATO, Nicholas Burns and Kai Eide, hosted the organization’s first conference to address the problem of human trafficking, and to consider whether NATO personnel posted abroad were contributing to the demand. By June of that year, NATO had developed a draft “Policy on Combating Trafficking in Human Beings” that received the endorsement of NATO heads of state and governments.²⁸ The NATO policy calls upon all NATO member states (and all non-NATO states that contribute troops or civilian personnel to NATO missions) to do all that they can to ensure that their troops do not contribute to or support trafficking in persons in any way. The key language of the policy prohibits NATO forces, contractors, and employees conducting operations under NATO command and control from “engaging in trafficking in human beings or facilitating it.”²⁹ Like the U.S. response in Korea, NATO sees training and education programs as being essential to reducing the engagement of prostitutes by NATO forces deployed abroad on NATO missions. Appendix II to the NATO policy outlines specific requirements of such training programs, including pre-deployment training for all, and special training for commanders and for military police units.³⁰ The policy’s prohibition also applies to any civilian element accompanying such forces, including contractors.³¹

United Nations

The Fox News report that caused such a reaction in the United States Army in Korea only hinted at official involvement in human trafficking. By contrast, the UN has been buffeted by allegations of serious sexual misconduct by its peacekeepers in many parts of the world for many years. Incidents of sexual assault perpetrated by UN peacekeepers have been documented in Angola, Cambodia, East Timor, Liberia, Mozambique,

²⁷ Mendelson, *Barracks and Brothels*, 60.

²⁸ NATO Press Conference, “Briefing on combating trafficking in human beings,” 8 July 2004; available at www.nato.int/docu/speech/2004/s040708a.htm. The policy document and its annexes can be found at www.nato.int/docu/comm/2004/06-istanbul/docu-traffic.htm (accessed May 5 2005).

²⁹ NATO Policy on Human Trafficking, paragraphs 5 and 6, at www.nato.int/docu/comm/2004/06-istanbul/docu-traffic.htm.

³⁰ *Ibid.*, Appendix II.

³¹ *Ibid.*, Appendix I, Paragraph 3.

Kosovo, Sierra Leone, and Somalia.³² When UN peacekeepers deployed to Bosnia-Herzegovina, brothels containing trafficked women developed quickly in the areas surrounding UN compounds.³³ Former Human Rights Watch researcher Martina Vandenberg wrote, “Brothels sprouted like mushrooms, surrounding the base on all sides.”³⁴ The UN suffered not only by the clear proximal association of prostitution and its troops, but by testimony regarding sexual offenses by its troops, and by testimony offered before a committee of the U.S. House of Representatives that high-level UN officials had attempted to conceal the offenses.³⁵ UN personnel also took with them hundreds of files regarding human trafficking when the UN mission in Bosnia turned over its duties to the European Union Police Mission at the end of 2002. This prevented evidence regarding trafficking that may have been embarrassing to the UN from falling into EU hands.³⁶ At the very least, it represented an absolute failure of cooperation in the turnover.

These signal embarrassments were revived, if not eclipsed, in the spring of 2004 when allegations of peacekeeper misconduct surfaced in the Congo. Complaints that UN peacekeepers had committed sixty-eight instances of rape, pedophilia, and prostitution upon the Congolese people were bad enough, but they were aggravated by reports of peacekeepers interfering with the investigation, paying or offering to pay witnesses to change their testimony, threatening investigators, and refusing to identify colleagues who were suspected of offenses.³⁷ Later research has concluded that up to 90 percent of the women engaging in normal prostitution in the Balkans were victims of human trafficking.³⁸ As a result, not only were the peacekeepers engaged in rape and pedophilia,

³² Elizabeth Rehn and Ellen Johnson Sirleaf, *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building* (New York: United Nations Development Fund for Women, 2002).

³³ Julia Stuart, “Dark Side of Peacekeeping: Kofi Annan is Calling for UN Troops to be sent to Liberia,” *The Independent* (London), (10 July 2003), 4, 5; Daniel Pallen, “Sexual Slavery in Bosnia; the Negative Externality of the Marketplace,” *Swords and Plowshare* 13:1 (Spring 2003): 27–43; available at www.american.edu/sis/students/sword/Back_Issues/3.pdf (accessed 6 May 2003). The August 2004 list of off-limits places in Kosovo shows a clear correlation between the name of the establishment and the country responsible for that part of the country. Mendelson, *Barracks and Brothels*, 11.

³⁴ Mendelson, *Barracks and Brothels*, 14.

³⁵ Testimony of David Lamb, U.S. House of Representatives Committee on International Relations, “The UN and the Sex Trade in Bosnia: Isolated Case or Larger Problem in the UN System,” Hearings before the Subcommittee on International Relations and Human Rights. 107th Congress, 2nd Session (24 April 2002), 68; available at http://commdocs.house.gov/committees/intrel/hfa78948.000/hfa78948_of.htm (accessed 20 March 2005).

³⁶ Mendelson, *Barracks and Brothels*, 63–64.

³⁷ “Comprehensive Review of the Whole Question of Peacekeeping Operations in all their Aspects,” UN General Assembly Document A/59/710 (24 March 2005); available at [http://daccessdds.un.org/doc/UNDOC/GEN/N\)5/247/90/PDF/NO524790.pdf?OpenElement](http://daccessdds.un.org/doc/UNDOC/GEN/N)5/247/90/PDF/NO524790.pdf?OpenElement) (accessed 30 March 2005).

³⁸ Mendelson, *Barracks and Brothels*, 9.

they were, perhaps unknowingly, supporting the trade in trafficked women and feeding the coffers of organized crime. Counter-trafficking expert and former U.K. police inspector Paul Holmes indicates that peacekeepers who exploit trafficked women “unwittingly support precisely the people who do not want a safe, stable, and secure environment” – i.e., organized criminals.³⁹

The Secretary-General of the UN was understandably outraged to learn that UN troops had committed these offenses while serving under the peacekeeping banner, but at the same time he could not have been surprised. He sent Jordanian Prince Zeid Ra’ad Zeid Al-Hussein to the Congo to investigate the allegations, and confirmed that they were true. The prince’s report was released to the public in March 2005, featuring an objective report of the problem and its causes, as well as an outline of steps the UN and its member nations can take now to reduce or control it.⁴⁰ The UN has thus found itself fairly in the limelight, with the opportunity to join the U.S. Army and NATO in seeking ways to prevent its troops from supporting trafficking or engaging in sexual misconduct while deployed on missions. The examples already set by the U.S. Army and NATO may well have informed and assisted development of the report’s recommendations.

Unlike the U.S. military, which reports to a single chain of command and is governed by the UCMJ, UN (and NATO) forces are made up of troops from many nations, each under its own system of laws and rules of procedure. By virtue of the Status of Forces Agreement under which they serve, neither the host nation nor the UN has any power to impose punishment on these troops for their misconduct. This responsibility is reserved for officials of the state to which they belong.⁴¹ As a result, the system seldom works well, and peacekeepers are seldom punished for offenses allegedly committed and investigated while deployed on peacekeeping duties half a world away. And yet the Comprehensive Review looks at ways to improve the likelihood that discipline will be administered. Some of the most significant recommendations for removing peacekeepers from factoring on the demand side of the equation of the trade in trafficked persons include:

1. Require nations contributing troops to undertake, as a condition to offering peacekeepers, a legal obligation to seriously evaluate complaints against its peacekeepers and to take disciplinary action when warranted, reporting its actions to the Department of Peacekeeping Operations.⁴²
2. Add to the performance goals of managers and commanders measures relating to the elimination of sexual exploitation and abuse.⁴³

³⁹ Ibid., 17.

⁴⁰ Ibid.

⁴¹ Franz Cede and Lilly Sucharipa-Behrmann, *The United Nations, Law and Practice* (The Hague, London and Boston: Kluwer Law International, 1999), 100–101.

⁴² “Comprehensive Review,” 6.

⁴³ Ibid., 5.

3. Impose strict disciplinary accountability for peacekeepers who violate the UN rules against exploitation and abuse.⁴⁴
4. Employ modern forensic methods to identify suspects with fingerprint, fiber, and DNA analysis.⁴⁵
5. Impose financial accountability on peacekeepers who father children while on deployment; use forensic equipment and technology to establish paternity.
6. Employ a permanent cadre of professional investigators, completely independent of other UN organs, to investigate allegations made against peacekeepers. Troop Contributing Nations (TCNs) should participate in the investigations to ensure that evidence collected will be admissible in their national courts. TCNs should agree to share information gathered in their own investigations with the UN investigators.⁴⁶
7. Employ curfews and off-limits areas to ensure that civilians do not have access to peacekeeper camps and vice versa. Build recreational facilities for peacekeepers to provide an alternative to patronizing houses of prostitution.⁴⁷
8. Establish a trust fund to compensate victims when a perpetrator cannot be identified.⁴⁸

Whether the UN is serious about reforming its peacekeeping operations or not remains to be seen, as the report and its recommendations have only just been issued. With the UN's history of peacekeeper abuses, obstruction of investigations, removal of evidence, its lack of common disciplinary authority, and an apparent organizational climate of cover up and obfuscation, it may well be that the report's recommendations will amount to nothing. So far, repatriation seems to be the only result that befalls any peacekeeper accused of crime.⁴⁹ Even the prince's report admits that the perception that peacekeepers are never prosecuted for crimes that they commit while deployed overseas is "justified."⁵⁰

And yet there is room to be cautiously optimistic. The UN's humiliation comes at a time when other major military forces are also beginning to grapple with the connection between armed forces and trafficked women who are forced into prostitution. The connection between trafficking and organized crime, which threatens the security that peacekeepers are trying to establish, may add muscle to the effort to crack down on both peacekeepers and prostitutes. The knowledge that the proceeds of human trafficking are funding organized crime and terrorist operations may actually give national commanders the determination to make things different when the UN sends peacekeepers to the field. If this can be done—carefully, and without offending any Troop Con-

⁴⁴ Ibid.

⁴⁵ Ibid, 15.

⁴⁶ Ibid.

⁴⁷ Ibid., 19–20.

⁴⁸ Ibid, 22.

⁴⁹ Mendelson, *Brothels and Barracks*, 68.

⁵⁰ "Comprehensive Review," 17.

tributing Nation—the results could significantly reduce the demand for trafficked women that UN Peacekeepers currently represent.

Conclusion

Human trafficking is one of the great scourges of our day, and is doubly damned because it feeds both organized crime and terrorist organizations. After a long slumber, nations of the world have begun to awaken and take firm and resolute action against both the demand and the supply sides of the equation. The role of military forces deployed abroad has come to be seen as a strong component of the demand for trafficked women, which in today's world is increasingly unacceptable to modern governments and the international organizations in which they participate. It is perhaps fortunate that the United States and United Nations have both suffered embarrassing revelations about the demand their deployed troops create for trafficked persons, particularly prostitutes. Whether mutually or independently, each has reached the conclusion that they must ensure that their military personnel must not be complicit in, or facilitate in any way, the trade in trafficked persons.

The steps taken by the U.S. and NATO (and those recommended for the UN) are clearly a step in the right direction, but how large a step remains to be seen. The task is not merely to give a brief training presentation before NATO troops deploy. It is to change the mindset of a whole society to the point where soldiers of every stripe actually see prostitution for what it is: a modern slave trade that fuels crime and instability and funds international terrorism. With strong leadership, disciplinary consequences that are real and significant, and other alternatives for off-duty recreation, there is a real possibility that deployed military personnel will diminish the role that they play in the demand for trafficked women. This in turn could do much to reduce the victimization of trafficked women and the evils that flow from this contemporary slave trade.

Fighting Human Trafficking in Bavaria

*Lothar Köhler**

Preliminary Remarks

Human trafficking—which we primarily observe in the form of trafficking in children and women, often linked to prostitution—is an especially reprehensible and offensive type of organized crime. It deeply injures human dignity. It is a modern form of slavery, which has already claimed many victims. In such cases, fundamental human rights, such as physical integrity, personal freedom, and sexual self-determination, are violated.

Ever since the passage of Germany's 37th Criminal Law Amendment Act of 19 February 2005, with regard to the term "human trafficking," the German authorities differentiate between human trafficking for purposes of sexual exploitation and for purposes of labor exploitation. Human trafficking for purposes of sexual exploitation refers to the exploitation of persons in a state of exigency or helplessness (associated with transportation to a foreign country) in order to bring them into or continue prostitution or force them to perform sexual acts on or before a perpetrator or third party, or to have sexual acts performed on them by a perpetrator or third party. Human trafficking for purposes of labor exploitation means exploiting the situations cited above in order to bring persons into slavery, bondage, or debt slavery, or to compel individuals to continue to labor under working conditions in which an obvious disparity exists to other employees in a comparable work situation. The law prescribes punishments for those convicted of prison sentences ranging from six months to ten years.

Aggravating factors for sentencing—which call for a minimum prison sentence of one to ten years—exist if the victim is a child, if the perpetrator has severely abused the victim during the crime or has endangered the victim's life, if he has committed the crime for profit or as a member of an organized criminal enterprise, or if he has made the person begin or continue prostitution or perform sexual acts using violence, threats of violence, or through deception. Persons promoting human trafficking by recruiting, transporting, transferring, housing, or taking in another person will be punished with prison sentences ranging from three months to five years. (The attempt to commit any of the above acts is also punishable.) In addition, a prison sentence of six months to five years has been set for the offense of forced marriage.

The Situation in Bavaria

The relevant case statistics regarding the situation in Bavaria from the year 2003—which, it should be noted, are based on the old laws, and only include human trafficking for the purpose of sexual exploitation—demonstrate that police statistics for Bavaria cite 126 cases of human trafficking for the year, involving 196 victims. In a ten-year

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comparison, the annual average was 84 cases per year. 31 of the investigations conducted in 2003 involved cases with definite ties to organized crime.

The majority of the victims in the 2003 cases were between eighteen and twenty-four years old, the youngest just fourteen. Most of the victims came from Central and Eastern European nations: 35 percent came from Germany, 27 percent from Bulgaria, 9 percent from Romania, and 8 percent each from the Czech Republic and Slovakia. Sixty-three suspects were registered. The nationalities of these registered suspects break down to 27 percent German, 21 percent Bulgarian, 16 percent Turkish, 6 percent Czech, 5 percent Yugoslav, and 3 percent Austrian, Slovak, Russian, Romanian, and Hungarian combined. 25 percent of the suspects were women.

However, these are only the numbers that are revealed by actual police investigations. The number of actual cases is probably a multiple of those stated above. According to estimates by the United Nations, almost 700,000 women and girls are kidnapped and forced into prostitution around the world every year. Thus, we must continue our endeavor to further expose the gray areas of this modern slave trade.

Special Problems

In the fight against human trafficking, we confront unique challenges. For instance, perpetrators use the prevailing social conditions in their countries of origin to their own advantage. In the recruitment phase, they generally promise the women serious employment and then, in most cases, use physical or psychological coercion to lead them into prostitution. The recruitment methods of perpetrators are varied and diverse. The most common method is to promise a woman a job in the service sector, especially in the domestic or food-service fields. Sometimes perpetrators use forged employment contracts. Using newspaper advertisements, combined with requests that “applicants” send photos, perpetrators usually make a visual preliminary selection of the women. In other cases, the traffickers answer advertisements posted by women seeking employment, or they promise to match their victims with husbands in the “Golden West” through their own dating or marriage agencies. In rare cases, the perpetrators purchase prostitutes from other human traffickers or abduct women from Central and Eastern European countries and ship them to Western Europe.

The women that are brought to Germany are primarily transported over land, in cars, vans, trucks, or trains. Entry into the country in itself is not problematic. Nationals from Poland, Lithuania, Slovakia, Croatia, Romania, and Hungary do not need a visa for entry, and can thus enter the country at any time as tourists. It has been determined that about half of the known victims of human trafficking that have been brought to Germany crossed the border in a quasi-legal fashion.

In Germany, traffickers generally immediately use their victims as prostitutes and exploit them. Usually, the women are forced into prostitution under the pretense that they must work off the debt for their passage. The majority of victims of human trafficking continue to be housed in brothel-like establishments. The high demand by johns for commercial sex leads the traffickers to maintain a high supply. Those involved in

the trade are generally well organized, highly secretive, and tend to operate in more isolated areas.

Confiscating profits from human traffickers is difficult, because the victims generally only provide scant information on their pay. When victims are released, they usually return to their home countries, and thus are no longer available for investigators to obtain further information. As a result, a corresponding adjustment of claims to facilitate the recovery of profits is only seldom possible.

Informal social monitoring through neighbors or one's social environment is virtually nonexistent in the isolated areas where human trafficking victims are often found. The victims are also rarely willing to press charges. One of the primary reasons for this is their dependence on the traffickers, who may pose a serious threat to themselves or their family in their home country. In addition, a lack of identification documents (which are often confiscated by the traffickers), poor language skills, a distrust in the government and/or police, and their ignorance of existing support options through the state or social institutions also work to restrain victims of human trafficking from seeking redress. This is particularly true given that, in cases where victims are discovered to be living in Germany illegally, criminal proceedings must also be initiated against them as well.

Abatement Measures

Due to these difficulties, German law enforcement agencies depend on a wide variety of preventive and repressive measures, especially in the fight against organized crime, and specifically human trafficking. For instance, over fifteen years ago Bavaria set up effective special bureaus for the fight against organized crime. The police officers employed in these bureaus have received comprehensive training to be capable of adequately and successfully reacting to any form of organized crime. Situational analyses are continually being conducted for all offense areas of organized crime, in order to identify new developments at an early stage and be able to react effectively to them. Especially in cases of human trafficking, special commissions spanning several agencies (e.g., police, federal border guards, customs) are established to utilize the variety of skills, legal instruments, insights, and contacts—both domestic and on foreign ground—in a concentrated manner.

Potential measures range from undercover investigators to victim protection establishments to several technical surveillance methods. In addition to classical law enforcement, we in Germany have had success in employing financial measures against traffickers. Not only do we wish to break down the structures of organized crime, we also wish to deprive the criminals of their means of financial support, because the incredible potential profits are the true engine driving this dangerous form of crime. Our specially trained financial investigators work extremely efficiently. In cooperation with the courts, they were able to seize criminal profits in the amount of 34.2 million euros in 2003.

Locally responsible specialized police departments regularly monitor the relevant brothels and areas where customers seek prostitutes in order to discover and stop cases

of human trafficking. The preventive effect of a police presence in this area continues to be high. Several crimes that are common building blocks of this larger framework can be prevented at an early stage.

In addition, we have established special investigative and surveillance units that are permitted to perform searches without probable cause of persons and motor vehicles in border areas and on all roads and inland localities that carry significant border traffic. Our so-called dragnet controls have proven especially successful in the fight against transborder crime in the German interior. Dragnet controls are especially valuable in the fight against drug smuggling, illegal immigration, and people smugglers, and thus against human trafficking.

Victim Protection Measures

In addition to these measures on the enforcement side of the equation, comprehensive organizational measures have also been undertaken to strengthen victim protection measures in Bavaria. For instance, among other measures, the Bavarian police have appointed fourteen “Police Delegates for Women and Children (BPFK),” who counsel and support victims of crime. At police headquarters in Munich, a separate department for victim protection has been established, and in Nuremberg, the police have created a “House of Prevention,” in which various victim protection organizations and a counseling center work together on an interdepartmental basis. For years, the Bavarian police have been working together in a confidential and efficient manner with various social, charitable, and religious organizations. One example of this collaboration is the project entitled “Fighting Sex Tourism and Child Abuse through German Perpetrators in the Border Areas of the Czech Republic” (known as “KISS” for short), as well as collaboration with the Solwodi (Solidarity with Women in Distress) and Jadwiga professional counseling centers in Germany and the Czech Republic, which are supported and maintained by the state.

In further pursuit of the protection of victims of human trafficking on the one hand, and of the successful fight against this inhuman type of crime on the other, last year Bavaria concluded a special agreement for the protection of victim witnesses between the police, the office of the district attorney, professional counseling centers, foreign and social welfare offices, and the state employment agency. The agreement allows the police, in coordination with the district attorney’s office, to involve local victim counseling centers at an early stage when pursuing human trafficking cases in which victims of human trafficking are likely to be picked up. Of course, confidentiality requirements must be taken into consideration in these cases. However, with the aid of the professional counseling centers, we want to be able to establish better mutual trust with the victims, who may be required to testify as witnesses. In this way, we wish to diminish their fear of the police and justice system and promote their willingness to testify, because only with witness testimony can we conclusively determine if the perpetrators are human traffickers.

All women who are found to be victims of human trafficking are generally given four weeks to leave the country. Only if the victim is prepared to testify—and then only

if it can be determined that human trafficking took place—can imprisonment (detention while awaiting trial or custody pending deportation) be avoided. All human trafficking victims are counseled and supervised by the professional counseling centers during the period of their stay in Germany, and are provided with support in making any necessary preparations for their return trip. As part of this process, the counseling centers try to contact counseling centers in the victim's home country. However, in many cases the victims wish to return to their homeland immediately after testifying before a judge.

If the victim is willing to remain in Germany until the trial, several victim protection measures are available. If, due to their willingness to testify—especially in cases involving serious or organized crime—victims are in particular danger, they may be put in a special witness protection program (with a new identity, no contact with their family in their home country, etc.) upon approval of the district attorney. In the event of a less severe degree of danger, victims are protected in special secure accommodations that are part of the professional counseling centers.

Victims generally receive a limited right of residence (known as “exceptional leave to remain”) until the end of the trial. During this time, they are counseled by the professional counseling centers (e.g., Solwodi or Jadwiga) intensively and, if possible, in their native language, and assisted in completing whatever administrative tasks are involved in their repatriation. The victims are thus aided in utilizing the time before the trial in a meaningful way.

Victims of human trafficking in Bavaria have a right to state social welfare assistance. They are provided with housing, are allowed to apply for a work permit, and are able to take advantage of medical assistance to regain their physical and psychological stability. The counseling centers will also organize their return trip to their home country; they often pay the travel costs and, in some cases, grant a small sum of money to enable the victims to establish a new life for themselves upon their return. These centers, acting on the victims' behalf, can also usually apply for acceptance into a re-integration program through the International Organization for Migration (IOM) and, if necessary, for secure housing as well.

International Cooperation

International cooperation is extremely significant in the larger struggle against organized crime, and especially in the fight against human trafficking. Favorable ties and contacts with the countries of origin of the victims and perpetrators are essential to effective police work in this area. The police take particular advantage of liaison officers in over fifty nations around the world, of Interpol ties, and of contacts developed beyond these more formal channels. For example, close cooperation exists between Bavarian law enforcement authorities and their counterparts in Poland and the Czech Republic. A permanent relationship exists, including formally responsible contact persons, such that a regular exchange of information and quick approval of necessary measures are possible. In the past, for instance, one human trafficking victim was first placed in a German and subsequently in a Czech witness protection program.

The Bavarian State Ministry of the Interior has concluded mutual bilateral declarations of police cooperation with a few neighboring countries in Eastern Europe, such as the Czech Republic. The goals of these agreements include improved collaboration, especially in the areas of fighting organized crime and human trafficking. Joint training courses, joint preventive measures, and the mutual exchange of crime-fighting strategies are high on the priority list. In addition, other measures include treaties that have been concluded by the federal government with Russia, Tunisia, and the Ukraine on fighting organized crime and other serious offenses, as well as treaties on police and legal cooperation. These treaties also cover cases of human trafficking.

Upon becoming members of the European Union, the new member nations also become part of respective EU police and judicial cooperative institutions, such as EUROPOL and EUROJUST. We hope that these mechanisms will lead to further improvements in international collaboration.

In recent years, the counseling centers in Bavaria have also undertaken a number of efforts to improve multinational collaboration. The main focal points include the granting of return trip assistance (travel costs, start-up assistance), qualification measures, the development of mutual strategies, intelligence measures, the exchange of information and experiences, guidance of victims returning home, or the conduct of international conferences in which policy-makers, police, federal prosecutors, and other governmental organizations participate, along with representatives from NGOs.

Despite all the progress that has been achieved, we must still further expand our collaboration on the international level. The Bavarian state government will consistently continue to pursue the path of concluding mutual declarations of police collaboration with neighboring countries in the East. We wish to further improve and simplify the conditions for cross-border observation and pursuit. Ideally, preventive cross-border observation would also be possible, under specified circumstances. In addition, we need even better legal foundations in order to enable undercover investigators to act on a cross-border basis in urgent cases, even without prior permission from the respective state. In anticipation of such cases, we are striving to establish internationally staffed investigative groups under the sovereignty of local police. The data and investigative opportunities provided by the Schengen Information System must be expanded to include the search and identification data of all European police.

Further Legislative Measures

Further measures are also necessary with regard to the legislature in Germany. The latest criminal law reforms have already expanded the scope of laws against human trafficking. They now also allow for the possibility of victims of coercion and extortion to escape punishment if they file charges against their tormentors.

However, we also need a series of further improvements, such as the following:

- Loopholes for brothels and pimps must be eliminated. Actions taken to promote prostitution that were punishable offenses in Germany as late as 2001 must once again be criminalized. Pimps who publicize working hours, venues, and prices of prostitutes must once again be subject to prosecution under German criminal law.

- Johns who exploit the situation of women and girls forced into prostitution must be liable to criminal prosecution.
- Regulations governing principal witnesses testifying for the state must be established, particularly for crimes attributable to the core area of organized crime. In order to break down structures, we must offer those willing to testify the incentive to cooperate with police and turn state's evidence.
- The expansion of the criminal offense catalog that justifies telephone surveillance is necessary – in all forms of human trafficking, telephone surveillance must be permissible. We also need manageable guidelines for electronic room surveillance, including optical surveillance. The recent decision of the Federal Constitutional Court on the “Great Bugging Operation” has made the work of law enforcement agencies in this field significantly more difficult.

Measures Taken in the Countries of Origin

Independent of measures taken in Bavaria and Germany, the respective countries of origin of non-German perpetrators and victims of human trafficking can also make significant contributions to the fight against this abominable form of crime. First and foremost, campaigns and measures for the education of potential victims are needed. Awareness measures play an especially critical role, so that as few women and children as possible will be taken in by the methods of human traffickers. It is also necessary to intensify proactive investigations in order to identify and break up criminal activities, structures, and procedures as early as possible. In concrete investigations as well as in the realm of victim assistance, we must work together even more closely across national borders. Victims must be placed even more at the center of attention of the relevant government agencies in their home countries when they return. In doing so, they must focus on victim counseling, required protection measures, and aid in reintroducing victims to society.

The U.S. Approach to Combating Trafficking in Women: Prosecuting Military Customers. Could it Be Exported?

Michael Noone *

On 15 September 2004, the Joint Service Committee on Military Justice of the Office of the U.S. Secretary of Defense announced that it was considering changes to the *Manual for Courts Martial*. The proposed changes involved crimes that could be charged under Article 134 of the Uniform Code of Military Justice.¹ Two of the offenses—“Patronizing a Prostitute” and “Pandering by Compelling, Inducing, Enticing, or Procuring [an] Act of Prostitution”²—were described by a senior Department of Defense official as intended to address misconduct associated with human trafficking.³ Pandering, an offense calling for up to five years’ imprisonment and a dishonorable discharge from the military, and prostitution, which can be punished by a dishonorable discharge and confinement for one year, were already listed as offenses; the proposed changes to the manual were technical. However, criminalizing the patronage of a prostitute is a novel and politically attractive approach to the problem.

It is novel because those countries that forbid prostitution typically focus their enforcement efforts on suppliers rather than customers.⁴ Nor does any other country, to my knowledge, extend the reach of its military justice system so that, for example, a soldier who seeks sex from a prostitute in a country where prostitution is permitted would still be subject to criminal prosecution. It is politically attractive for several reasons. First, it evidences governmental willingness to undertake new initiatives to cope with this enormous international threat to the rule of law.⁵ Second, imposing sanctions on military customers, rather than all customers, can be justified in disciplinary terms and as an aspect of enlightened foreign policy.⁶ Finally, it is attractive because soldiers, sailors, and airmen have less domestic political influence than affluent tourists who

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¹ 69 *Federal Register* 55600, at 55603–604.

² Pander: “To pimp; to cater to the gratification of the lust of another.” *Black’s Law Dictionary*, 3rd ed. (St. Paul, MN: West Publishing, 1933).

³ Statement of Charles S. Abell, Principal Deputy Under Secretary of Defense (Personnel and Readiness) before the House Armed Services Committee and Commission on Security and Cooperation in Europe, 21 September 2004; available at <http://armedservices.house.gov/issue%20Forums/Helsinki%209-21-04/abdstatement.pdf>.

⁴ Isabelle Talleyrand, “Military Prostitution: How the Authorities Worldwide Aid and Abet International Trafficking in Women,” *Syracuse Journal of International Law and Commerce* 27 (2000): 166.

⁵ “According to the U.N., human trafficking is the third largest criminal enterprise worldwide, generating an estimated 9.5 billion USD in annual revenues....” United States Department of State, *Trafficking in Persons Report 2004* (June 2004), 14.

⁶ The maximum punishment: dishonorable discharge, forfeiture of all pay and allowances, and confinement for one year. 69 F.R. 33604.

claim the right to bargain for sexual services. However, before other countries propose similar laws, they should consider the peculiar legal environment in which this proposal was developed, and they should reflect on the difficulties that they would face if they were to try to transplant it.

An Initiative of the Commander in Chief

In a September 2003 speech to the United Nations General Assembly, President George W. Bush singled out human trafficking as a “special evil,” and devoted nearly twenty percent of his speech to that topic.⁷ For analytic purposes, we can treat his speech as the initial step in a process that was to culminate in the proposal to punish individual service members’ purchase of sexual services. The U.S. Constitution provides that “the President shall be Commander in Chief of the Army and Navy of the United States.”⁸ A standard Constitutional commentary, describing the president’s role as commander in chief, says: “He is the ultimate tribunal for the enforcement of the rules and regulations for the government of the forces, and which are enforced through-courts martial.”⁹ Neither presidential Executive Order 13257 issued in February 2004, which established a cabinet-level task force to combat trafficking, nor the National Security Presidential Directive (NSPD) on trafficking announced later that month, referred particularly to the Department of Defense, nor did they suggest that particular sanctions would be imposed on members of the armed forces.¹⁰ However, a memorandum dated January 30 from the deputy Secretary of Defense to secretaries of the military departments, the chairman of the Joint Chiefs of Staff, and other high-level functionaries in the Department of Defense refers to the NSPD, which must have already been issued, and reminds “all commanding officers and other Department of Defense officers and employees in positions of authority [that they] are expected to conduct themselves in a manner that is consistent with statutory requirements for exemplary conduct.”¹¹ Eight months later, that reminder had been translated into definitions of criminal behavior.

At first glance, the process—from speech to draft offenses—is remarkable only for the relatively short time between the chief executive’s announcement of a broad policy

⁷ “An estimated 800,000 to 900,000 human beings are bought, sold, or forced across the world’s borders ... generat[ing] billions of dollars each year – much of which is used to finance organized crime.” 39 Weekly Comp. Pres. Doc. 1256 (23 September 2003). U.S. legislative responses to the problem include the Trafficking Victims Protection Act (2000), and the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act (2003).

⁸ *Constitution of the United States*, Article II, Section 2, clause 1.

⁹ Edward S. Corwin, ed., *The Constitution of the United States of America, Revised and Annotated* (Washington, D.C: Government Printing Office, 1953), 403, citing Supreme Court decisions.

¹⁰ White House Press release, 25 February 2004.

¹¹ Deputy Secretary of Defense Paul Wolfowitz, “Memorandum on Combating Trafficking in Persons in the Department of Defense”; available at <http://www.marshallcenter.org/site-graphic/lang-en/page-mc-policy-1/static/sdocs/opa/static/DSD%a20013004.pdf>.

and the bureaucracy's development of particular instruments to implement that policy. Upon a second look, however, the process raises some fundamental questions regarding the nature of law-making for the U.S. armed forces, questions that turn on the peculiar legal relationship between the president, the Congress, and the service member. While the president (as head of the executive branch) is designated by the Constitution as commander in chief of the armed forces, the Constitution grants Congress (the legislative branch) the power "To make Rules for the Government and Regulation of the land and naval forces."¹² One of the fundamental maxims of both common and civil law is *nullum crimen sine lege*: only behavior that has been previously defined as criminal can be the basis for prosecution. A corollary of that rule, applied in modern democratic societies, is that the legislature—not the executive—is responsible for setting the norms defining criminal behavior. If that is the case, how can it be that the Department of Defense—an agency of the executive branch—proposed to criminalize behavior that had hitherto been permitted?¹³ The Department of Defense can do so as an agent of the commander in chief because Congress, which enacted the Uniform Code of Military Justice (UCMJ) in 1950, provided in Article 134 (under which trafficking offenses will be charged) that:

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces and crimes and offenses not capital, of which Persons subject to this code may be guilty, shall be taken cognizance of by [the various types of court-martial] according to the nature and degree of the offense, and punished at the discretion of such court.¹⁴

¹² *Constitution of the United States*, Article I, Section 8, clause 14. In 1947, Congress established the Department of the Air Force. "Shortly after the passage of this (1947) act a Joint Resolution was offered in the House of Representatives proposing an amendment to the Constitution (which would add the Air Force to provisions regarding the Army and Navy). Apparently in the belief that the broad sweep of the war power warranted the creation of the Air Force without a constitutional amendment, Congress took no action on this proposal." Corwin, *The Constitution Annotated*, 284.

¹³ For examples of nations where U.S. service members have been permitted to patronize prostitutes, see Katherine H. S. Moon, *Sex Among Allies: Military Prostitution in U.S.-Korea Relations* (New York: Columbia University Press, 1997); and Sister Mary Soledad Perpinan, "Militarism and the Sex Industry in the Philippines," in *Women and Violence*, ed. Miranda Davies (London: Zed Books, 1994), 150. Prostitution is illegal in both Korea and the Philippines, but the ban was not enforced near U.S. military installations. Julie Yuki Ralston, "Geishas, Gays and Grunts: What the Exploitation of Asian Pacific Women Reveals about Military Culture and the Legal Ban on Lesbian, Gay and Bisexual Service Members," *Law and Inequality: A Journal of Theory and Practice* 16 (1998): 694–95. With regard to Thailand, where prostitution is legal, see Elizabeth Rho-Ng, "The Conscripted of Asian Sex Slaves: Causes and Effects of U.S. Military Sex Colonialism in Thailand and the Call to Expand U.S. Asylum Law," *Asian Law Journal* 7 (2000): 103–150.

¹⁴ Act of 5 May 1950, 64 Stat. 107.

Article 36 of the Code provides that “The procedure ... in cases before courts-martial ... may be prescribed by the President by regulations....” The “regulation” which prescribes procedures is the *Manual for Courts-Martial*, an Executive Order first issued in 1951 and revised regularly.¹⁵ The *Manual for Courts Martial* contains an Appendix of forms to be used in drafting charges (alleging what punitive article was violated) and specifications (alleging the facts of the offense with sufficient precision to “enable the accused to understand what particular act or omission he is called upon to defend”).¹⁶ Article 56 of the Code provides that “The punishment which a court-martial may direct for an offense shall not exceed such limits as the President may prescribe for that offense.” Maximum punishments for individual offenses are prescribed by the president in the *Manual for Courts-Martial*. Thus, Article 56 permits the president to limit a court’s discretion to punish granted by Article 134. His agent, the Department of Defense, proposes the maximum punishments referred to earlier.

Typically, legislatures establish the sanctions that may be judicially imposed for a criminal act. The legislative grant of discretion in the UCMJ permitting the executive to set sanctions is unusual,¹⁷ and the grant of discretion in Article 134 to specify what behavior shall be deemed criminal is a unique characteristic of those military justice systems that derive from the English articles of war.¹⁸ This “general article” classifies three categories of behavior: conduct prejudicial to good order and discipline; conduct that brings discredit to the armed forces; and “crimes and offenses, not capital,” which incorporates into military law all offenses (save those calling for the death penalty) punishable by the laws of the United States. The third category does not, of course, call for laws to be made by the executive branch. The Department of Defense proposal regarding patronage of prostitution relies on the first two categories. The first category, punishing conduct prejudicial to good order and discipline, was copied from the British articles and adopted by the Continental Congress in 1775. The second, punishing behavior that brings discredit on the armed services, was adopted after World War I. Early twentieth-century British and U.S. military law manuals offered examples of illicit sexual behavior; rape, indecent assault, and sexual molestation of children were forbidden in both systems. The British military penalized prostitution in two situations: when the owner or occupier of premises permitted girls under the age of sixteen to engage in

¹⁵ E.O. 10214, 8 February 1951.

¹⁶ Thus the proposed offense of patronage would require that the government allege and prove that “(the named accused), did (at a particular place and date) wrongfully (compel), (induce), (entice), (procure) (the named prostitute), a person not the accused’s spouse, to engage in an act (or acts) of sexual intercourse in exchange for money (or other compensation).” Sample specification, proposed amendment to paragraph 97, Article 134. 69 *Federal Register* 55604.

¹⁷ Once the punitive boundaries are set by the legislature, many countries permit prosecutors, who are agents of the executive branch, to participate in determining the punishment. See Julia Fionda, *Public Prosecutors and Discretion, A Comparative Study* (Oxford: Clarendon Press, 1995).

¹⁸ William Winthrop, *Military Law and Precedents* (Washington D.C.: Government Printing Office, 1920), 720.

prostitution, or when a woman of any age was compelled by threats or intimidation to have sex with the offender or some third person.¹⁹ Neither offense is listed in the contemporaneous U.S. counterpart legislation, which lists as an offense “neglect to take proper prophylactic treatment after illicit intercourse” resulting in venereal disease.²⁰

Opponents of efforts to establish venereal clinics or to regulate prostitution claimed that such policies encouraged immorality. Feminists asserted that the laws were applied unequally, focusing on the prostitute, not on her customer.²¹ By the early 1950s, an understanding had been reached so that a member of the U.S. armed forces would not be punished for consorting with a prostitute unless he did so in violation of an order issued by a subordinate commander which declared particular premises “off limits” to military personnel. When, in the 1990s, critics sought change in U.S. military policies that were seen as condoning prostitution, they emphasized moral suasion at the national and international level rather than the punishment of individuals.²² Thus the Department of Defense initiative, founded on the commander in chief’s authority to declare behavior contrary to good order and discipline or as bringing discredit to the armed services, is on firm legal ground, although it may be seen as an intrusion on the autonomy of individual service members.

Challenging the Initiative within the U.S. System

The Joint Services Committee’s publication of proposed changes is intended to elicit public comment, leading to changes in, or even withdrawal of, an executive branch order. No organized opposition to the trafficking provisions can be expected, because the proposal regarding patronage of prostitutes is politically attractive. There may, however, be some objection to the severity of the proposed penalties. The American Law

¹⁹ *Manual of Military Law* (London: War Office. 1914), 96.

²⁰ United States Army, *A Manual for Courts-Martial, 1928* (Washington, D.C.: Government Printing Office, 1943 ed.), 256. Military authorities assumed that venereal disease, a chronically wasting condition with profound effects on military efficiency, was acquired by contact with prostitutes. During and after the First World War they debated whether to “criminalize” the condition. See E.H. Beardsley, “Allied Against Sin: American and British Responses to Venereal Disease in World War I,” *Medical History* 20 (1976): 190–202. The debate resumed when U.S. forces occupied Germany after V-E Day, and was finally resolved by a decision to “medicalize” the condition, treating it as a health issue rather than as a result of criminal behavior. See John Willoughby, “The Sexual Behavior of American GIs During the Early Years of the Occupation of Germany,” *Journal of Military History* 62 (1998): 155–74.

²¹ G.S. Meyer, “Criminal Punishment for the Transmission of Sexually Transmitted Diseases: Lessons from Syphilis,” *Bulletin of the History of Medicine* 65 (1991): 549–64.

²² See, e.g., sources cited in note 11 above, and Gwyn Kirk and Carolyn Bowen Francis, “Redefining Security: Women Challenge U.S. Military Policy and Practice in East Asia,” *Berkeley Women’s Law Journal* 15 (2000): 229–71. The sole exception, Emily Nyen Chang, refers to the American Law Institute’s Modern Penal Code. She does not suggest that the provisions be incorporated into the UCMJ. Emily Nyen Chang, “Engagement Abroad: Enlisted Men, U.S. Military Policy and the Sex Industry,” *Notre Dame Journal of Law, Ethics & Public Policy* 15 (2001): 621–54.

Institute's Model Penal Code (for civilians) provides that prostitution be treated as a petty misdemeanor, which calls for a maximum punishment of less than a year, and patronizing a prostitute be considered a "violation, calling for a fine or forfeiture."²³ The disparity between civilian and military punishments for prostitution has always existed. The drafters of the military patronage proposal may have felt obliged to propose a punishment for (mostly male) customers equivalent to that previously in effect for (presumably) female prostitutes. Because no opposition has been heard, I predict that by the time this essay is published, the trafficking provisions will have become law. But will that law be obeyed? The *Air Force Times*—a commercial publication intended for military and former military readers—undertook an on-line reader survey between 30 September and 5 October 2004, in which 74 percent of the 2,856 readers responding concluded that the patronage proposal was "a waste of time"; 22 percent said "the change is long overdue"; and 4 percent "didn't know."²⁴ The survey results did not provide any demographic data regarding the respondents, but the results suggest that neither commanders (who will initiate the disciplinary action) nor subordinates (potential targets of any disciplinary action) expect a radical change in behavior. A few patrons will be disciplined. In September 2004 testimony before the U.S. House of Representatives Committee on Armed Services, the commander of United States forces in Korea testified that, during the prior twenty-one month period (January 2003–September 2004), "five service members have received disciplinary action for solicitation of prostitution."²⁵ His testimony suggests that when discipline is imposed it will not involve a court-martial, but rather what in U.S. terms is called non-judicial punishment, which permits limited sanctions similar to those recommended by the Model Penal Code.

An accused service member offered non-judicial punishment may, unless "attached to or embarked on a vessel," refuse to accept the punishment and request trial by court-martial.²⁶ If the commander decides to proceed to trial, then the soldier could face the maximum punishment proposed by the Joint Service Committee, but it is improbable that a service member would be punitively discharged or jailed for what is seen in civilian life as a minor offense. If the service member were to receive a punitive discharge, the court martial proceedings would be reviewed by an appellate panel of military judges. Since the offense proposed is consistent with other sexual offenses already listed in the Code, a conviction would not be overturned on the grounds that the offense is outside the "competence" (jurisdiction) of a military court. Therefore I predict that attempts to challenge the new offense will fail. If another military justice system were to adopt the proposal, can its success be predicted?

²³ Model Penal Code section 251.2(1) (prostitution) and 251.2(4) (patronizing).

²⁴ "Frontlines," *Air Force Times* (18 October 2004), 4.

²⁵ 21 September 2004 Statement of General Leon J. Laporte, available at www.house.gov/hasc/issue%20forums/Helsinki%209-21-04/LaPortestatement.pdf.

²⁶ Article 15(b)(2)(A) of The Uniform Code of Military Justice, note 14 *supra*.

Challenging the Initiative in Non-U.S. Systems

As a discrete jurisprudential topic of study, comparative military law is in its infancy. However, a recent analysis of ten European countries enables us to identify several crucial differences between the U.S. and the typical Continental European approach toward military legal systems.²⁷ First, most European countries—with the exception of the United Kingdom and Denmark (whose military justice systems are similar to that of the U.S.)—distinguish between disciplinary and criminal offenses. The latter involve acts or omissions contrary to the national criminal law; the former relate to deviations from military norms. Continental Europeans tend to punish disciplinary offenses administratively, and reserve judicial punishment for criminal offenses. Thus, before the U.S. patronage offense could be transplanted into a foreign military justice system, the first question to be asked is, “Would patronage constitute a criminal offense under the national legal system?” If so, then the nation’s military legal code would determine the procedures and sanctions appropriate to the offense.

If patronage of prostitution is not a crime under a given nation’s legal system, then it would be treated administratively, and several factors would determine its incorporation into a national system. First is whether or not it can be considered a violation of the so-called “general clauses” in the national military code. These clauses—the functional counterparts of Article 134’s provisions regarding “good order and discipline”—are used in most countries to define soldiers’ duties, although their provisions have been criticized for violating the maxim *nulla poena sine lege certa* (no punishment without an explicit previously enacted prohibition).²⁸ In this regard, the *military* purpose of an order not to patronize prostitutes might be legally challenged. The British *Manual of Military Law* provides the criteria that might be used: a “superior has the right to give a command for the purpose of maintaining good order or suppressing a disturbance or for the execution of a military duty or regulation or for a purpose connected with the welfare of troops. He has no right, however, to take advantage of his military rank to give a command which does not relate to military duty or usage....”²⁹

Challengers of the provision may ask how paying for sexual favors, rather than accepting them gratuitously, affects “good order.” Second, before the clause regarding patronage could be incorporated into the national military justice code, the drafters would have to consider the application of national and international human rights norms. Would incorporation in a Canadian context, for example, be consistent with the Canadian Charter of Rights and Freedoms? Similarly, states that have assented to the European Convention on Human Rights must consider its application. Of the forty high contracting parties, ten, when they signed the Convention, entered reservations intended to insulate their military justice systems from the European Court of Human Rights’ ap-

²⁷ George Nolte, ed., *European Military Law Systems* (Berlin: De Gruyter Recht, 2003.)

²⁸ *Ibid.*, 91.

²⁹ *The Manual of Military Law, Part I* (London: HMSO, 2003), 296.

plication of the Convention.³⁰ If the incorporating state were one of the ten, then it could proceed without concern for the European Court's oversight. If it had not entered such reservations, then it would have to prepare itself for challenges, and claim that the new offense is "in accordance with national law and is 'necessary in a democratic society.' The 'hallmarks of a democratic society include pluralism, tolerance and broad-mindedness.'"³¹

Although the court's jurisprudence, relying on the doctrine of "margin of appreciation," permits some latitude in national decision-making, it has not granted the military's internal disciplinary system the broad discretion authorized by the U.S. Supreme Court. The Supreme Court's deferential treatment of the military is exemplified in its *In re Grimley* opinion: "An army is not a deliberative body. It is an executive arm. Its law is that of obedience. No question can be left open as to the right to command in the officer or the duty of obedience in the soldier."³² Thus the European Court's reassuring statement recognizing that "the proper functioning of an army is hardly imaginable without legal rules designed to prevent servicemen from undermining legal discipline"³³ must be evaluated in the light of its subsequent willingness to disagree with military authorities' assessment of disciplinary requirements.³⁴ Therefore, if any of the thirty states party to the convention that did not enter any reservations sought to follow the U.S. initiative, they should expect that their decisions would be challenged before the European Court, and might well be overturned on the grounds that the measure did not enhance state security.

Conclusion

The U.S. Department of Defense has over 400,000 personnel overseas and afloat. The traditional view of U.S. commanders toward overseas prostitution was evidenced by the comments of CINCPAC Admiral Richard Macke when, in 1996, three servicemen were arrested after raping a twelve-year-old Japanese girl: "Absolutely stupid. For the price they paid to rent the car (to kidnap the child) they could have had a girl."³⁵ Since then, the military command structure in the United States has belatedly come to the conclu-

³⁰ These ten nations are the Czech Republic, France, Lithuania, Moldova, Portugal, Russia, Slovakia, Spain, Turkey, and Ukraine.

³¹ Peter Rowe, *Control Over Armed Forces Exercised by the European Court of Human Rights* (Geneva: Geneva Centre for Democratic Control of Armed Forces, 2001), 1, citing extracts from *Lustig-Prean, v. UK* (27 September 1999), para. 80, setting the Court's criteria.

³² 137 U.S. 147, 153 (1890). See also *United States v. Shearer*, 473 U.S. 52 at 58 (1985) in which the Court spoke critically of suits which go directly to the "management of the military ... question[ing] basic choices about discipline, supervision and control of a serviceman."

³³ *Engel and others v. Netherlands* (8 June 1976), para. 100.

³⁴ Rowe, *Control Over Armed Forces*, 8, citing *Hadjianastassiou v. Greece* (16 December 1992), *Vereinigung Demokratischer Soldaten Österreich* and *Gubi v. Austria* (19 December 1994), *Gregoriades v. Greece* (25 November 1997), *Lustig-Prean* and *Beckett v. UK* (27 September 1999).

³⁵ Available online at <http://www.chinfo.navy.mil/navpalib/people/flags/macke/retire.txt>.

sion that prostitution may not be a voluntary activity,³⁶ and military officials have begun assessing their responsibility for supporting and maintaining local sex industries.³⁷ Other nations' military contingents serving overseas in peacekeeping operations have, by their presence and relative wealth, encouraged prostitution and, thus, human trafficking.³⁸ Those other nations will be pressed to consider additional steps to deter trafficking. If the U.S. initiative intended to punish military patrons of prostitutes is offered as a model, policy-makers must consider the peculiar legal environment in which the proposal was promulgated and compare it to their own situation. The unique characteristics of this legal environment that must be considered are:

- The U.S. has a comprehensive military justice system which makes no distinction between disciplinary and criminal offenses, and which permits the executive branch to create offenses and designate punishments without legislative intervention.
- The U.S. "general article," under which charges would be brought, is more comprehensive than those of other nations that have a similar provision.
- The fact that U.S. military law provides for more severe punishment of prostitution-related offenses in general, and for patronage of prostitutes in particular, than the model civilian law, has no judicial consequences.
- The U.S. Supreme Court, which claims to protect the rights of all citizens, has traditionally accorded far greater deference to military disciplinary decisions than the European Court of Human Rights.
- Finally, one may ask whether the U.S. military—or any other military force—has an enforcement mechanism capable of identifying offenders and their sexual partners and then bringing the offender to trial.

³⁶ See, for example, Human Rights Watch, "Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution" (November 2002); available at www.hrw.org/reports/2002/Bosnia.

³⁷ See, for example, Department of Defense Office of the Inspector General, "Assessment of DoD Efforts to Combat Trafficking in Persons: Phase I – United States Forces in Korea," (July 2003); available at www.DODig.osd.mil/aim/alsd/HO3L88433128PhaseI.pdf.

³⁸ For sources describing peacekeepers' creation of prostitution industries in Kampuchea, Mozambique, and Yugoslavia, see Talleyrand, "Military Prostitution," 156–57.

The Post-Soviet Puzzle and Western Democracies

*Dr. Vladislav V. Froltsov **

Introduction

In the early years of the new millennium, the question of the effective interaction between states from different regions could be estimated as being of signal importance for the foreign policies of all democratic nations because of the significant strengthening of the threats and challenges that face the modern world. While these threats are perhaps of particular concern to the United States, given its role as the world's sole remaining global superpower, they also have an effect on the policies of European nations, which are responsible for the security of many other states within the framework of the world's political and military alliances.

The recent barbaric acts of terrorism in Great Britain and Egypt have clearly demonstrated that the new "International" of the Islamic or non-Islamic radicals is ready to continue a struggle against the democratic nations and their partners despite all the efforts of the global anti-terror coalition. In this dangerous situation, active interaction between the U.S. and its allies must be considered as a key goal for contemporary U.S. foreign policy; this point could be said to be one of the most important messages of the United States' National Security Strategy, published in 2002.¹ Such policy is also significant for the European countries, including Germany, which is the largest democratic state within the European Union.

The question remains, however, of whether the post-Soviet states will prove to be decisive and trustworthy allies of the Western democracies in this new global conflict, or if this region is bound to transform into the next center of instability. Nowadays this question remains open, but the answer will be of crucial importance both for the foreign policy of Washington and its European allies, and for the future of world politics.

The Emergence of the Post-Soviet World

The collapse of the USSR and the resulting creation of fifteen post-Soviet states were obvious consequences of the defeat of Moscow in the Cold War. At the same time, the continuing processes in the territory of the former Soviet empire have caused some significant changes in the foreign policy strategies of the Western democracies, particularly of the United States and Germany, which were the most active actors in Eastern European politics.

Over many decades of the twentieth century, the diplomatic strategy of Washington and the European capitals was focused on developing a meaningful interaction with

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¹ *The National Security Strategy of the United States of America. September 2002* (Washington, D.C., 2002), 1; available at www.Whitehouse.gov/nsc/nss.pdf; accessed 5 August 2005.

Moscow. Moreover, all changes (even insignificant) of the political situation in the Kremlin were subject to careful and detailed analysis in the research and intelligence centers of Europe and America. Therefore, it is possible to say that the Soviet leaders were the usual and anticipated partners for the Western democracies until the collapse of the USSR.

But the process of *perestroika* initiated by Mikhail Gorbachev awakened powerful national-democratic movements in the Soviet republics, which came to power in 1989–90 in Lithuania, Latvia, Estonia, Armenia, Moldova, and Georgia. In addition to these independence movements, the increasing openness within the Soviet Union fostered the development of influential opposition movements that countered the communist governments of Ukraine, Belarus, Azerbaijan, and some of the republics of Central Asia.

The formation of such political movements represented a real challenge for the foreign policies of Western nations. On the one hand, the United States and European countries welcomed the growth of democracy on the periphery of the Soviet empire and established close contacts with these forces, which were striving without doubt for both economic and political independence from Moscow. But, on the other hand, obvious and permanent support for these opposition movements from Western states had the potential to cause problems personally for Mikhail Gorbachev, who faced a growing counteraction from the hard-liners in the Communist Party and the Soviet security and military structures.

It was a real dilemma for American and European diplomacy in the final years of the USSR (and remained as a challenge for the West in the future as well). This situation can also be identified as one of the main reasons behind the especially careful Western position concerning the *de jure* recognition of the self-proclaimed independence of three Baltic states and then the other Soviet republics.²

Thus, the U.S. and the major European countries recognized the independence of Ukraine only after the final collapse of the Soviet Union in December 1991.³ But the Declaration of State Sovereignty, in which this republic was proclaimed “a sovereign national state,” was accepted by the Ukrainian Parliament as early as 16 July 1990 (in the period of Gorbachev’s final attempts to preserve the unity of the USSR).⁴ This diplomatic recognition did not even come about after a referendum on Ukraine’s independence on 1 December 1991, when the decision was approved by more than 90 percent of the voters, despite the clear sympathies of the Western countries to this choice by the Ukrainian people.⁵

² For more details about this dilemma, see the memoirs (published in Russian) of former ambassadors in the USSR in the *perestroika* period, Jack F. Matlock, Jr. (U.S.) and Piet Buwalda (the Netherlands): Jack F. Matlock, *Smert' imperii* (Moscow, 2003), 187 *passim*; and Piet Buwalda, *Dnevnik diplomata* (Moscow, 2000), 157, 182–83, 189–90.

³ Hans Georg Lehmann, *Deutschland-Chronik 1945 bis 2000* (Bonn: Bouvier, 2000), 507.

⁴ “Deklarazija pro dershavnyj suverenitet Ukrainy,” *Bidomosti Verhovnoj Rady URSR* 31 (1990): 429.

⁵ Jack F. Matlock, *Smert' imperii* (Moscow, 2003), 534–35.

However, all these efforts on the part of Western leaders were unable to help the final president of the USSR. Mikhail Gorbachev was transformed by Boris Yeltsin and other leaders of the breakaway republics into “a king without kingdom” after the failure of the putsch in August 1991. The new partners of the Western democracies were the governments of the former Soviet republics, which did not always have a clear idea of which path would be the optimum one for their new states to follow.

In this situation, the U.S. and the nations of the EU aspired to assist the new independent states to overcome the numerous problems that they faced regarding their embarkation on a program of social, economic, and political reforms. Concerns about the Soviet nuclear arsenal, which was finally concentrated in Russia as a result of substantial diplomatic efforts on the part of the United States and European countries (as well as significant promises of financial aid), were definitely no less significant. However, the rapid implementation of economic reforms did not result in immediate prosperity in the post-Soviet states, disappointing the expectations of their populations.

Nowadays some experts believe that the level of aid provided by the West was insufficient.⁶ In the early 1990s, however, the expectations of Western leaders concerning the prospects of the former Soviet Union were very optimistic. They sincerely believed that the end of the Cold War and competition in the military sphere would facilitate a transition to a market economy and a formation of civil society as well as democratic institutions in the former Soviet republics.

As an example of such an idealistic approach, we can consider a position of the former German Chancellor Helmut Kohl, who declared in a special televised statement before the beginning of the process of German unification that the economic problems of the East couldn't be solved in one night, but would be in the “foreseeable” (“überschaubaren”) future.⁷ Though it primarily concerned East Germany, this approach was typical regarding all countries of the former “socialist” bloc.

The desire to be “good neighbors”—as well as the aspiration to partnership and cooperation—that dominated global politics in the early 1990s was a reason for the optimism about the rapid integration of the former parts and satellites of the Soviet empire into European and Euro-Atlantic structures. In this period, the efficiency of the foreign policies of the Western countries depended on the success of their participation in efforts to assist the former Soviet republics to achieve conditions of democracy and a market economy. In the case of Helmut Kohl, this aspiration was one of the key elements of the former chancellor's political image, since he considered German foreign policy as an exclusive sphere of his competence.⁸ He also perceived a need to help the

⁶ See, for example, a highly critical work: Clyde Prestowitz, *Rogue Nation. American Unilateralism and the Failure of Good Intentions* (New York: Basic Books, 2003), 229.

⁷ Helmut Kohl, *Ich wollte Deutschlands Einheit*, assembled by Kai Diekmann and Ralf Georg Reuth (Munich: Ullstein, 2000), 426.

⁸ Compare with the analysis of Kohl's ruling style in: Stefan Froehlich, “Auf den Kanzler kommt es an”: *Helmut Kohl und die deutsche Aussenpolitik* (Paderborn: F. Schöningh, 2001), 116–17.

East as an expression of German gratitude for an opportunity to recreate the united country.

In the 1990s, Germany emerged as a major trading and political partner for the majority of the Eastern European states, including Russia.⁹ Moreover, an active interaction with the post-Soviet states was declared as the logical continuation of Germany's traditional Eastern policy, or *Ostpolitik*. The Joint Declarations about the Principles of the Relations ("Gemeinsame Erklärungen über die Grundlagen der Beziehungen") that were signed with Latvia (20 April 1993), Estonia (29 April 1993), Ukraine (10 June 1993), and Lithuania (21 July 1993) were viewed as manifestations of the German aspiration to continue such policy. Russia also accepted all legal obligations according to the treaty between Germany and the USSR on Neighborliness, Partnership, and Cooperation ("Vertrag zwischen der BRD und der UdSSR über gute Nachbarschaft, Partnerschaft und Zusammenarbeit"), which was signed by Mikhail Gorbachev and Helmut Kohl in Bonn on 9 November 1990.¹⁰

Besides these formal relationships, Kohl considered himself to be an advocate ("Sprecher") for the interests of the newly democratic states of Central and Eastern Europe.¹¹ He believed that the rapid integration of these states into the EU and NATO would also strengthen Germany's position as a regional leader as well as a model of an effective democracy and social market economy.

For the United States, its relations with the post-Soviet countries were no less significant. However, the world's sole remaining superpower faced a huge number of different problems after the collapse of the USSR that completely changed the configuration of the world political stage. Therefore, any accusation of a political "oversight" concerning the situation in the former Soviet republics, and especially in Russia, is definitely excessive. Moreover, it's possible to agree with the opinion of the German analyst Christian Hacke, who holds that cooperation with Moscow was a priority of U.S. foreign policy during the 1990s, as President Bill Clinton wanted to transform Russia into a key trading and political partner for the U.S. The president considered Russia's transition to democratic politics and a market economy as the main purpose of his policy. Christian Hacke views this approach as a continuation of the idealistic tradition of Woodrow Wilson, Franklin Roosevelt, and Jimmy Carter concerning the United States' foreign policy strategy.¹² Clinton demonstrated an enduring willingness to help Russia to establish a democratic state during his two terms in office, despite the criticism of the Republican opposition, the skepticism of public opinion, as well as the obvious political and economic problems in Moscow.

⁹ Werner Weidenfeld and Karl-Rudolf Korte, eds., *Handbuch zur deutschen Einheit 1949-1989-1999* (Bonn: Bundeszentrale für Politische Bildung, 1999), 41.

¹⁰ *Ibid.*, 603.

¹¹ Christian Hacke, *Die Aussenpolitik der Bundesrepublik Deutschland. Von Konrad Adenauer bis Gerhard Schroeder* (Stuttgart: Econ Ullstein List Verlag, 2003), 425–26.

¹² Christian Hacke, *Zur Weltmacht verdammt* (Bonn, Ullstein Verlag, 2003), 547-48.

Therefore, it is necessary to deny the claim that there was an absence of will on the part of the Western democracies to assist the former parts of the Soviet empire, and that the efforts of the United States and European countries (first of all, Germany) in this regard were insufficient. The most important reasons for the relatively ineffective realization of the optimistic expectations of the West were the social and political heterogeneity of the post-Soviet republics as an element of the modern system of international relations, as well as the dual nature of the foreign policy strategy of many Western democracies towards the newly independent states.

This dual nature was not entirely a result of an incorrect estimation of post-Soviet conditions, but rather a reaction to some controversial tendencies in the foreign policy of the former parts of the USSR. On the one hand, as the largest state that emerged from the wreckage of the Soviet Union, Russia aspired to ensure its status as a regional Great Power as well as a center of attraction for other “fragments” of the Soviet empire. What is more, several post-Soviet countries (for example, Belarus and Tajikistan) acquiesced in this policy. On the other hand, the new independent states strived to keep their distance from Moscow, and their foreign policies were based on the principle: “Our main task is to differ from Russian policy, and to act strictly independently in world politics.”

In the case of Ukraine, such a “reflectivity” in their foreign policy in the early 1990s was an object of criticism by the second Ukrainian President Leonid Kuchma (1994–2005) in his book *Ukraina – ne Rossija* (translated as “Ukraine is not Russia”).¹³ The first Belarusian ambassador to Germany, Dr. Piotr Sadouski, stated in an interview for the German journal *Wostok* in 1994 (three years after the creation of the independent Belarusian state) that further interaction between Germany and Belarus depends directly on the dynamics of the relationship between Belarus and Russia. The ambassador underlined the priority placed on German policy towards Moscow in comparison with other post-Soviet countries.¹⁴

And so it is possible to say that many representatives of the post-Soviet establishment perceived themselves more as the mutinous governors of provinces on the periphery of the Soviet empire than as the leaders of independent states in the first years after the collapse of the USSR. Only three Baltic countries—Lithuania, Latvia, and Estonia—had already formulated a coherent and consistent foreign policy strategy, the purpose of which was a rapid integration into European and Euro-Atlantic structures (this goal was realized successfully in 2004).

Another peculiarity of post-Soviet politics that definitely complicated the development of an interaction with the Western democracies was the excessive expectations of the former Soviet republics, namely their aspiration to rapidly overcome the numerous social, economic, and political problems that they faced with the help of financial aid from the West. In the framework of this view, the United States and European nations were considered primarily as donors that would—or even must—help the post-Soviet

¹³ Leonid Kuchma, *Ukraina – ne Rossija* (Moscow: Vremija, 2003), 140–41.

¹⁴ “Interview mit Dr. Piotr Sadouski: Deutschland – Belarus. Perspektiven für die Zusammenarbeit,” *Wostok* 1 (1994): 49–51.

countries to establish market economies and democratic institutions. The U.S. and Germany were seen as the primary engines of this process. Moreover, the economic resources of a unified Germany and its opportunity to assist the former socialist countries were, as a rule, overestimated.¹⁵

As a result, a sense of mutual disappointment appeared in the late 1990s. Certain social and political developments in Russia and many other post-Soviet countries did not contribute to building optimism in the region. Boris Yeltsin initiated a bloody war against Chechen separatists, which continues to this day. The hard-line communists and nationalists, who dreamed of the revival of the Soviet empire, emerged as the most popular political forces in Russia. The elections were a competition between a so-called “administrative resource” (that is, the use of state power against political opponents during the campaign) and organized criminal structures that were no less powerful.

After a Russian “experience” in October 1993, when Boris Yeltsin violated the constitution, dissolved the parliament, and compelled some of the judges on the Constitutional Court to resign, the heads of many other post-Soviet states successfully repeated this scenario. In the long run, the legislative and judicial bodies in these states were transformed into the appendages of the executive structures. It is remarkable that this process failed in such countries as Ukraine and Moldova, due to a variety of reasons. In the early 2000s, a relatively independent parliament also existed in Georgia. This factor allowed not only the securing, but also the strengthening of the democratic institutions in these post-Soviet republics from 2003–2005.

All these trends were seen in Washington as well as in the European capitals as an obvious refusal by a significant portion of the post-Soviet leaders to take steps to build democratic states and develop market economies. Christian Hacke ascertained, for example, that Bill Clinton’s reaction to Moscow’s withdrawal from democratic standards was a reorientation of U.S. policy to more intensive interaction with Ukraine and the Caucasian countries.¹⁶ This new policy caused great deal of irritation in Russia, which began to implement its own version of the Monroe Doctrine towards other former parts of the USSR. The post-Soviet republics were considered in the Kremlin to be so-called “*blishnee zarubesh’e*” (“neighboring foreign countries”) – that is, a sphere of Russian influence and responsibility, where Moscow did not wish to allow the presence of the interests of other states. Moreover, in the early 1990s the Russian government tried to draw some additional countries in Central and Eastern Europe into this sphere, and namely to prevent the integration of Poland, the Czech Republic, and Hungary into NATO (they joined the Alliance in 1999).

In this difficult situation, the U.S. government wanted to simultaneously take into account the interests of Moscow and support the former Soviet satellites, which feared the revival of Russian imperial ambitions and potential new threats from the East. This approach primarily concerned Poland, whose experience of interaction with Russia had

¹⁵ See, for example, Andrei Zagorski, “Russlands Erwartungen an Deutschland,” *Aus Politik und Zeitgeschichte*, B 1-2 (1997): 46–53.

¹⁶ Hacke, *Zur Weltmacht verdammt*, 550.

been particularly painful and destructive for centuries. In addition, Warsaw aspired to play a more active role in Central and Eastern Europe. Poland represented a significant demographic presence (almost 39 million) and a potentially significant economic power (Poland's estimated GDP in 2004 was \$463 billion), as well as an image as the main "trouble-maker" for the Soviet empire in the 1970s–1980s.¹⁷

Such activity definitely caused a highly negative reaction in Russia, which feared the creation of an alliance of the new democracies on its western border, which wished to become NATO and EU members, and felt no nostalgia for life within the Soviet empire.¹⁸ It is remarkable, though, that this "nightmare" was successfully realized in the early 2000s, and nowadays Moscow faces a coalition of its former satellites, extending from Estonia to Georgia, and from the Czech Republic to Ukraine. All these countries are united in their common aspiration to cooperate with the U.S. and Western European countries as closely and intensively as possible, and also to promote the spread of democratic values in other post-Soviet states, including Russia. However, some American experts—even in this favorable situation—believed that the U.S. policy towards Poland and the other new democracies went too far, as it obliged the United States to be responsible for the security of these countries.¹⁹

In the case of Germany, the effort to support the new democracies in Central and Eastern Europe as well as to simultaneously take into account the interests of Moscow in this region was typical for German foreign policy in the 1990s. It was considered to be a basic element of diplomacy by Hans-Dietrich Genscher and his successor Klaus Kinkel.²⁰ They aspired to establish a close interaction between NATO and Russia, and hoped that this partnership could equilibrate the loss of control over their former European satellites for the Russian establishment and society, which suffered from the psychological trauma and humiliation of the collapse of their huge empire.

However, the German government faced a new challenge. Along with Poland, the Czech Republic, and Hungary, the three Baltic states also aspired to join NATO, despite the obvious irritation of Moscow. In this case, Russia's interests in *blishnee zarubesh'e* were violated immediately, and this certainly contributed to the further deepening of opposition between Moscow and the Western democracies.

Another significant impulse for this process was NATO's military action against the regime of Slobodan Milosevic in Yugoslavia in the spring of 1999. This nationalistic politician was supported indirectly by Moscow. Russia had traditionally declared itself to be a strong defender of the Serbian people, though the USSR kept silent when the

¹⁷ CIA. *The World Factbook: Poland*; available at www.cia.gov/cia/publications/factbook/geos/pl.html; accessed 6 August 2005.

¹⁸ See, for example, a very informative article by Jeremy Page, "Mugging of boys leads to new diplomatic cold war," *The Times* (London), 4 August 2005; available at www.timesonline.co.uk/article/0,,3-1720237,00.html; accessed 6 August 2005.

¹⁹ Prestowitz, *Rogue Nation*, 164–65, 243–44.

²⁰ Hans-Dieter Heumann, "Genscher, ein 'liberaler' Aussenpolitiker?" in *Genscher, Deutschland und Europa*, ed. Hans-Dieter Lucas (Baden-Baden: Nomos, 2002), 429.

Nazis attacked Yugoslavia in April 1941, because of the Molotov-Ribbentrop Pact, which was signed in August 1939. Moreover, from 1948–1953, a war between the USSR and Tito’s “people’s democracy” appeared to be a very real possibility. But the overwhelming majority of the population in Russia and the other post-Soviet countries didn’t know about these historical facts, and enjoyed the TV programs from Moscow, which retransmitted as fact all news and comments from Belgrade. Another annoyance to Moscow was the condemnation of Russia’s 1999 escalation of the war against the Chechen separatists by the Western democracies; this international opprobrium was especially unpleasant for the Russian government and citizens.

Under such conditions, the German government considered the effort to preserve the interaction between Moscow and NATO as one of the basic elements of a new configuration of European and Euro-Atlantic security to be especially important.²¹ Germany was perceived in Russia as being Russia’s main trading and political partner in Europe. Moscow withdrew its troops from the new Eastern *Länder* (states) of Germany in August 1994, several months ahead of schedule (the stipulated date was 31 December 1994).²² Therefore, Boris Yeltsin waited for a demonstration of German gratitude, and namely hoped for a transformation of the country into Russia’s main political ally among the Western democracies. However, Helmut Kohl—along with his successor, Gerhard Schröder—actively supported the military operation in Yugoslavia, and also the integration of the former Soviet satellites into NATO, despite all their declarations about building a strategic partnership with Russia.

Besides, the “Red-Green” coalition, which won the federal elections in Germany in September 1998, needed to act urgently to improve the economic situation in Germany, due to the support they garnered from voters from the economically backward areas of Eastern Germany, which still featured a high level of unemployment and many closed factories.²³ A reduction of governmental spending, including expenditures on foreign policy, was an obvious step. These reductions in spending also affected Germany’s payments into the European budget, foreign aid for Russia, and German activities in preparation for a round of EU expansion.

The head of the office of the Konrad-Adenauer-Stiftung in Warsaw, Henning Tewes, characterized the key feature of modern German foreign policy as a fundamental conflict between different goals (“Zielkonflikt”), which he states has existed since the middle of the 1990s.²⁴ However, in the late 1990s, when the economic and social

²¹ Werner Link, “Ordnungsentwürfe für Europa,” in *Weltpolitik im neuen Jahrhundert*, ed. Karl Kaiser and Hans-Peter Schwarz (Bonn: Bundeszentrale für Politische Bildung, 2000), 563–64.

²² Lehmann, *Deutschland-Chronik 1945 bis 2000*, 509–10.

²³ *Die Fischer Chronik Deutschland. Ereignisse. Personen. Daten* (Frankfurt am Main: Fischer Taschenbuch Verlag, 2001), 1035–36.

²⁴ Henning Tewes, “Rot-Grün und die Osterweiterung der Europäischen Union,” in *Deutschland im Abseits? Rot-grüne Außenpolitik 1998–2003*, ed. Hans Maull, Sebastian Harnisch, and Constantin Grund (Baden-Baden: Nomos, 2003), 79.

crisis in Germany was an obvious phenomenon, the government should have concentrated more efforts on Germany's internal problems. This moment had the potential to either transform Gerhard Schröder into one of Germany's most successful chancellors (if the domestic problems were successfully addressed) or to put an end to his further political career (if the crisis tendencies developed again). The latter scenario was estimated as being the more likely possibility after the Social Democrats' poor performance in the elections in North Rhine-Westphalia on 22 May 2005.²⁵

In this period, political developments in Russia began to raise more and more questions. A formal transfer of presidential power from Boris Yeltsin to Vladimir Putin took place at the end of 1999. However, a more significant trend in this period was the final formulation of the new foreign policy vision of the modern Russian establishment. German expert Jutta Scherrer has pointed to a "vestigial imperial idea" ("*eine überlebte Reichsidee*") as its main principle.²⁶ It is possible to name the following basic elements of this "new-old" vision in the sphere of international relations, which had a substantial influence on Russian foreign policy strategy in the early years of the century:

- A peculiar conviction exists in Russia that this country is a separate civilization, which is related neither to the West, nor to the East. It leads to claims for a special Russian role in Eurasia, as well as an aspiration to be a Great Power.
- A feeling that the Ukrainian and Belarusian nations are the "younger brothers" of Russia, and a hope, that these three countries (Russia, Belarus, and Ukraine) will be reunited eventually. In the framework of this vision, the collapsed Soviet Union is considered as the best model for the union of the fraternal nations. The struggle to revive the USSR, even in the form of the union of three Eastern Slavonic states, is a reason for the extremely negative reaction from Moscow concerning the fact that pro-Russian candidate and former Ukrainian Prime Minister Victor Janukovich lost the last presidential elections in this country in January 2005.
- A negative evaluation of all possible alliances of the post-Soviet states that do not involve Russia—for example, GUAM, which includes Georgia, Ukraine, Azerbaijan, and Moldova—which are considered as a threat to its influence in *blisnee zarubesh'e*. This is accompanied by a fear concerning the close interaction of these countries with the new members of NATO and the EU; such interactions are seen as a real attempt to isolate Russia from Europe.

²⁵ "Wahl zum 16. Deutschen Bundestag am 18 September 2005. Heft 1. Ergebnisse und Vergleichszahlen früherer Bundestags-, Europa- und Landtagswahlen sowie Strukturdaten für die Bundestagswahlkreise" (Wiesbaden, 2005), 94; available at www.bundeswahlleiter.de/wahlen/download/heft12005gesamt.pdf; accessed 6 August 2005.

²⁶ Jutta Scherrer, "Das Erbe: Geschichte und Gesellschaftskultur," in *Russland unter neuer Führung. Politik, Wirtschaft und Gesellschaft am Beginn des 21. Jahrhunderts*, ed. Hans-Hermann Höhmann and Hans-Henning Schroeder (Bonn: Bundeszentrale für Politische Bildung, 2001), 79.

- A tendency to consider the new independent states only as objects of international relations, and namely as a site of the collision between the political interests of Moscow and other countries (the U.S., Germany, Turkey, etc.). A typical example is the position taken by one of the most well-known Russian foreign policy experts, Anatoly Utkin, who promulgated his evaluation of the future role of Ukraine in world politics as “a field of hard struggle” in his four books, which were issued in 2001–2003.²⁷ It is quite probable that this statement will be repeated word for word in his further publications.
- A view of the policies of Mikhail Gorbachev, who recognized the independence of Lithuania, Latvia, and Estonia in September 1991, and also the first presidents of Russia and Ukraine, Boris Yeltsin and Leonid Kravchuk, as well as the speaker of the Belarusian parliament, Stanislau Shushkevich, who liquidated the Soviet Union in December 1991, as a betrayal. In the case of Gorbachev, this view is very rare in geopolitical circles. The former head of the state, who is especially respected abroad (particularly in Germany) for putting an end to the exhausting global confrontation that could have erupted into the Third World War at any moment, has an extremely negative rating in his native land. In 1996, less than one percent of the voters supported him as a candidate in the Russian presidential race.²⁸

All these tendencies gave a key role to the concept of *blishnee zarubesh'e* in Moscow's modern foreign policy. The ability to exert control over the former parts of the Soviet empire allows both the Russian establishment and the population to identify themselves as representatives of a Great Power, which, despite the disintegration of the USSR, continues to exist and exert an influence on other states. Moscow used the following methods to realize this policy:

- A use of the Russian-speaking population to exert pressure on the governments of other states. This was especially the case in the Baltic states. After their integration into the EU, these states are obliged to strictly observe the rights of all national minorities, a fact that gives Moscow an opening to consistently accuse Latvia and Estonia of violating the civil rights of their Russian-speaking minorities.
- Providing active support to separatists in countries whose governments do not wish to maintain close connections with Russia. These separatist groups include the self-proclaimed republics of Abkhazia and South Ossetia within Georgian territory, and also Transdnistria within Moldova. In the early 1990s, Moscow tried to

²⁷ Anatoly Utkin, *Mirovoj porjadok XXI veka* (Moscow: Algoritm, Russkii natsional'nyi fond, 2001), 369; Anatoly Utkin, *Vyzov Zapada i otvet Rossii* (Moscow: Algoritm, 2002), 536; Anatoly Utkin, *Amerikanskaja imperija* (Moscow: EKSMO, Algoritm, 2003), 560; Anatoly Utkin, *Edinstvennaja sverhdershava* (Moscow: Algoritm, 2003), 485.

²⁸ “Yeltsin wins narrow victory in first-round election,” CNN.com International (17 June 1996); available at <http://edition.cnn.com/WORLD/9606/17/russia.elex/html>; accessed 6 August 2005.

support the Russian separatists in Crimea, but the decisive and tough actions of the Ukrainian government overcame this dangerous situation.²⁹

- Exploiting the economic dependence of some post-Soviet states on Russian oil and gas, which allows Moscow to put pressure on countries that do not have their own hydro-carbonic resources. However, in the case of Ukraine and Belarus, the ultimate recipients of the Russian gas shipped through their territories are Germany and other Western European countries. This compels Moscow to take into account the interests of these two states, whose territory is a transit area for this resource.
- A tendency to intervene into the election processes of other states to support the pro-Russian candidates. The most recent examples are Vladimir Putin's personal participation in the campaign of Victor Janukovich in Ukraine in October–November 2004, as well as a media campaign against Moldovan president Vladimir Voronin, who was successfully re-elected in April 2005.
- A consistent striving to preserve the Commonwealth of the Independent States (CIS) as an instrument for the preservation of Russian domination in the post-Soviet space, and also for the creation of new economic and military-political alliances with some former Soviet republics. The recent and most ambitious integration project of Moscow—the United Economic Space (UES), which was to include Russia, Belarus, Ukraine, and Kazakhstan—was actually suspended because of the skeptical position of the new Ukrainian government.
- Exerting partial control over the information space of the former USSR, as the Russian tabloids and television channels are just as popular in some post-Soviet countries (including Belarus) as the national mass media.
- A wish to limit the active interaction of the former parts of the Soviet empire with Western countries, most of all with the United States. Moscow, for example, supported the demand of Uzbek president Islam Karimov that U.S. troops be withdrawn from this country in six months (that is, by February 2005).³⁰ The U.S. military presence in Uzbekistan was viewed as an element of an obvious aspiration to force out Russia from Central Asia. It also caused an ambiguous reaction in Moscow concerning a change of the government in Kyrgyzstan in March 2005.

Such actions definitely challenged the policy of the Western democracies towards the post-Soviet states. However, the U.S. and European approaches to the formation of a new strategy regarding Russia and other countries of this region vary widely; Germany can be used as a typical example in this case.

²⁹ Kuchma, *Ukraina – ne Rossija*, 500–504.

³⁰ For more details, see an article by the former British Ambassador in Uzbekistan: Craig Murray, “Why the US won’t admit it was jilted,” *The Guardian* (3 August 2005); available at www.guardian.co.uk/comment/story/0,,1541384,00.html; accessed 5 August 2005.

United States Policy Towards Russia

Nowadays for the United States, Russia is first of all a partner in the struggle against international terrorism; this fact determines the interaction with Moscow as one of the top priorities of U.S. foreign policy. In spite of the obvious disagreements during the military action of the U.S.-led coalition against Saddam Hussein, and also the long-term cooperation that exists between Moscow and Tehran, the U.S. government wishes and will continue to wish to avoid a transformation of Russia into an opponent. In the modern conditions of the war against terror, the partnership with Russia is of critical importance to the U.S., even if there are many problems involving the practice of democracy and human rights within this country. But this does not mean that Washington will ignore these issues, and will stop criticizing Vladimir Putin's government for its policies towards the media and big business, or its aspiration to put pressure on its neighboring states.

Moreover, a flexible U.S. strategy concerning Russia and other post-Soviet countries allows the United States to interact successfully both with Moscow and members of GUAM, taking into account the obvious desire on the part of Georgia, Ukraine, Azerbaijan, and Moldova to establish a close relationship with the European and Euro-Atlantic structures. To help realize this goal, the United States has successively and decisively supported all states in the former Soviet orbit that aspire to create effective democratic institutions and market economies.

This stance took a more active form in 2005, namely after the democratic change of the government in Ukraine as a result of the people's protests against the falsified results of the presidential election in November 2004. The new Ukrainian democracy was considered in Washington as a key partner of the U.S. in the region, and providing whatever assistance would be necessary to integrate this country into the European and Euro-Atlantic structures as soon as possible can be described as one of the more important goals of current U.S. foreign policy.³¹

In January 2005, the U.S. Congress submitted the concurrent resolution "Congratulating the people of Ukraine for conducting a democratic, transparent, and fair runoff presidential election on December 26, 2004, and congratulating Viktor Yushchenko on his election as President of Ukraine and his commitment to democracy and reform." The U.S. Congress expressed its "strong and continuing support for the efforts of the Ukrainian people and the new Government of Ukraine to establish a full democracy, the rule of law, and respect for human rights."³² In reply, the new President of Ukraine,

³¹ Celeste A. Wallander, "Challenge & Opportunity: A U.S. Strategy on Ukraine," The Center on Strategic and International Studies (CSIS), June 2005, 1-4; available at www.csis.org/ruseura/050628_usstratonukraine.pdf; accessed 9 August 2005.

³² "Congratulating the people of Ukraine for conducting a democratic, transparent, and fair runoff presidential election on December 26, 2004, and congratulating Viktor Yushchenko on his election as President of Ukraine and his commitment to democracy and reform," 6 January 2005, H. Con. Res. 16 and 26 January 2005, S. Con. Res. 7; available at <http://thomas.loc.gov/cgi-bin/query/C?c109:./temp/~c1097smxZs> and <http://thomas.loc.gov/cgi-bin/query/C?c109:./temp/~c109zfyNZS>; accessed 24 July 2005.

Viktor Yushchenko, in an address before a joint session of Congress during a visit to Washington in April 2005, declared that he “would like to thank the United States Congress, U.S. presidents George Walker Bush, Bill Clinton, George Bush, and the entire American nation for their invariable respect for Ukraine and their support for Ukraine’s democracy.”³³

In May 2005, the U.S. Senate submitted a resolution regarding the present state of Georgian-Russian relations, namely “Expressing support for the withdrawal of Russian troops from Georgia.” The resolution declared that “the Russian Federation should respect the territorial integrity and sovereignty of the Republic of Georgia,” as well as that “the United States should continue to support Georgia in its efforts to negotiate an agreement for ending Russia’s military presence in Georgia.”³⁴

The first visit of a U.S. president to Georgia, in May 2005, was also an especially significant event in the history of cooperation between the two countries. In Tbilisi, George W. Bush declared: “We respect Georgia’s desire to join the institutions of Europe. We encourage your closer cooperation with NATO. Georgia’s leaders know that the peaceful resolution of conflict is essential to your integration into the transatlantic community. At the same time, the sovereignty and territorial integrity of Georgia must be respected—the territorial [*sic*] and sovereignty of Georgia must be respected by all nations.”³⁵ In this manner he provided his support to the Georgian government in its diplomatic conflict with Moscow. Addressing the President of Georgia, Mikheil Saakashvili, President Bush said: “We look forward to working with you to meet those obligations. NATO is a very important alliance for the United States of America. It’s a place where we have our strategic conversations with our transatlantic friends, and we want to help you achieve your objective there.”³⁶ It could also be interpreted as a state-

³³ Victor Yushchenko, “Ukrainian President Yushchenko’s Address before Joint Session of U.S. Congress,” The Press Office of the President of Ukraine Victor Yushchenko, 6 April 2005; available at www.president.gov.ua/en/news/data/11_173.html; accessed 24 July 2005.

³⁴ “Expressing support for the withdrawal of Russian troops from Georgia,” 12 May 2005, S. Res. 139; available at <http://thomas.loc.gov/cgi-bin/query/C?c109:./temp/~c109Mph13t>; accessed 24 July 2005.

³⁵ “President Addresses and Thanks Citizens in Tbilisi, Georgia,” The Communications Office of the President of Georgia, 10 May 2005; available at www.president.gov.ge/?l=E&m=0&sm=3&id=124; accessed 24 July 2005.

³⁶ “Remarks by President Bush and President Saakashvili of Georgia in a Joint Press Availability,” The Communications Office of the President of Georgia, 10 May 2005; available at www.president.gov.ge/?l=E&m=0&sm=3&id=126; accessed 24 July 2005.

ment of personal support for the Georgian leader, who is a decisive and long-time proponent of Georgia's pro-Western orientation.³⁷

In addition to the situation in Georgia, Washington did not forget the problem of the Russian military presence in several other post-Soviet states. So, in March 2005 the U.S. Senate submitted a resolution "Expressing the sense of the Senate about the actions of Russia regarding Georgia and Moldova," which resolved that the United States should "urge Russia to live up to its commitments at the 1999 Organization for Security and Cooperation in Europe (OSCE) Summit in Istanbul regarding Georgia and Moldova."³⁸ Taking into account Russian pressure on Moldova during the last parliamentary elections to avoid the re-election of present president Vladimir Voronin, as well as an unwillingness on the part of Moscow to withdraw its troops from the territory of Moldova and Georgia, this resolution was a demonstration of the United States' firm support for these small former Soviet republics.

The reaction of the U.S. concerning the possible vote fraud and infringements during the recent parliamentary elections in the Kyrgyz Republic was also unequivocal and resolute. In February 2005, the U.S. Senate submitted a resolution "Urging the Government of the Kyrgyz Republic to ensure a democratic, transparent, and fair process for the parliamentary elections scheduled for February 27, 2005," which called on

the Kyrgyz authorities to ensure the full transparency of election procedures before, during, and after the 2005 parliamentary elections; the right to vote for all eligible citizens of the Kyrgyz Republic; unimpeded access by all parties and candidates to print, radio, television, and Internet media on a non-discriminatory basis; and the right of opposition parties and candidates to assemble freely, campaign openly, and contest the upcoming elections on an equal basis as all other parties, including the party currently in control of the Parliament.

But the recommendations of the U.S. senators were ignored, and as a result mass protests began in this Central Asian republic, which compelled long-term president Askar Akaev to resign.

Finally, the U.S. Congress declared its position concerning Moscow's unwillingness to recognize the fact of the annexation of the Baltic States in 1940. The special concur-

³⁷ For more details see the following materials: "Speech delivered by Mikheil Saakashvili at Johns Hopkins University," The Communications Office of the President of Georgia, 4 February 2004; available at www.president.gov.ge/?l=E&m=0&sm=3&id=171; "Speech delivered by President Mikheil Saakashvili at George Washington University," The Communications Office of the President of Georgia, 23 February 2004; available at www.president.gov.ge/?l=E&m=0&sm=3&id=156; "Georgian President addresses nation ahead of Bush visit," The Communications Office of the President of Georgia, 3 May 2005; available at www.president.gov.ge/?l=E&m=0&sm=3&id=156; "President Saakashvili's Welcoming Address for the President of the United States," The Communications Office of the President of Georgia, 10 May 2005; all accessed 24 July 2005.

³⁸ "Expressing the sense of the Senate about the actions of Russia regarding Georgia and Moldova," 10 March 2005, S. Res. 69; available at <http://thomas.loc.gov/cgi-bin/query/C?c109:./temp/~c109udzio8>; accessed 24 July 2005.

rent resolution “Expressing the sense of Congress that the Government of the Russian Federation should issue a clear and unambiguous statement of admission and condemnation of the illegal occupation and annexation by the Soviet Union from 1940 to 1991 of the Baltic countries of Estonia, Latvia, and Lithuania” passed by the Senate on 19 May 2005, and the House of Representatives on 22 July 2005.³⁹

As a result of this activity, Washington could present itself as a resolute and firm advocate of the interests of the new post-Soviet democracies, and thereby demonstrate its willingness to strengthen its cooperation with these republics. This trend allows Washington to hope that the next “Kiev” round of EU and NATO enlargement—as predicted by Zbigniew Brzezinski—would be a clear demonstration of the success of the U.S. strategy towards Eastern Europe, which could substantially reinforce the position of this superpower in the modern global arena.⁴⁰

At the same time, in the case of Russia it is necessary to point out that the U.S. government has certainly not been the most “convenient” partner for Moscow during the past several years. But the permanent anxiety in Washington concerning the further political development of Russia can be interpreted, first of all, as a factor of the positive external influences on the largest post-Soviet state.

Germany and Relations with Russia

For Germany, the maintenance of good relations with the former parts of the USSR is more important than for the United States, taking into account Germany’s geographical position and its economic interests in this region. Russia’s problems with democracy and human rights, and also the economic and social crises that have roiled the country, have resulted in a serious contradiction in the framework of the German strategy towards Moscow. Gerhard Schröder was able to establish friendly relations personally with Vladimir Putin, but the German Minister for Foreign Affairs, Joschka Fisher, criticized Russia harshly and constantly for the situation in the Chechen Republic and its obvious rejection of many democratic principles.⁴¹ This contradictory situation resembles the interactions between Moscow and Berlin during the last term of the government of Helmut Kohl. Boris Yeltsin considered him to be his best friend in the West, but, nevertheless, Germany criticized Russia’s political development (along with other Western countries). At the same time, though, Germany continued to actively trade with Russia.⁴²

As a result, cooperation between Berlin and Moscow concentrated mostly on the sphere of economy and trade, in spite of a temporary rapprochement of the Russian,

³⁹ “Expressing the sense of Congress that the Government of the Russian Federation should issue a clear and unambiguous statement of admission and condemnation of the illegal occupation and annexation by the Soviet Union from 1940 to 1991 of the Baltic countries of Estonia, Latvia, and Lithuania,” 19 May 2005 S. Con. Res. 5 and 22 July 2005, H. Con. Res. 128.

⁴⁰ Zbigniew Brzezinski, *The Choice: Global Domination or Global Leadership* (New York: Basic Books, 2004), 223.

⁴¹ Christian Hacke, *Die Aussenpolitik der Bundesrepublik Deutschland*, 466–67.

⁴² *Ibid.*, 428–29, 463–65.

German, and French positions concerning the military action in Iraq. The Federal Republic was interested in gas and other natural resources, and Russia desired a stable market in which to sell them. Both countries took and continue to take into account this interdependence. Therefore, Berlin and Moscow aspire to enlarge the range of their economic cooperation, drawing heavily on the friendly personal relationship that exists between both leaders.⁴³

In this context it is remarkable that in an article by Gerhard Schröder, which was published in the Russian journal *Rossija v globalnoj politike* in July–August 2004, the phrase “Germany is the number one economic partner for Russia” appeared in the second sentence. It characterizes very precisely the vision of Russia that was held by the federal government in Germany in the early years of the new century.⁴⁴

However, the German position regarding other post-Soviet states is more contradictory. As long ago as November 1994, Chancellor Helmut Kohl named Ukraine—together with Russia—as a priority of German foreign policy towards Eastern Europe.⁴⁵ But Moscow remained a major partner for Berlin during all of Helmut Kohl’s years in office, as well as those of his successor, Gerhard Schröder. The German government did not wish to intervene in the controversial relations between the post-Soviet states, though the FRG criticized some countries for their poor records regarding democracy and human rights from time to time.⁴⁶

It is also probable that Germany hoped to avoid any negative reaction from Moscow for taking an active policy towards the countries of *blishnee zarubesh’e*, which was the usual practice for U.S. diplomacy in this region. Instead, the federal government’s primary support went to its traditional partners (or even friends) Boris Yeltsin and Vladimir Putin. The same strategy was enacted towards Mikhail Gorbachev before the collapse of the USSR. Moreover, Germany has preferred to interact with these countries, as a rule, within the framework of the common foreign and security policy of the EU, and also together with other European countries, or to participate in UN actions in the post-Soviet space in the recent past, rather than forming direct bilateral relationships

⁴³ Alexander Rahr, “Pochemy Shroederu nraiv’za Rossija,” *Rossija v globalnoj politike* 2:4 (2004): 77, 81–82.

⁴⁴ Gerhard Schröder, “Rossija i Germanija: leytmotiv sotrudnichestva,” *Rossija v globalnoj politike* 2:4 (2004): 68.

⁴⁵ Helmut Kohl, *Aufbruch in die Zukunft: Deutschland gemeinsam erneuern. Regierungspolitik 1994-1998*, Die Regierungserklärung von Bundeskanzler Dr. Helmut Kohl vor dem Deutschen Bundestag am 23. November 1994 (Bonn: Presse- und Informationsamt der Bundesregierung, 1994), 46.

⁴⁶ Regarding the German position concerning human rights in Ukraine, see, for example: “Verlangsamung des Reformtempo in der Ukraine,” *hib-Meldung* (1 July 2004); available at www.bundestag.de/bic/hib/2004/2004_148/02.html; accessed 24 July 2005.

with the post-Soviet states.⁴⁷ Therefore it is necessary to agree with the opinion of Christian Hacke, that the Federal Republic of Germany does not have a detailed concept of a policy towards Central and Eastern Europe, even now.⁴⁸ However, such a concept is more than necessary at this moment, since even close cooperation with Moscow is no guarantee of the same friendly relations with other post-Soviet countries, whose foreign policy interests and strategies vary widely.

For example, during his first visit to Germany, the new Ukrainian President Viktor Yushchenko declared his wish to begin the negotiations about the Associated Treaty between Ukraine and the European Union in 2007, to open a way to full EU membership for this post-Soviet country. This proposal was a key element of the Yushchenko's address before the German Bundestag on 9 March 2005.⁴⁹ The reaction of the German government was very cautious and restrained. The president of the Bundestag, Wolfgang Thierse (SPD), welcomed Viktor Yushchenko as an "elected representative of the new, young Ukrainian democracy."⁵⁰ But the question of Ukraine's possible membership in the EU was left without a clear German response.

At the same time, this situation was successfully used by the Christian Democrats to emphasize once again the weakness of Gerhard Schröder's foreign policy. Thus Volker Rühle, the head of the Foreign Policy Committee of the Bundestag and former German Minister of Defense (1992–98), declared, that it is necessary to evaluate whether it would be "a benefit for all Europe" if—thanks to the success of its political reforms—Ukraine would become a "part of the European Success Story."⁵¹ In addition, the CDU/CSU faction in the Bundestag passed a special statement (15/5021) calling on the German government to work "actively for a closer partnership of the EU and Ukraine," as well as to assist in developing the institutions of a democratic society and market economy, thereby helping to give this land "a clear European perspective."⁵²

⁴⁷ *Deutsche Aussenpolitik 2003/2004* (Berlin: Das Auswärtiges Amt, 2004), 83–85, 105, 111–14; available at www.auswaertiges-amt.de/www/de/infoservice/download/pdf/publikationen/ap2004.pdf; accessed 10 April 2005. See also *Deutsche Aussenpolitik 2004/2005* (Berlin: Das Auswärtiges Amt, 2005), 59, 65, 76, 112, 155–56, 160; available at www.auswaertiges-amt.de/www/de/infoservice/download/pdf/publikationen/ap2005.pdf; accessed 8 August 2005.

⁴⁸ Christian Hacke, *Die Aussenpolitik der Bundesrepublik Deutschland*, 560.

⁴⁹ "Rede von Präsident der Ukraine Viktor Juschtschenko im Deutschen Bundestag," Press Office of the President of Ukraine Victor Yushchenko, 9 March 2005; available at www.president.gov.ua/en/news/data/11_877.html; accessed 24 July 2005.

⁵⁰ "Ansprache des Staatsoberhauptes der Ukraine, Juschtschenko möchte 2007 Verhandlungen über EU-Beitritt aufnehmen," *hib-Meldung* (9 March 2005); available at www.bundestag.de/bic/hib/2005/2005_069/01.html; accessed 24 July 2005.

⁵¹ Johanna Metz, "Ein Land will Teil der europäischen Erfolgsstory werden," *Das Parlament* (20 July 2005); available at www.bundestag.de/dasparlament/2005/25-26/europa/002.html; accessed 24 July 2005.

⁵² "CDU/CSU: Die Ukraine ist ein in jeder Hinsicht europäisches Land," *Das Parlament* (29 March 2005); available at <http://www.bundestag.de/dasparlament/2005/13-14/plenumauschuesse/005.html>; accessed 24 July 2005.

Moreover, before the Bundestag elections scheduled for 18 September 2005, the Christian Democrats presented their vision of German foreign policy. One of its elements was a new strategy towards Russia and other post-Soviet countries. The opposition admitted that cooperation with Russia is crucial for the preservation of stability and peace in Europe. The CDU also spoke of the necessity to promote the process of reform in Russia, as well as to develop German-Russian interaction in all spheres.⁵³ However, the party condemned Gerhard Schröder for his unwillingness to speak with Vladimir Putin about Russia's problems with democratic values, and namely about the violations of human rights in Chechnya and the persistent government censorship of the media that strengthens the Russian regimes' authoritarian tendencies. The Christian Democrats promised to support the democratic forces in Russia and to assist in establishing a social market economy in this country.⁵⁴ In another document, the "Governmental Program 2005–2009," the opposition coalition declared that they want to have good relations with Russia, but "not over the heads of our neighbors."⁵⁵

However, there were no concrete points about a foreign policy strategy towards other post-Soviet countries in both sets of pre-election materials, in spite of the increasingly resolute steps of some of these states (Ukraine, Georgia, etc.) to integrate themselves into structures such as NATO or the EU. Therefore, it is possible to assume that the problem of how to define Germany's new priorities in this region is also a topical one for the Christian Democrats, not only for the "Red-Green" coalition government.

Conclusion

Unfortunately, current political developments in the former Soviet republics and satellite states do not allow enough time for long-term deliberation on the question of how best to approach relations with Russia and the other former republics of the USSR. The persistent and growing conflict between Moscow (together with some pro-Russian oriented former Soviet republics) and the GUAM members is likely to develop further, and the struggle for control over the territory of the collapsed Soviet empire will perhaps be one of the central topics in Russian politics during the next parliamentary election in 2007 and the presidential race in 2008. These events can be viewed as decisive for the future development of this country, as the popularity of nationalist and imperial appeals is extremely high at present, among all groups of the population. Therefore, this rhetoric will likely be used by both the representatives of the government and their op-

⁵³ CDU Deutschlands, *Deutschland braucht eine kompetente Aussenpolitik*, Politik A-Z, Aussenpolitik, 4, 8; available at http://www.cdu.de/doc/pdf/az_aussenpolitik_191104.pdf; accessed 8 August 2005

⁵⁴ Ibid, 13.

⁵⁵ CDU Deutschlands, *Deutschland Chancen nutzen. Wachstum. Arbeit. Sicherheit. Das Regierungsprogramm 2005-2009* (Berlin: CDU Deutschlands, 2005), 37; available at <http://www.regierungsprogramm.cdu.de/download/regierungsprog-ramm-05-09-cducsu.pdf>; accessed 9 August 2005.

ponents from the national-leftist opposition to attract those voters who have been most injured by the dissolution of the Soviet empire.

At the same time, the probability of the nationalist and leftist parties winning a dominant majority in the next Russian Duma is very substantial. The difficulty of legally transferring presidential power to Putin's successor in 2008 is also acute for the Kremlin establishment, taking into account the many significant social and economic problems in Russia. In this situation, the use of the emotional issue of *blishnee zaryubesh'e* in the presidential campaign is likely inevitable. Therefore, Moscow will directly and indirectly support the Belarusian government in its dispute with the United States, Poland, and other European countries, and will also aspire to exert new influence in the Central Asian and Caucasian regions, as well as resist the new "Orange," "Rose," or any other colorful revolutions. It is worthy of note that Russia has already practiced such a policy once in its history, namely in the first half of the nineteenth century, when the Russian Empire struggled against the revolutionary movements in Europe and America within the framework of "the Holy Alliance" (which allied Russia with Prussia and Austria-Hungary). For this reason, it is highly unlikely that future relations between Russia and Ukraine will be entirely smooth and calm, taking into account Moscow's wish to help pro-Russian candidates during the next parliamentary election in Ukraine in 2006.

If such friction does arise, it is likely that Kiev, Tbilisi, and Chisinau will ask the Western democracies for assistance, a request that would be also supported by Poland, the three Baltic countries, and other new EU and NATO members. But Russia is the major economic partner for Germany, as well as one of the important participants of the anti-terrorism coalition led by the United States. Therefore Berlin and Washington should realize the importance of arriving at an especially flexible and sensitive policy that will enable them to support their new allies in Eastern Europe while avoiding isolating Russia. The most important elements for the success of such a policy are the following conditions:

First, the contradictions between the U.S. and some European countries—primarily Germany and France—which arose because of the military action in Iraq must be overcome (there were also other reasons for the conflict as well). The U.S. international relations scholar Robert Kagan warned of this situation even before the beginning of the operation against Saddam Hussein. He also asserted that these transatlantic frictions are dangerous to the modern world.⁵⁶ They are especially negative for the post-Soviet states, taking into account the aspiration of many politicians in these countries to use for their own ends the disagreements between the U.S. and Germany or France, as well as the disconnect between so-called "Old" and "New" Europe. Therefore, it is necessary to agree with the opinion of Philip H. Gordon and Jeremy Shapiro, two American researchers, who have written of the existence of a "Common Agenda" between the United States and Europe in many regions of the world, and in many spheres of activ-

⁵⁶ Robert Kagan, *Macht und Ohnmacht: Amerika und Europa in der neuen Weltordnung* (Berlin: Siedler Verlag, 2003), 116–18.

ity.⁵⁷ They do not directly address the present situation in the post-Soviet space, but it is clear that close interaction between the U.S. and the states of Western Europe is no less significant for this region than it is for the “Greater Middle East.”

Second, the dissemination of democratic values is probably a more important task than the provision of economic assistance or diplomatic interaction with the former parts of the USSR. The U.S. practice of “Public Diplomacy” realized this purpose quite effectively during the 1990s–early 2000s. Therefore, the integration of the Baltic countries into the EU and NATO in 2004, along with the present aspiration of the new governments of Ukraine, Georgia, and other post-Soviet countries to build the democracies and market economies, could be seen as an obvious success of the United States’ foreign policy strategy towards this region. For Germany, the effective use of “soft power” concerning the former parts of the Soviet empire is still a problem, although Germany does have long experience in political, economic, and cultural interaction with the nations of Eastern Europe to use as a model. In addition, the modern example of German parliamentary democracy and social market economics are very attractive for the post-Soviet states. For this reason, it is possible to agree with the German scholar Gerhard W. Wittkämper, who underlined the special role played by Germany in the formation of the European identity, which could serve as a genuine basis for EU unity.⁵⁸

But for the successful realization of this mission, the FRG needs a new “Cultural Policy” towards the post-Soviet countries, which will include not only assistance for a German language study or information support for its own businessmen in this region, but also a more active spreading of democratic values as well as an aspiration to more robustly consider the variety of political systems and social conditions in the former Soviet republics. The German researcher Karl Kaiser has asserted that an active promotion of democracy will be particularly useful for Germany.⁵⁹ In addition, the federal government should have in mind that there are many other candidates for the role of “democratic locomotive” for the post-Soviet countries – for example, Poland or Ukraine, which might wish to enjoy the role as the new center of contemporary Eastern European politics.

Third, the stock phrase *post-Soviet space*—which I have used very often in this article—should be considered only as a geographical concept, not a political one. Today, this space includes very different countries, ranging from the new members of the EU and NATO (Lithuania, Latvia, Estonia) to Turkmenistan, where there is only one political party, as in the former Soviet Union. This diversity requires an individualized approach to each of the post-Soviet countries that would allow for the more effective realization of the foreign policy goals of the United States, Germany, and other European countries.

⁵⁷ Philip H. Gordon and Jeremy Shapiro, *Allies at War: America, Europe, and the Crisis over Iraq* (New York: McGraw-Hill 2004), 199–221.

⁵⁸ Gerhard W. Wittkämper, *Politik im Wandel – Themen der Zeit. Ausgewählte Vorträge 1987 bis 1997* (Münster: Agenda, 1998),

⁵⁹ Karl Kaiser, “Die neue Weltpolitik: Folgerungen für Deutschlands Rolle,” in *Weltpolitik im neuen Jahrhundert*, 602.

Another factor that must be appreciated outside the territory of the former Soviet Union is the new status of Russia. Moscow remained a cultural center as well as an important trading partner for the other former Soviet republics, but its position of prominence is not a given for all leaders of the neighboring states nowadays. In the case of such countries as Ukraine, Georgia, or Moldova, the Russian point of view is, as a rule, an object of harsh criticism within these countries. Certainly, this situation complicates the task of Western diplomats and experts, but an underestimation of the diversity of the post-Soviet world could lead to misunderstandings with new allies in this region.

In any case, the development of relations with the former republics of the Soviet Union will create many new challenges for U.S. and European policy. However, the further democratic development of Russia and its neighbors gives the Western democracies an opportunity to have a solid flank of shared values in this region, which is more necessary than ever in the conditions of the intensifying struggle against international terrorism. The United States, Germany, and other European countries currently have a complicated variety of goals and objectives concerning the former parts of the USSR, namely providing support for the new democracies in Eastern Europe, interacting with Russia as a partner within the anti-terror coalition, maintaining close cooperation with all countries of this region in the framework of NATO and PfP activities, and many others. Therefore, a successful solution of the post-Soviet puzzle would allow nations in the West to view the territory of the former Soviet empire not as a “black hole,” but as a region of security and peace, where there are the trustworthy allies and partners for the United States and Europe.

Postscript: *In the beginning of August 2005, there was an emergency involving a Russian mini-submarine in the Pacific Ocean. Due to the help of the navies from Great Britain and the United States (and also Japan), seven Russian sailors were rescued. The government of Russia thanked these countries for their timely help. Such successful interaction allows the assumption that the Cold War actually did come to an end fifteen years ago, and that the Western democracies (as well as Eastern) stand as the major international partners for Russia and other post-Soviet countries.*

Cooperative Security in the 21st Century

Dr. Michael Mihalka *

Historians may well look back on the first years of the twenty-first century as a decisive moment in the human story. The different societies that make up the human family are today interconnected as never before. They face threats that no nation can hope to master by acting alone – and opportunities that can be much more hopefully exploited if all nations work together.¹

The events of 11 September 2001 marked the beginning of a new era in cooperative security. On September 12, the UN Security Council passed Resolution 1368, which applied the inherent right of self-defense under the UN Charter to the response to the terrorist attacks on New York and Washington, and called on “all states to work together urgently to bring to justice the perpetrators, organizers, and sponsors of these terrorist attacks.”² This statement is remarkable in applying Article 51 to a non-state actor. Before this, Article 51 was viewed as applying only to states. This recognition that non-state threats represented a major cause of security concern was consistent with the my earlier work on cooperative security in the pre-9/11 era, in which cooperative security is defined as states working together to deal with non-state threats.³

Definitions

Cooperative security as a term is often used rather loosely in the international relations literature.⁴ The term often simply means that states will work together to solve common problems, and is often used synonymously with *collective security* – that is, to mean simply that states work collectively together. However, collective security also often has a more specific meaning in the international relations literature, in which it is used to describe a kind of security system in which states agree to act together against one of

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¹ Kofi Annan, Foreword to “A More Secure World: Our Shared Responsibility,” Report of the High-level Panel on Threats, Challenges and Change; available at www.un.org/secureworld/, accessed June 20, 2005.

² S.C. Res. 1368, UN SCOR, 56th Sess., 4370th mtg. at 1; UN Doc. S/RES/1368, 12 September 2001. This statement was reaffirmed in S.C. Res. 1373, UN SCOR, 56th Sess., 4385th mtg., UN Doc. S/RES/1373, 28 September 2001 (“reaffirming the inherent right of individual or collective self-defense as recognized by the Charter of the United Nations as reiterated in Resolution 1368 [2001]).

³ Michael Mihalka, with Richard Cohen, *Cooperative Security: New Horizons for International Order*, Marshall Center Paper No. 3 (Garmisch-Partenkirchen, Germany: George C. Marshall European Center for Security Studies, April 2001); Mihalka, “Concepts of Cooperative Security” (in Russian) *Vestnik* 1 (Moscow State University, 2001).

⁴ Ibid.

the members of the system that takes aggressive actions against another. The terms *common security* and *comprehensive security* are also often used, where common security means that states are affected equally by a common threat, such as nuclear war, the threat being more the effects of the war rather than the country that uses the nuclear weapons, and where comprehensive security means a security regime that encompasses both the so-called traditional threats associated typically and specifically with state actors, and non-traditional threats, which mean everything else. To minimize confusion, I have reserved the term *cooperative security* to describe cases where states work together to deal with non-state threats and challenges.

Trends in the International System Conducive to Cooperative Security

Several trends in the international system have made cooperative security increasingly important as the main mode to deal with threats posed by non-state actors. The trends include a dramatic decline in the incidence of interstate war, precipitated in part by the change in the global distribution of power after the end of the Cold War that left the United States as the only clear remaining global superpower. Other trends include the United States' support of a liberal economic and political order that has led to less direct state control over many areas in the world that had previously lived under dictatorships or centrally-planned economic systems. In addition, we have seen a corresponding increase in globalization and the realization of a global commons, and an attendant rise in the perceived importance of transnational actors.⁵ In addition, regional actors and organizations have gained in importance as well.

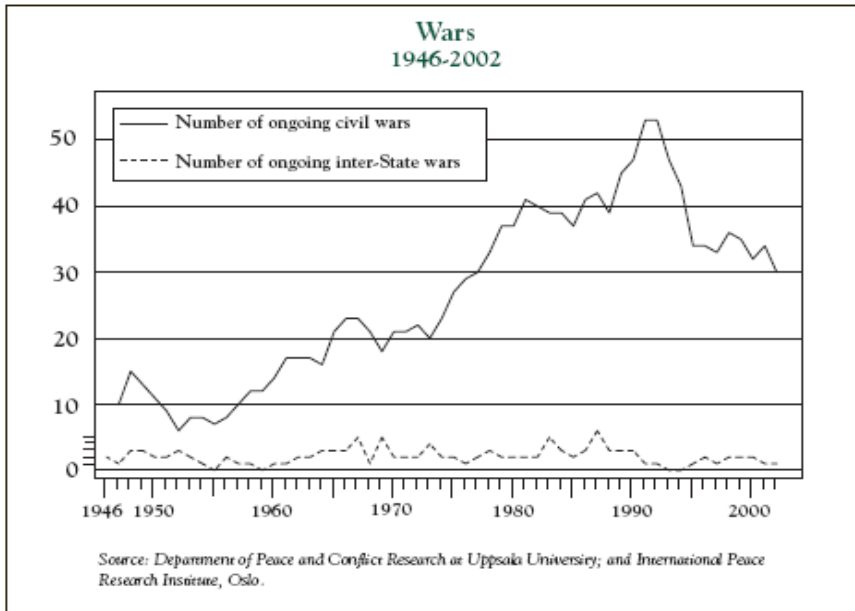
Although cooperative security has become the preferred mode of security cooperation in the world, some recent trends in the United States appear to undercut cooperative approaches. For one, the United States may have become too dominant militarily. This has had two adverse consequences for cooperative security. First, other countries may feel less inclined to act cooperatively, because they can simply rely on the United States to provide global security. Second, this dominance, and the perception that other countries are not doing enough, has led the United States to articulate a national security policy that advocates preemption and comes close to endorsing the notion of preventive war.

The End of Interstate War?

One of the important features of the post-Cold War era is the sharp decline in the prevalence of interstate war. The Center for International Development and Conflict

⁵ The notion of a global commons perhaps first gained wide currency with a widely anthologized article by Garret Hardin: "Tragedy of the Commons," *Science* 162 (1968): 1243–48. For a recent discussion, see Stephen M. Gardiner, "The Real Tragedy of the Commons," *Philosophy and Public Affairs* 30:4 (Fall 2001): 387–416.

Mangement has tracked trends in interstate and intrastate conflict from 1949 to 2004.⁶ The magnitude of interstate war remained at the same level up to the late eighties, and then declined sharply in the 1990s. The magnitude of intrastate conflict peaked around 1990, and has since declined. As Figure One shows, while there were never more than five interstate conflicts ongoing in any one year in the 1990s, the number of ongoing intrastate conflicts rose to over 50 in 1992 and declined to around 30 by 2002.⁷ This intrastate war has become an increasingly relevant source of security concern, especially compared with the problems posed by states in the past.



The implications for cooperative security as I have defined it are profound. Other states come to pose an increasingly smaller proportion of security concerns, as states become more preoccupied with threats posed by non-state actors and general environmental conditions.

Numerous articles have appeared detailing the security problems posed by non-state actors and downplaying the importance of traditional threats. Even the National Secu-

⁶ Monty Marshall and Ted Robert Gurr, *Peace and Conflict 2005* (College Park, Maryland: University of Maryland, 2005). Available at <http://www.cidcm.umd.edu/inscr/PC05print.pdf> (accessed September 13, 2005)

⁷ Cf., Report of the Secretary-General's High Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (New York: United Nations, December 2004), 9; available at <http://www.un.org/secureworld/report3.pdf> (accessed 27 May 2005).

urity Strategy of the United States, issued in 2002, suggests that failing states have become a greater security concern than traditional state competitors because they provide breeding grounds for lawlessness, terrorism, and internal conflict that may spill over into neighboring states.

A great many articles and monographs have emphasized that changes in the international system have altered how people now think about security. Particularly relevant is the report of the United Nations High Level Panel on Threats, Challenges, and Change in December 2004. The panel noted that the “the preoccupation of the United Nations founders was with State security.” Today, however, the threats encompass “poverty, infectious disease and environmental degradation; war and violence within states; the spread and possible use of nuclear, radiological, chemical, and biological weapons; terrorism; and transnational organized crime.”⁸ The character of what is perceived as a threat has changed from one emanating from the ambitions of an individual state to a set of transnational conditions that affect all states regionally and globally.

Concerns with transnational threats have only come to the fore because states are no longer concerned about the prospects for their continued existence. Nazi Germany and fascist Japan sought to eliminate their neighbors and enslave their populations. The United States and the Soviet Union were locked in an ideological competition for the hearts and mind of the globe. It is only with the end of the Soviet Union that states could afford to become much more concerned with transnational threats, since there was no longer any significant threat to states as such.

The Change in the Global Balance of Power and the Victory of Liberalism

The change in the global distribution of power that occurred with the rapid deterioration and breakup of the Soviet Union was not sufficient in and of itself to cause the marked decline in the perception of state-based threats. One might expect that a sharp decline in the power of one main actor in the international system would lead to the reordering of the alliance structure. This certainly happened after World War II, when the victors went their separate ways and set up opposing alliance systems, NATO and the Warsaw Pact. After the end of the Cold War, the weaker major powers in the system—the Western Europeans and Japan—could have allied with the defeated power, Russia, to oppose the sole remaining “hyperpower,” the United States. This did not happen. Instead, the Europeans proclaimed that the relevance of military power had declined, and that the “hour of Europe” had arrived.⁹ Economics would solve all security problems. The Europeans did not and still do not feel that the preponderance of U.S. military power poses a threat to their survival.

⁸ Ibid.

⁹ Cf. Michael Mihalka, “Political Economy, Weltanschauung and the Transformation of European Security,” *European Security* (December 2001).

The economic success of the nations of Western Europe rests directly on the liberal economic global order that is supported by U.S. military power.¹⁰ The World Bank, the International Monetary Fund, and the predecessor of the World Trade Organization (the Global Agreement on Trades and Tariffs, which remains in force) all promote a system that favors free trade and less government involvement in economic affairs. The end of the Soviet Union and the shift toward pro-market policies pursued by the Chinese leadership meant that the liberal economic order would be extended globally. Most countries today have joined or are aspiring to join the World Trade Organization, which requires states to support free trade rather than protectionism.

A liberal political order has not spread as widely or quickly as the liberal economic order. Nevertheless, Freedom House, a non-governmental organization, reports sure and steady progress in this regard since the early 1990s.¹¹ Although they classified only 19 percent of the world's population as free in 1993, the corresponding figure in 2003 was 44 percent. In 1993, 44 percent of the world was considered "partly free," a percentage that had declined to 20 percent by 2003. Over 35 percent of the world population resides in not-free states, with a large proportion of this figure accounted for by China's classification as being not free (China alone represents 20 percent of the world's population).

No major country is currently advocating the spread of a political or economic ideology that opposes the regime of liberal democracy or free markets. Moreover, both the United States and the European Union actively sponsor programs to promote the spread of liberal democracy.

The spread of liberal economic and political values promotes cooperative security. Countries developed the habit of cooperation by working together to address global issues through the WTO and other organizations. Major economic powers have developed similar habits by working together through the Group of Eight industrial democracies to address concerns of international trade, energy, development, and terrorism.

The Use of Force in Cooperative Security and the Rise of Humanitarian Intervention

Many of the examples of cooperative security used throughout this essay do not involve the use of force. However, we have seen throughout the 1990s and beyond an increasing interest in humanitarian intervention. While humanitarian intervention remains contentious in the international legal and political science community, it falls well

¹⁰ Much of the world moved to a system of free trade based on the Bretton Woods agreements of 1944. See Robert Gilpin, *Global Political Economy: Understanding the International Economic Order* (Princeton, NJ: Princeton University Press, 2001).

¹¹ Adrian Karatnycky, "Gains for Freedom Amid Terror and Uncertainty," in *Freedom in the World 2004*; available at www.freedomhouse.org/research/freeworld/2004/essay2004.pdf (accessed 27 May 2005).

within the definition of cooperative security used here.¹² In a recent volume on humanitarian intervention, J.L. Holzgrefe defined the concept as:

The threat or use of force across borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.¹³

For our purposes, what is important is the focus on the need to protect human rights, which is not necessarily the same as a need to act against the country in which the violations are taking place. A group of states is thus acting to deal with a non-state security challenge, even though that may mean violating the principle of non-intervention in the affairs of another state.

NATO's intervention in Kosovo represents an important case study of cooperative security and the use of force. Many legal scholars find that the intervention "reflects the problems of an undeveloped rule of law in a morally dangerous situation."¹⁴ Most thought it was illegal, but others have argued:

[T]he absence of consensus on human rights [among the permanent members] means that [the Council's] remedial action ... is unlikely [in cases of grave human rights violations requiring a forceful response]. Yet the international legal process's demand for a remedy for grave violations ... has become so powerful and urgent that democratic governments that are susceptible to non-governmental influence and that have the wherewithal to effect a remedy are under grave pressure to act unilaterally. Hence for the purposes of the enforcement of human rights ... enforcement through the Security Council [should be used], if it can be achieved, but enforcement unilaterally if it cannot.¹⁵

Although few in the international community would agree with this quote, many acknowledge the growing importance of human rights as an issue of international concern, and some have even squared the circle on sovereignty and intervention by noting that sovereignty derives from the rights of the individual and that the international community takes precedence over the state as the ultimate guarantor of human rights.¹⁶

¹² Robert Keohane, "Introduction," in J. L. Holzgrefe and Robert O. Keohane, ed., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press, 2003), 1.

¹³ J.L. Holzgrefe, "The Humanitarian Intervention Debate," in *Humanitarian Intervention*, 18.

¹⁴ Jonathon I. Charney, "Anticipatory Humanitarian Intervention in Kosovo," *American Journal of International Law* 93:4 (Oct. 1999): 841.

¹⁵ W. Michael Reisman, "Unilateral Action and the Transformation of the World Constitutive Process: The Special Problem of Humanitarian Intervention," *European Journal of International Law* 11 (2000): 7–8, as quoted in Tom J. Farer, "Humanitarian intervention before and after 9/11: Legality and Legitimacy," in *Humanitarian Intervention*.

¹⁶ See Thomas G. Weiss and Jarat Chopra, "Sovereignty under Siege: From Intervention to Humanitarian Space," in *Beyond Westphalia? State Sovereignty and International Intervention*, ed. Gene M. Lyons and Michael Mastanduno (Baltimore: Johns Hopkins University Press, 1995).

The Rise of Globalization, Transnational Challenges, and the “Limits of Self-Protection”

Globalization has often been viewed as something that is largely a pursuit of avaricious transnational corporations that has proceeded divorced from broader economic and political trends. In fact, globalization has proceeded in fits and starts, and reflects the conscious choices of states to participate in the liberal economic and political order.

By easing traffic of all kinds across borders, globalization also changes the character of the security challenges that countries face. The UN High Level Panel on Threats, Challenges, and Change concluded, “Today’s threats recognize no national boundaries, are connected, and must be addressed at the global and regional as well as national levels. No state, no matter how powerful, can by its own efforts alone make itself invulnerable to today’s threats.”¹⁷ The UN study argues that many of the security challenges that states will face in the twenty-first century are interconnected. For example, it argues that “preventing mass-casualty terrorism requires a deep engagement to strengthen collective security systems, ameliorate poverty, combat extremism, end the grievances that flow from war, tackle the spread of infectious disease and fight organized crime.”¹⁸ The UN identifies six groups of threats that are of particular concern now and in the foreseeable future:

1. Economic and social threats, including poverty, infectious disease, and environmental degradation;
2. Inter-state conflict;
3. Internal conflict, including civil war, genocide, and other large-scale atrocities;
4. Nuclear, radiological, chemical, and biological weapons;
5. Terrorism;
6. Transnational organized crime.¹⁹

The UN study states, “The world has seen few inter-state wars over the past sixty years.”²⁰ However, it has very little to say about any specific threat posed by any particular group or phenomenon, but rather stresses the connection between regional disputes and the other five security challenges. So the real issue for the UN is not so much interstate conflict—for which it has all the requisite authority to manage—but transnational threats, where its authority is much less clear.

The UN study repeatedly makes the point that no one state can address transnational threats alone:

No state, no matter how powerful, can by its own efforts alone make itself invulnerable to today’s threats. Every state requires the cooperation of other states to make itself secure. It is in every state’s interest, accordingly, to cooperate with other states to

¹⁷ *A More Secure World*, 1.

¹⁸ *Ibid.*, 17.

¹⁹ *Ibid.*, 23.

²⁰ *Ibid.*, 31.

address their most pressing threats, because doing so will maximize the chances of reciprocal cooperation to address its own threat priorities.²¹

The Necessity of Cooperative Security

In other words, the UN study argues that cooperative security in the sense that is used in this study is necessary in order to address today's threats. Transnational threats by definition span traditional state boundaries. Thus, addressing the problems in one state will not necessarily resolve the issues in other states. In fact, a rigorous program to address transnational problems such as terrorism in a single state will likely only succeed in shifting the problems to another state. In domestic law enforcement, crackdowns in one area may lead to increased crime in neighboring areas, a phenomenon known as displacement.²² This is why the security strategies of both the United States and the European Union place such great emphasis on failed states – transnational terrorists can move freely across these porous and un-policed borders. Only by states acting together can most of these issues be resolved.

The United States: Facilitator or Obstacle for Further Cooperative Security?

The U.S.-led interventions against Afghanistan and Iraq after 9/11 would seem at first blush not to constitute examples of cooperative security, since they were actions against sovereign states. However, the U.S. justified both actions as part of its campaign against terrorism. Afghanistan harbored Osama bin Laden and refused to apprehend him and turn him over to the U.S., while Saddam Hussein was accused of continuing to further a program of weapons of mass destruction. Vice President Dick Cheney, for example, justified the intervention in Iraq because “simply stated, there is no doubt that Saddam Hussein now has weapons of mass destruction” and “had a relationship with Al Qaeda that stretched back through most of the decade of the ‘90s.”²³ Cheney also maintained, “We believe he has, in fact, reconstituted nuclear weapons.”²⁴ In justifying action against Hussein, Cheney argued, “Deliverable weapons of mass destruction in the hands of a terror network or a murderous dictator, or the two working together, constitutes as grave a threat as can be imagined.”²⁵

For its part, the National Security Strategy of the United States of 2002 argues that the greatest threat to the country is the nexus of transnational terrorism and weapons of mass destruction. The U.S. does not believe that it will face a peer competitor in the military realm in the near term, and has adopted a strategy to ensure that one will not

²¹ Ibid., 16.

²² See Michael S. Scott, “The Benefits and Consequences of Police Crackdowns,” available at www.popcenter.org/Responses/response-crackdowns.htm (accessed 20 June 2005).

²³ “Cheney in Wonderland,” *Los Angeles Times*, 16 September 2003.

²⁴ “The Man With No Ear,” *New York Times*, 27 June 2003.

²⁵ Dana Milbank, “Cheney Says Iraqi Strike Is Justified; Hussein Poses Threat, He Declares,” *Washington Post*, 27 August 2002.

arise in the mid- to long term. The U.S. intends to maintain its dominance by retaining control of the global commons (air, space, high seas)—at least militarily—and to dissuade other states from trying to compete in those areas.²⁶ Although Donald Rumsfeld made these comments regarding nuclear weapons, they apply equally well to all aspects of the global commons:

Some have asked why in the post-Cold War we need to maintain as many as 1,700 to 2,200 operationally deployed warheads. The fact that the Soviet threat has receded does not mean that we no longer need nuclear weapons. To the contrary, the U.S. nuclear arsenal remains an important part of our deterrent strategy and helps us to dissuade the emergence of potential or would-be peer competitors by underscoring the futility of trying to sprint toward parity with us.²⁷

The U.S. is willing to spend to ensure it retains its dominance. By some accounts, it is responsible for over 50 percent of total global defense spending, and spends as much on military research alone as the country that spends the second-most amount on defense overall.

The U.S. supports liberalism (political systems based on individual rights), but it is also hegemonic in promoting the spread of liberalism.²⁸ The U.S. does not favor the consensus-based approach to cooperative security pursued by the Western Europeans, leading many of them to accuse the U.S. of unilateral behavior. According to the German Foreign Minister Joschka Fischer, “The international coalition against terror does not provide a basis for doing just anything against anybody—and certainly not by going it alone. This is the view of every European foreign minister.”²⁹ This leads to a curious paradox: the hegemonic nature of American liberalism has created an environment that permits cooperative security, but the U.S. does not seem to be so cooperative itself, at least as far as such matters as the Kyoto environmental treaty or the International Criminal Court are concerned. This apparent paradox will continue. The U.S. quest for continuing dominance will provide the environment in which others are able to engage

²⁶ See Office of Force Transformation, *Elements of Defense Transformation* (Washington, DC: Office of the Secretary of Defense, October 2004); available at www.of.t.osd.mil/library/library_files/document_383_ElementsOfTransformation_LR.pdf (accessed 10 June 2005).

²⁷ Donald H. Rumsfeld, hearings before the Senate Foreign Relations Committee, 17 July 2002; available at www.afa.org/magazine/sept2002/0902rumsfeld.asp (accessed 10 June 2005).

²⁸ For a discussion of hegemonic liberalism, see Charles William Maynes, “U.S. Role in the Word: What are the Choices?” in *Great Decisions 2000* (New York: Foreign Policy Association, 2000).

²⁹ See “Germany warns U.S. against unilateralism,” *BBC News Online*, 12 February 2002; available at <http://news.bbc.co.uk/1/hi/world/europe/1816395.stm> (accessed 10 June 2005).

in consensus-based cooperative security, but the U.S. will participate in such efforts only when it can lead.³⁰

Conclusions and Observations

Cooperative security has become the main mode whereby states cooperate with each other. The rise of globalization has seen the attendant rise of transnational problems that can only be addressed through the local, regional, and global cooperation of states. The continued dominance of the United States and the continuing spread of liberal values means that no peer competitor to the United States will appear in the near future to threaten this cooperative security regime. It is one of the great ironies of this regime that the United States is viewed as the primary antagonist to cooperative security, but its dominance and support for liberal values provides the necessary context for the cooperation that does occur.

³⁰ For more on the relative benefits and drawbacks of hegemonism, see G. John Ikenberry, "Getting Hegemony Right," *The National Interest* 63 (Spring 2001), available at www.ocf.berkeley.edu/~7Egobev/fp/readings/Ikenberry.txt; Clark S. Judge, "Hegemony of the Heart," *Policy Review* 110 (December 2001/ January 2002), available at www.ocf.berkeley.edu/~gobev/ipe/readings/Judge.txt; and Stanley Kurtz, "The Future of 'History,'" *Policy Review* 113 (June/July 2002), available at www.ocf.berkeley.edu/~7egobev/fp/readings/kurtz.txt.