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## COMBATTING GLOBAL SEX TRAFFICKING: THE UNITED NATIONS AS A POWERLESS ENTITY OR AN UNTAPPED RESOURCE?

Kimberly M. Lennox

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**COMBATTING GLOBAL SEX  
TRAFFICKING: THE UNITED NATIONS  
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UNTAPPED RESOURCE?**

*By Kimberly M. Lennox\**

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“Let us declare in one voice: We will not tolerate anyone committing or condoning sexual exploitation and abuse. We will not let anyone cover up these crimes with the UN flag. . . . Let us make zero tolerance a reality.”<sup>1</sup>

— Secretary-General António Guterres

## I. INTRODUCTION

In July of 2019, the world shuddered at news of finance mogul Jeffrey Epstein’s involvement in a large-scale child sex trafficking scandal, having been charged with several counts of sex trafficking minors in United States federal court.<sup>2</sup> It was alleged that the multi-millionaire had knowingly sexually abused girls as young as fourteen years old, specifically targeting those in economically vulnerable circumstances and buying their silence with hundreds of dollars in cash after each assault.<sup>3</sup> Epstein was further accused of devising a trafficking scheme to maintain a supply of victims, offering additional cash payments to those who would recruit other underage girls for him.<sup>4</sup> While the exact number of victims remains unknown, an email written by the Assistant U.S. Attorney disclosed to Epstein’s legal counsel that there were at least thirty-four underage girls who were allegedly victim to Epstein’s abuse.<sup>5</sup> In addition to molesting these victims at his residences in the continental U.S., it was alleged that Epstein used a personal aircraft to transport underage girls to a privately-owned island

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<sup>1</sup> S.G. SM Secretary-General Announces Launch of Report ‘Special Measures for Protection from Sexual Exploitation and Abuse: A New Approach,’ (Mar. 9, 2017).

<sup>2</sup> *See* Sealed Indictment, *United States v. Epstein*, 2019 WL 2911680 (S.D.N.Y. 2019).

<sup>3</sup> Press Release, Dep’t Just. U.S. Att’ys Off. S. Dist. N.Y., Ghislaine Maxwell Charged in Manhattan Federal Court for Conspiring with Jeffrey Epstein to Sexually Abuse Minors (July 2, 2020) (on file with D.O.J.).

<sup>4</sup> Sealed Indictment, *supra* note 2.

<sup>5</sup> *Doe 1 v. United States*, 359 F.Supp.3d 1201, 1208 (S.D.F.L. 2019).

in the U.S. Virgin Islands where they became captive to his sexual abuse.<sup>6</sup> Accusations of criminal involvement by high-profile celebrities, politicians, and national leaders have emerged from civil lawsuits brought against Epstein and his co-conspirators.<sup>7</sup> Many are left to wonder how this massive criminal enterprise was able to thrive for decades under the radar of prosecuting officials.

While *human* trafficking also includes exploitation for purposes of forced labor and organ removal, trafficking for *sexual exploitation* continues to be the most popular form of trafficking.<sup>8</sup> Although there are an estimated 3.8 million victims of sex trafficking in the world today,<sup>9</sup> countries have only reported 85,613 victims worldwide.<sup>10</sup> Researchers have posed various explanations for this detection deficit, citing to inadequate criminalization and governmental corruption.<sup>11</sup> Because of its lucrative nature, some governments view trafficking as an opportunity to increase tourism or as a pillar of their economic structure, as is the case in Amsterdam.<sup>12</sup> Exploitation of sex trafficking victims generates roughly \$99 billion in revenue a year, highlighting the magnitude of this humanitarian crisis.<sup>13</sup>

The unyielding prevalence of sex trafficking indicates that the current status of global opposition is insufficient and must be reexamined.

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<sup>6</sup> Complaint at 25, *Doe v. Estate of Jeffrey Epstein*, 2019 WL 3936550 (S.D.N.Y.) (No. 1:19-cv-07772).

<sup>7</sup> See *Doe v. Indyke*, 457 F.Supp.3d 278 (S.D.N.Y. 2020).

<sup>8</sup> INT'L LAB. ORG., GLOBAL ESTIMATES OF MODERN SLAVERY 10 (2017).

<sup>9</sup> *Id.* at 11 (“The central element [of this research] is the use of 54 specially designed, national probabilistic surveys involving interviews with more than 71,000 respondents across 48 countries.”)

<sup>10</sup> See U.S. DEP'T STATE, 2019 TRAFFICKING IN PERSONS REPORT 38 (2019) (Data derived from the mandatory reporting obligations of 142 countries to the UNODC, which is compiled and made publicly available).

<sup>11</sup> See U.N. Office on Drugs and Crime, *The Role of Corruption in Trafficking in Persons*, at 12 (2011).

<sup>12</sup> See Hannah Bondi, *Europe Must Target Demand to Fight Sex Trafficking*, SOCIAL EUROPE (Sept. 20, 2018), <https://www.socialeurope.eu/europe-must-target-demand-to-fight-sex-trafficking>.

<sup>13</sup> Global Data Hub On Human Trafficking (graphic illustration), in *The Counter Trafficking Data Collaborative*, (Sept. 21, 2021) <https://www.ctdatacollaborative.org/>; INT'L LAB. ORG., PROFITS AND POVERTY: THE ECONOMICS OF FORCED LABOUR 27 (May 20, 2014).

This paper argues that as the largest international organization—hosting nearly *all* of the world’s sovereigns in membership—the United Nations is uniquely positioned to initiate global action in opposition of sex trafficking.<sup>14</sup> Addressing the United Nations’ reputation of powerlessness, this paper will demonstrate the United Nations’ authority as an international organization. Section II begins by establishing the internationally-accepted definition for trafficking in persons, then applies its elements to the allegations against Jeffrey Epstein. Narrowing the definition to the particular crime of sex trafficking, these elements are then applied to a California case involving a fifteen-year-old runaway. After examining the global presence of sex trafficking generally, this paper characterizes various countries according to their role in the trafficking industry, labelling each as source, transit, and destination regions. Section III provides background on the United Nations’ inception, including its founding documents and intended purpose. Following a synopsis of the power distribution among its principal organs is an overview of the United Nations’ law-making authority which examines treaties, resolutions, and international law. Section IV scrutinizes the various tools for enforcement available to the United Nations, such as trade sanctions and criminal tribunals, in addition to proposing a revision for the Charter to better distribute authority in the Security Council. Section V describes offers various cyber initiatives and measures for curbing child sex trafficking in particular. Overall, this paper contends that the United Nations is uniquely situated by virtue of global membership to take action against sex trafficking.

## II. SEX TRAFFICKING BACKGROUND

### A. Definition and Scope

Historically, sex trafficking has been difficult to define, with definitions carrying various levels of specificity and criminality. The first internationally-accepted definition was published by the United

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<sup>14</sup> See JEANNIE EVERS, NATIONAL GEOGRAPHIC, RESOURCE LIBRARY: ENCYCLOPEDIA ENTRY, <https://www.nationalgeographic.org/encyclopedia/international-organization/> (last updated Dec. 23, 2012).

Nations in 2000.<sup>15</sup> This formally established trafficking in persons as “the recruitment, transportation, transfer, [harboring] or receipt of persons, by means of the threat or use of force or other forms of coercion, . . . for the purpose of exploitation.”<sup>16</sup> Under this definition, human trafficking requires: (1) an overt act by the trafficker; (2) a use of force or coercion; and (3) an exploitive purpose. A victim’s consent is irrelevant when coercive means have been employed.<sup>17</sup> As applied to the charges against Jeffrey Epstein, it was alleged that he routinely telephoned his victims to schedule the abusive encounters, satisfying the requirement of an overt act.<sup>18</sup> Epstein also used his tremendous wealth to coerce financially vulnerable victims.<sup>19</sup>

Two years after establishing this definition, the United Nations specified the meaning of sexual exploitation after reports of aid workers sexually abusing refugees in West Africa came to light.<sup>20</sup> The United Nations defined sexual exploitation as, “any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.”<sup>21</sup> The term is intended to be broadly construed, encompassing all situations in which an imbalance of power is used for sexual advancement.<sup>22</sup> Applying this definition to a recently adjudicated case, a California woman was sentenced to seven years imprisonment for trafficking a fifteen-year-old for sex in nearby

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<sup>15</sup> See G.A. Res. 55/25, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, at 2 (Nov. 15, 2000). [hereinafter *Trafficking Protocol*].

<sup>16</sup> Trafficking Protocol, *supra* note 15.

<sup>17</sup> *Id.*

<sup>18</sup> See Sealed Indictment, *supra* note 2.

<sup>19</sup> *Id.*

<sup>20</sup> See U.N. Secretary-General, *Investigation Into Sexual Exploitation of Refugees by Aid Workers in West Africa*, at 3, U.N. Doc. A/57/465 (Oct. 11, 2002) (United Nations peacekeepers and aid workers were reported to have been sexually exploiting women in three West African countries in exchange for “food [and] services that refugees are entitled to receive free of charge via the distribution system of international aid.”).

<sup>21</sup> U.N. Secretary-General, *Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, U.N. Doc. ST/SGB/2003/13, ¶ 1 (Oct. 9, 2003).

<sup>22</sup> *Id.*

states.<sup>23</sup> As a runaway, this victim was particularly vulnerable when she was abducted as a new avenue of making income for her trafficker. In this case, the trafficking did not use force or express coercion, satisfying the elements of sex trafficking with the imbalance of power that the trafficker held over the young, homeless victim. Using this international definition of sex trafficking, the United Nations classified countries based on their functional contributions to the trafficking industry.<sup>24</sup>

## B. Classifying Countries by Involvement

Within the global network of trafficking, the United Nations classifies countries as origin, transit, and destination regions based on roles they occupy in the procurement of trafficked victims.<sup>25</sup> These designations are not mutually exclusive, with most States classified under all three labels, in addition to domestic trafficking.<sup>26</sup>

Origin countries are those where victims are trafficked from, where are responsible for the supply of victims who are sexually exploited.<sup>27</sup> These regions are generally less developed, with areas of severe poverty and limited educational opportunities.<sup>28</sup> Traffickers take advantage of victims' vulnerable economic circumstances and areas with deficient law enforcement.<sup>29</sup> In these countries, it is not uncommon for parents to sell their children for money, or to send them elsewhere with the expectation that their children will have a

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<sup>23</sup> Nate Gartrell, *Woman Sentenced to Prison for Trafficking Teen*, MERCURY NEWS <https://www.mercurynews.com/2020/10/24/a-teen-girl-stranded-at-a-bus-stop-was-offered-help-by-a-stranger-for-the-next-month-a-man-and-woman-trafficked-her-across-ca-and-az/> (last updated October 26, 2020).

<sup>24</sup> U.N. Off. on Drugs and Crime, *Trafficking in Persons: Global Patterns*, at 102 (Apr. 2006).

<sup>25</sup> Emily James, *How Do Countries Contribute to Human Trafficking?*, DRESSEMBER (last visited September 23, 2021), <https://www.dressember.org/blog/how-do-countries-contribute-to-human-trafficking>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> See U.N. Off. of Drugs and Crime, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, at 74 (2008).

<sup>29</sup> James, *supra* note 25.

better life and more opportunity there.<sup>30</sup> Unfortunately, children in these situations are often funneled directly into sex slavery.<sup>31</sup> The highest volume of reported victims are trafficked from Russia,<sup>32</sup> Mexico, China,<sup>33</sup> Thailand, Brazil, and Columbia.<sup>34</sup>

Transit countries serve as the path connecting origin countries to destination countries.<sup>35</sup> Weak law enforcement and border control make these regions appealing to traffickers.<sup>36</sup> Governmental affiliation with organized crime has aided the transportation of victims.<sup>37</sup> Regions

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> E.g., Lauren McCarthy, *Beyond Corruption: An Assessment of Russian Law Enforcement's Fight Against Human Trafficking*, (Aug. 27, 2009). In 2013, the U.S. Trafficking in Persons Report lowered Russia from a Tier 2 status to a Tier 3 classification, meaning that the country does not fully comply with the Trafficking Victims Protection Act (TVPA)'s minimum standards and is not making significant efforts to do so. Russia's previous designation on the Tier 2 watch list indicated that although the country had not met the TVPA's minimum standards, it was making significant efforts to bring themselves into compliance with the standards. Since Russia's demotion, it has refused to provide federal trafficking statistics to the U.S. State Department in an attempt to frustrate the field's research capabilities. Fortunately, Russian non-governmental organizations have continued to cooperate with foreign agencies tracking this information. Beyond this flagrant disregard for global cooperation, Russia has been home to several prosecutions of high-level officials under sex trafficking allegations, including an official in the Ministry of Internal Affairs. U.S. DEP'T STATE, 2010 TRAFFICKING IN PERSONS REPORT (2010).

<sup>33</sup> E.g., U.S. DEP'T STATE, OFF. TO MONITOR AND COMBAT TRAFFICKING PERSONS, COUNTRY NARRATIVES: COUNTRIES A THROUGH F: TRAFFICKING IN PERSONS REPORT 2010: CHINA (TIER 2 WATCH LIST), June 2010. Chinese law prohibits luring others into prostitution, providing criminal sanctions only for "luring girls under the age of fourteen into prostitution," Criminal Law of the People's Republic of China, Ninth Amendment art. 359. The limiting language of the law leaves children between age fourteen and eighteen victim to a non-prosecutable offense. Further, Chinese law recognizes some forms of sex trafficking, while conflating child abduction for adoption with trafficking offenses, intertwining the two distinct crimes, responsible for increasing the difficulty of successful prosecutions.

<sup>34</sup> U.N. Off. on Drugs and Crime, *Trafficking in Persons: Global Patterns*, at 38 (Apr. 2006).

<sup>35</sup> See James, *supra* note 25.

<sup>36</sup> See U.N. OFF. ON DRUGS AND CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 2018, at 41, U.N. Sales No. E.19.IV.2 (2018).

<sup>37</sup> *Id.*

recovering from a civil war or natural disaster are particularly attractive to traffickers.<sup>38</sup> According to the U.S. State Department's 2016 *Trafficking in Persons Report*, "[a]rmed conflict amplifies the risks of human trafficking for vulnerable populations by increasing economic desperation, weakening rule of law, decreasing the availability of social services, and forcing people to flee for their safety."<sup>39</sup> In addition to these social factors, locational convenience is a major reason why transit countries exist. Pacific Islands and Middle Eastern countries are some of the most popular transit regions because they are positioned between major cities and provide easy access to neighboring continents.<sup>40</sup> The highest volume of reported victims are trafficked through Italy, Germany, Thailand, Burma, and Turkey.<sup>41</sup> As coastal regions, Italy and Germany serve are attractive to traffickers smuggling victims from eastern Europe to western European cities.<sup>42</sup> In contrast, Turkey is the main place of export for victims trafficked from Middle Eastern countries because of its centralized location.<sup>43</sup> The heightened demand for Asian victims relies on Thailand and Burma to ship victims to all corners of the world.<sup>44</sup>

Destination countries represent the final link of the trafficking chain, providing the consumer market for commercial sex.<sup>45</sup> These areas are on the receiving end of the trafficking scheme, generally boasting prosperous economic systems and a high return on investment for traffickers.<sup>46</sup> The highest volume of reported victims are brought to the Netherlands, Saudi Arabia, China, the United States, and Japan.<sup>47</sup> Americans are the primary contributors to sex tourism, visiting destination regions for commercial sex and stimulating the

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<sup>38</sup> U.S. DEP'T STATE, *TRAFFICKING IN PERSONS REPORT* 32 (2016).

<sup>39</sup> *Id.*

<sup>40</sup> U.N. Off. on Drugs and Crime, *Trafficking in Persons: Global Patterns*, at 38 (Apr. 2006).

<sup>41</sup> *Id.*

<sup>42</sup> *See id.*

<sup>43</sup> *See id.*

<sup>44</sup> *See id.*

<sup>45</sup> *See* James, *supra* note 25.

<sup>46</sup> James, *supra* note 25.

<sup>47</sup> U.N. Off. on Drugs and Crime, *supra* note 40.

trafficking economies there.<sup>48</sup> The legalization of commercial sex in the Netherlands allowed the region to cultivate significant demand for trafficking victims.<sup>49</sup> The widespread availability of brothels provides traffickers with an abundance of buyers for their victims, supporting the Netherlands' position as the global leader in registered trafficking victims.<sup>50</sup> The Global Centurion—a non-profit organization dedicated to reducing demand for commercial sexual exploitation—argues that “legalization implicitly supports the view that ‘men need sex and are entitled to have it even if they have to purchase a woman’s body’ . . . [A]s a consequence of legalization, commercial sexual exploitation is normalized, and demand is increased.”<sup>51</sup> This theory is reflected in the United States as well. Prostitution is legal only in Nevada which incidentally also bears the highest rates of sex trafficking in the country.<sup>52</sup> <sup>53</sup> As compared with Mississippi—which has the second highest rate of trafficking—Nevada reports nearly *twice* as many victims per capita, strengthening the correlation between legal prostitution and sex trafficking.<sup>54</sup>

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<sup>48</sup> See U.S. DEP'T OF THE STATE, TRAFFICKING IN PERSONS REPORT 97 (2019) (“In tourist regions, foreign child sex tourists, primarily from the United States, exploit child sex trafficking victims.”).

<sup>49</sup> Bondi, *supra* note 12.

<sup>50</sup> *Id.*; Report on the Progress Made in the Fight Against Trafficking in Human Beings (2016), at 4, COM (2016) 267 final (May 19, 2016); Eurostat, *Trafficking in Human Beings*, at 23 (2015). In 2010-2012, the Netherlands had the highest rate for registered trafficking victims, reporting 7.9 victims per 100,000 inhabitants.

<sup>51</sup> Laura J. Lederer, *Demand Hub Sex Trafficking*, GLOBAL CENTURION, <https://www.globalcenturion.org/about/publications/demand-hub-sex-trafficking> (last visited September, 23 2021).

<sup>52</sup> World Population Review, *Human Trafficking Statistics by State 2021*, <https://worldpopulationreview.com/state-rankings/human-trafficking-statistics-by-state> (last visited September 23, 2021).

<sup>53</sup> It is estimated that about one-in-five American men have purchased commercial sex at least once in their lifetime. MICHAEL SHIVELY, PH.D. ET AL., FINAL REPORT ON THE EVALUATION OF THE FIRST OFFENDER PROSTITUTION PROGRAM 10 (2008). There are 8,248 reported escort services and illicit massage businesses reported throughout the United States. THE U.S. NATIONAL HUMAN TRAFFICKING HOTLINE, DATA REPORT 3 (2019).

<sup>54</sup> World Population Review, *supra* note 52 (Nevada reports a trafficking rate of 7.50 per 100k, while Mississippi reports a rate of 4.99 per 100k).

While it is widely assumed that trafficking must be intercontinental, the reality is that most trafficking flows between neighboring countries, often within the same subregion.<sup>55</sup> Since 2010, the share of victims trafficked domestically has increased from 27% of all trafficking cases to 58% of reported cases.<sup>56</sup> <sup>57</sup> In regions like Cambodia and Sri Lanka, where the economy is heavily reliant on a prosperous tourist industry, the government often turns a blind eye to the prevalence of trafficking within its borders.<sup>58</sup> Considering its global reach and intercontinental structure, the sex trafficking industry is too pervasive for countries to battle on their own, requiring an effective intergovernmental campaign for its eradication.

### III. UNITED NATIONS BACKGROUND

#### A. Foundation

With 193 of the 195 existing sovereign States in its membership,<sup>59</sup> the United Nations is the largest and most familiar intergovernmental organization.<sup>60</sup> After World War II, the organization was founded “to maintain international peace and security,” creating an arena for international arbitration and bringing together representatives from Member States for international cooperation.<sup>61</sup> Outside of its peacekeeping purpose, the United

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<sup>55</sup> See *Global Report on Trafficking in Persons 2018*, *supra* note 36, at 9.

<sup>56</sup> *Id.* at 41.

<sup>57</sup> Uighur women have faced ethnically-motivated prosecution, detained in Chinese camps where they become victim to a trafficking system of “rape, sexual humiliation . . . [and being] forced to undergo abortions, long-term birth control measures, and sterilizations.” Sawyer Sourbeer, *Starvation and Torture in Uighur Detention Camps*, JLIA BLOG (Feb. 26, 2021), <https://sites.psu.edu/jlia/starvation-and-torture-in-uighur-detention-camps/>.

<sup>58</sup> See Lederer, *supra* note 51.

<sup>59</sup> According to the U.S. State Department, there are 195 independent sovereignties in the world. BUREAU OF INTELLIGENCE AND RESEARCH, INDEPENDENT STATES IN THE WORLD FACT SHEET (2021). Not in United Nations membership are the State of Palestine and the Holy See (Vatican City). See G.A. Res. 67/19 (Nov. 29, 2012); see G.A. Res. 58/314 (Apr. 6, 1964).

<sup>60</sup> Evers, *supra* note 14.

<sup>61</sup> United Nations, What We Do, <https://www.un.org/en/our-work> (last visited September 23, 2021).

Nations is the center for promoting international respect for human rights and fundamental freedoms.<sup>62</sup> In its founding Charter, the United Nations uses the phrase “human rights” on seven occasions, implying their importance to the organization’s purpose.<sup>63</sup> In 1948, three years after the United Nations was created, it published the *Universal Declaration of Human Rights* as the standard for fundamental human rights which warrant international protection.<sup>64</sup> The United Nations welcomes “all peace-loving nations which accept the obligations of the Charter.”<sup>65</sup> When joining the organization, States agree to uphold the United Nations’ mission and act in furtherance of its purpose.<sup>66</sup> The Charter provides for membership suspension or expulsion when violations are persistent.<sup>67</sup>

Six principal organs carry out the functions of the United Nations: General Assembly, Security Council, Economic & Social Council, Trusteeship Council, International Court of Justice, and Secretariat.<sup>68</sup> Each of these organs—with the exception of the Trusteeship Council—oversee various subsidiary bodies,

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<sup>62</sup> U.N. Charter art. 1 ¶1.

<sup>63</sup> See U.N. Charter arts. 1–111.

<sup>64</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

<sup>65</sup> BARRY E. CARTER ET AL., *INTERNATIONAL LAW* 511 (Wolters Kluwer, 6th ed. 2018). The Charter of the United Nations is considered an international treaty, and is therefore binding on those who accept it. In addition to establishing United Nations organs and procedures, the Charter sets out the obligations of its members: to protect succeeding generations from war, to protect fundamental human rights, to establish conditions promoting respect for treaty obligations, and to promote social progress towards a better standard of freedom. U.N. Charter art. 1.

<sup>66</sup> See U.N. Charter art. 2.

<sup>67</sup> *Id.* at arts. 5–6.

<sup>68</sup> See U.N. Charter arts. 9–99.

<sup>69</sup> The Trusteeship Council was created to promote the advancement of newly independent regions. See United Nations, Trusteeship Council, <https://www.un.org/en/sections/about-un/trusteeship-council/> (last visited September 23, 2021). As the supervising entity for trust territories, the Council led post-war regions to self-government and economic security. Trust territories are regions that were controlled by Imperial Germany and the Ottoman Empire prior to World War I that became sovereigns under the League of Nations mandate. The Council suspended its operations after the last trust territory gained independence in 1994.

commissions, programs, and offices that perform the tasks essential to the organization's functionality.<sup>70</sup> The General Assembly serves as a forum for multilateral negotiation and policymaking, similar in nature to the United States Congress.<sup>71</sup> The Security Council is responsible for maintaining international peace and security, investigating international disputes, and authorizing actions to address threats to international peace.<sup>72</sup> The Economic & Social Council is the research organ of the United Nations, facilitating intergovernmental discussions into significant global issues like poverty and climate change, as well as conducting studies into international economic, social, cultural, educational, and health concerns.<sup>73</sup> The International Court of Justice is the principal judiciary, hearing legal disputes between Member States and applying international law.<sup>74</sup> Per the Charter, States are bound to comply with the Court's decisions.<sup>75</sup> Failure to perform in accordance with the Court's decisions may result in disciplinary action enacted by the Security Council.<sup>76</sup> Finally, the Secretariat carries out the day-to-day functions of the United Nations, and is made up of a Secretary-General and thousands of international staff.<sup>77</sup> The Secretary-General serves as the chief administrative officer for all United Nations meetings, and is responsible for introducing any concerns of international peace and security to the General Assembly, as well as acting as the spokesperson for the United Nations.<sup>78</sup> While it has been criticized for its insufficient response to global issues, clearly the United Nations organs have numerous tools at their disposal which should be better utilized to suppress the sex trafficking industry.<sup>79</sup>

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<sup>70</sup> BARRY E. CARTER ET AL., INTERNATIONAL LAW 518 (Wolters Kluwer, 6th ed. 2018).

<sup>71</sup> U.N. Charter arts. 10–17.

<sup>72</sup> *Id.* at 24–26.

<sup>73</sup> *Id.* at 62–66.

<sup>74</sup> *Id.* at 92.

<sup>75</sup> *Id.* at 94, ¶ 1.

<sup>76</sup> *See id.* at 94, ¶ 2.

<sup>77</sup> *See* U.N. Charter art. 97.

<sup>78</sup> *See id.* at 98–99.

<sup>79</sup> Stephanie Morrow, *What Kind of Power Does the U.N. Wield Internationally?*, LEGALZOOM (Oct. 27, 2016), <https://www.legalzoom.com/articles/what-kind-of-power-does-the-un-wield-internationally>.

## B. Law-Making Authority

In contrast to adopted resolutions, treaties impose binding obligations on the States that ratify them.<sup>80</sup> Within the context of international law, a State's ratification indicates its consent to be legally bound to the treaty's obligations.<sup>81</sup> Under Article 26 of the Vienna Convention, "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith."<sup>82</sup> Once a State ratifies the treaty, it must take the necessary steps to become compliant with the treaty obligations.<sup>83</sup> Treaties are enforced using dispute resolution methods which are enumerated in their provisions, such as reporting requirements or through independent supervisory committees.<sup>84</sup> Alternatively, compliance with treaty obligations can be enforced by the International Court of Justice, the International Criminal Court, or the European Court of Human Rights.<sup>85</sup>

Outside of obligations created by treaties, United Nations' Member States must also abide by international law, including those principles common to all major legal systems and the decisions of international tribunals.<sup>86</sup> Of particular importance are *jus cogens* norms, a "peremptory norm of international law . . . accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same

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<sup>80</sup> See Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

<sup>81</sup> U.N. OFF. OF LEGAL AFFS. TREATY HANDBOOK, at 9, U.N. Sales No. E.12.V.1 (2012).

<sup>82</sup> Vienna Convention, *supra* note 80, at Art. 26.

<sup>83</sup> *Id.* at Art. 1(b) (establishing that ratification is an international act whereby a State consents to be bound to the treaty obligations).

<sup>84</sup> 2010 Treaty Event: Towards Universal Participation and Implementation, *Fact Sheet #5*, at 2 (2010); see, e.g., G.A. Res. 317 (IV), Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, at Art. 21 (Dec. 2, 1949).

<sup>85</sup> U.N. Office of the High Commissioner for Human Rights, Fact Sheet No. 36, Human Rights and Human Trafficking 55 (2014), [https://www.ohchr.org/Documents/Publications/FS36\\_en.pdf](https://www.ohchr.org/Documents/Publications/FS36_en.pdf).

<sup>86</sup> OHCHR, Fact Sheet No. 36, at 9.

character.”<sup>87</sup> These internationally accepted rules bar genocide, slavery, torture, crimes against humanity, maritime piracy, and apartheid.<sup>88</sup> Unlike treaty obligations that require consent to be bound, *jus cogens* obligations are wholly recognized by the international community as inviolable.<sup>89</sup> “Because *jus cogens* norms do not depend solely on the consent of States for their binding force, ‘they enjoy the highest status within international law.’”<sup>90</sup>

United Nations resolutions are considered “soft law,” meaning that they do not carry binding obligations, instead serving as “an expression of commitments that are not themselves legally binding.”<sup>91</sup> The influential power of these resolutions is derived from the United Nations’ position as the largest international organization, holding out its decisions as “the moral authority of the world community.”<sup>92</sup> An additional means of persuasion is created by resolution provisions which provide for financial and technical support to countries undertaking to uphold its standards.<sup>93</sup> Economic incentives mobilize a resolution’s goals, while reliance on such financial support provides an opportunity to compel action with threats of revocation. These law-making authorities enabled the United Nations to address human rights violations, transcontinental organized crime, and various forms of trafficking through its Member States.

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<sup>87</sup> Vienna Convention, *supra* note 80, at Art. 53; *see, e.g.*, Evan J. Criddle & Evan Fox-Decent, *A Fiduciary Theory of Jus Cogens*, 34 YALE J. INT’L L. 331, 331 (2009) (explaining that “jus cogens . . . include[s], at a minimum, the prohibitions against genocide; slavery or slave trade; murder or disappearance of individuals; torture or other cruel, inhuman, or degrading treatment or punishment; prolonged arbitrary detention. . . .”).

<sup>88</sup> Evan J. Criddle & Evan Fox-Decent, *A Fiduciary Theory of Jus Cogens*, 34 YALE J. INT’L L. 331, 333 (2009)

<sup>89</sup> Vienna Convention, *supra* note 80.

<sup>90</sup> *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 715 (9<sup>th</sup> Cir. 1992) (internal citation omitted).

<sup>91</sup> Barry, *supra* note 70, at 157.

<sup>92</sup> *Id.* at 513.

<sup>93</sup> *See* U.N. Off. of Drugs and Crime, Global Programme against Trafficking, <https://www.unodc.org/middleeastandnorthafrica/en/project-profiles/glot59.html>.

## IV. UNITED NATIONS' TOOLS FOR ENFORCEMENT

Widely criticized as effectively powerless, the United Nations has historically under-utilized its tools of international influence.<sup>94</sup> Its Charter vested the General Assembly with authority to suspend and expel members violating the organization's principles, as recommended by the Security Council.<sup>95</sup> Despite numerous violations by Member States which surely warranted some form of disciplinary action, the General Assembly has never utilized its authority under this provision.<sup>96</sup> Entrusted with substantial power to influence, the Security Council may use a variety of measures to protect international peace and security, including trade sanctions, travel bans, arms embargoes, and military intervention.<sup>97</sup> Additionally, the Security Council has the authority to establish subsidiary bodies for the purpose of carrying out its functions, similar to the agencies created by the U.S. Congress.<sup>98</sup> Significantly, this provision has been used to establish ad hoc tribunals for criminal prosecutions.<sup>99</sup> Despite the various enforcement measures at its disposal, the Security Council has not managed to garner enough support to initiate measures addressing global sex trafficking.<sup>100</sup>

In accordance with a need for penal action against traffickers, the International Law Commission recently adopted and submitted to the General Assembly the *Prevention and Punishment of Crimes Against Humanity to the General Assembly*.<sup>101</sup> The document proposes to define "crimes against humanity" as any murder, enslavement, torture, sexual violence, etc. "committed as part of a widespread or system attack directed against any civilian population."<sup>102</sup> Additionally, adoption of

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<sup>94</sup> Stephanie Morrow, *What Kind of Power Does the U.N. Wield Internationally?*, LEGALZOOM (Oct. 27, 2016), <https://www.legalzoom.com/articles/what-kind-of-power-does-the-un-wield-internationally>.

<sup>95</sup> U.N. Charter art. 5–6.

<sup>96</sup> Barry, *supra* note 70.

<sup>97</sup> U.N. Charter art. 39–51.

<sup>98</sup> U.N. Charter art. 29.

<sup>99</sup> S.C. Res. 827 (May 25, 1993).

<sup>100</sup> OHCHR, U.N. Expert Calls on Security Council to Address Trafficking as Human Rights Issue, U.N. Doc. A/73/171 (July 17, 2018).

<sup>101</sup> Int'l L. Comm'n, *Prevention and Punishment of Crimes Against Humanity*, U.N. Doc. A/CN.4/L.935 (2019).

<sup>102</sup> *Id.*

this document assigns stringent prosecutorial obligations onto its parties, prohibiting the assertion of *any* exception to its requirements including the existence of ongoing armed conflicts or public emergencies.<sup>103</sup> Implementing widespread prosecution measures should mitigate the insufficiency of legal recourse that makes transit and destination regions so attractive to traffickers. Unfortunately, like other United Nations treaties, the *Prevention and Punishment* treaty does not prescribe enforcement procedures for parties not in compliance with the prosecutorial obligations.<sup>104</sup> To be effective, the United Nations needs to look at the parties to this treaty—more so than other treaties—to determine where its provisions have yet to be implemented, and enforce the obligations.

#### A. Sanctions

Any external actions by the United Nations are taken under the instruction of the Security Council, which is responsible for maintaining international peace and security.<sup>105</sup> The Security Council has the sole authority to determine the existence of a threat to international peace, evaluating such allegations by investigating international disputes.<sup>106</sup> Additionally, it controls the United Nations' external response to a recognized threat to peace, empowered with a variety of measures under Chapter VII of the Charter for the protection of international security.<sup>107</sup> Of these measures, the Council is authorized to impose trade sanctions, travel bans, and arms embargoes, as well as to create *ad hoc* tribunals for violations of international law and to initiate military intervention.<sup>108</sup> Historically, the Security Council's response to sex trafficking has been limited to public condemnation, an area of contention for its constituents who rely on the organization for protection. For example, when the Council met in 2017 to discuss trafficking in Libya, Spain proposed that the United Nations take the lead on anti-trafficking initiatives rather than

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<sup>103</sup> *Id.* at art. 3.

<sup>104</sup> Int'l L. Comm'n, *supra* note 101.

<sup>105</sup> U.N. Charter art. 24-26.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*; *see* U.N. Charter art. 39-51.

<sup>108</sup> U.N. Charter art. 39-51.

relying on the web of policies countries have enacted themselves.<sup>109</sup> In its responding resolution, the Council reiterated its condemnation for trafficking, but took no further action.<sup>110</sup> To ensure international peace and security for victims of trafficking, the Security Council must initiate sanctions against States committing blatant violations of international law.

### 1. Trade & Economic Embargoes

The Security Council responded to Iraq's invasion and occupation of Kuwait in 1990 by initiating mandatory arms and economic sanctions against Iraq.<sup>111</sup> The resolution called States to halt all trade with Iraq and Kuwait, denying them any military support.<sup>112</sup> It also required that States withhold all financial support to the governments and commercial entities in both Iraq and Kuwait to deprive invading forces of resources in hope of restoring Kuwait's sovereignty.<sup>113</sup> Similar sanctions were later executed in 2006 as well, responding to the Iranian nuclear program.<sup>114</sup> The Security Council directed States to refrain from all trade with Iran, simultaneously freezing any financial assets held by Iranian individuals engaged in nuclear activities.<sup>115</sup>

Where a State continuously fails to adequately respond to its United Nations obligations, trade sanctions may encourage compliance. When the Government of South Africa repeatedly rejected appeals by the Secretary-General to discontinue the apartheid system beginning in 1967, the Security Council instituted an arms embargo and divestment campaign against the country, requiring mandatory participation by Member States.<sup>116</sup> As a result, the South African government became isolated from the international

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<sup>109</sup> Press Release, Security Council, Security Council Reiterates its Condemnation of Trafficking in Persons, Unanimously Adopting Resolution 2388 (2017), U.N. Press Release SC/13081 (Nov. 21, 2017).

<sup>110</sup> S.C. Res. 2388 (Nov. 21, 2017).

<sup>111</sup> S.C. Res. 661 (Aug. 6, 1990).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> S.C. Res. 1737 (Dec. 27, 2006).

<sup>115</sup> *Id.*

<sup>116</sup> S.C. Res. 418 (Nov. 4, 1977).

community and felt the weight of its economic instability, providing support for the anti-apartheid movement in demanding change.<sup>117</sup> South Africa complied with the demands of the United Nations by establishing its first racially-inclusive government under President Nelson Mandela.<sup>118</sup> Once their objectives were accomplished, the sanctions were lifted.<sup>119</sup> These same sanctions could serve to encourage implementation of effective anti-trafficking policies in States whose citizens are identified as victims of sex trafficking elsewhere. For example, most trafficking victims detected outside of their region of citizenship are from East Asian countries: China, Cambodia, Indonesia, Japan, Mongolia, South Korea, Thailand and Vietnam.<sup>120</sup> Utilizing trade restraints and economic embargoes could provide the United Nations with the leverage necessary to induce State compliance with treaty obligations.

## 2. Criminal Prosecution

The Security Council is also authorized to establish subsidiary bodies as necessary to carry out its prescribed functions.<sup>121</sup> Among the forms of subsidiary bodies the Council has established are *ad hoc* tribunals for prosecuting criminal violations of international law.<sup>122</sup> Historically, the Council has only used this authority on three occasions: International Tribunal for the former Yugoslavia (ICTY); International Criminal Tribunal for Rwanda (ICTR); and Special Court for Sierra Leone.<sup>123</sup>

The ICTY was formed in response to the Yugoslav Wars and was the first international tribunal created since the Nuremberg trials, which had famously prosecuted Nazi war criminals.<sup>124</sup> The Yugoslav

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<sup>117</sup> See Philip I. Levy, *Sanctions on South Africa: What Did They Do?*, CENTER DISCUSSION PAPER NO. 796 (1999).

<sup>118</sup> See S.C. Res. 919 (May 25, 1994).

<sup>119</sup> See *id.*

<sup>120</sup> See TRAFFICKING IN PERSONS 2018, *supra* note 36, at 8 & 18.

<sup>121</sup> U.N. Charter art. 29.

<sup>122</sup> S.C. Res. 1966 (Dec. 22, 2010).

<sup>123</sup> S.C. Res. 827 (May 25, 1993).

<sup>124</sup> Emma Daly, *Beyond Justice: How the Yugoslav Tribunal Made History*, HUMAN RIGHTS WATCH (Dec. 19, 2017),

Wars were a series of interrelated ethnically-fueled conflicts which resulted in over 130,000 deaths.<sup>125</sup> The United Nations was able to create this tribunal under the jurisdiction of genocides as *jus cogens* violations, allowing the ICTY to prosecute individuals for various crimes against humanity, including ethnic cleansing and war rape.<sup>126</sup> In the first case determining the scope of enslavement as a crime against humanity for sexual exploitation, *Prosecutor v. Kunarac, Vukovic and Kovac*, the Court explained that “whether a particular phenomenon is a form of enslavement will depend on the operation of the factors . . . [including] the ‘control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, . . . subjection to cruel treatment and abuse, [and] control of sexuality.’”<sup>127</sup> The three soldiers prosecuted in *Kunarac, Vukovic and Kovac* were sentenced to a cumulative sixty-year imprisonment for various crimes against humanity, including the rape and sale of Muslim women.<sup>128</sup>

A year later, the United Nations established the ICTR in response to a genocide responsible for the lives of 800,000 Rwandan people in another ethnic-based civil war.<sup>129</sup> During its initial year of prosecutions, the ICTR brought justice to 85 individuals, most significantly interim Prime Minister, Jean Kambanda.<sup>130</sup> Kambanda plead guilty to charges of genocide, making history as the first Head of a Government to do so before an international criminal tribunal.<sup>131</sup> Also noteworthy is the conviction of Jean-Paul Akayesu, mayor of Taba—a city where thousands of Tutsi victims were tortured as part

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<https://www.hrw.org/news/2017/12/19/beyond-justice-how-yugoslav-tribunal-made-history>.

<sup>125</sup> *Id.*

<sup>126</sup> S.C. Rep. of the Int’l Tribunal for the Former Yugoslavia, seventy-second session, A/72/266-S/2017/662 (Aug. 1, 2017).

<sup>127</sup> *Prosecutor v. Kunarac, Vukovic and Kovac*, ICTY-96-23 and ICTY-96-23/1, Case Information Sheet (June 12, 2002).

<sup>128</sup> *Id.*

<sup>129</sup> Michael P. Scharf, *Statute of the International Criminal Tribunal for Rwanda*, accessed on Feb. 10, 2021 from the website of the United Nations Audiovisual Library of International Law, <http://www.un.org/law/avl>.

<sup>130</sup> *Prosecutor v. Jean Kambanda*, ICTR 97-23-S, Judgement (Sept 4, 1998).

<sup>131</sup> *See id.*

of the genocide.<sup>132</sup> The conviction of Akayesu marked the first time in history that rape was acknowledged in international law as a component of genocide, stating that “sexual assault constitutes genocide in the same way as any other act as long as [it was] committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such.”<sup>133</sup>

These tribunals serve as an example of a measure available to the Security Council to hold individuals accountable for their participation in sex trafficking. In response to the discovery that Jeffrey Epstein had been facilitating a sex trafficking ring which targeted minors and potentially included intercontinental involvement, an international criminal tribunal in the United States could serve to bring to justice those who are not within its jurisdiction. With allegations against individuals of various citizenship—including Nadia Marcinkova, Slovakia;<sup>134</sup> Jean-Luc Brunel, France;<sup>135</sup> and Prince Andrew, Duke of York, United Kingdom—victims have been denied

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<sup>132</sup> Prosecutor v. Jean-Paul Akayesu, ICTR-96-4-T, Judgement (Sept. 2, 2008).

<sup>133</sup> Jean-Paul Akayesu, ICTR-96-4-T, at ¶ 731.

<sup>134</sup> Nadia Marcinkova is a former employee of Jeffrey Epstein who worked as a pilot for his private plane, nicknamed the “Lolita Express.” Kate Shelby, *Who is Nadia Marcinkova, the Model-Turned-Pilot from Epstein Flight Logs?*, N.Y. POST (Sept. 21, 2020), <https://nypost.com/article/nadia-marcinkova-jeffrey-epstein-flight-logs/>. Marcinkova was identified as a “potential co-conspirator” in Jeffrey Epstein’s non-prosecution agreement from 2007, one of four named accomplices who were given immunity from charges of solicitation and procuring a minor for prostitution. *Doe v. United States*, No. 9:08-cv-80736-KAM, 2016 WL 8997518 (S.D. Fla., Feb. 10, 2016). In written testimony from one of Epstein’s victims, Marcinkova is explicitly named as a participant in the sexual abuse of several minors. *Id.*

<sup>135</sup> Jean-Luc Brunel is a former modeling agent who is accused of organizing the transportation and accommodations for young girls on behalf of Jeffrey Epstein, as well as sexually assaulting minor victims. Michele Dargan, *Lawsuit Documents Link Jeffrey Epstein to Modeling Agency Owner Jean Luc Brunel*, PALM BEACH DAILY NEWS (Apr. 1, 2012), <https://www.palmbeachdailynews.com/story/news/2012/04/01/lawsuit-documents-link-jeffrey-epstein/9662207007/1>, 2012). He is being prosecuted in French court, however the allegations against him have come from underage girls from all over the world who were procured for Epstein under the promise of modeling contracts. *Id.*

an opportunity for justice for the crimes they suffered at the hands of these international actors.<sup>136</sup>

## B. Security Council Constraints

Composed of five permanent members—China, France, Russia, the United Kingdom, and the United States—and ten two-year termed members, actions by the Security Council may only be taken with a nine-vote majority and the acquiescence of the five permanent members.<sup>137</sup> By vesting permanent members with a right to veto, these five countries are given significant power to collectively bar approval of Security Council actions. With each of these nations acting in its own interests, the Council has struggled to successfully respond to arising global issues.<sup>138</sup> When deciding to vest permanent members with veto power, the Charter drafters reasoned that these five nations were pivotal in founding the United Nations and therefore should embody an important role in maintaining international peace.<sup>139</sup> However, the world now looks very different from when the Charter was established in 1945; widespread humanitarian crises have arisen today that were not foreseen at the United Nations' inception. To allow the Security Council to effectively carry out its duties, membership reform is necessary. At a minimum, the right to veto should be eliminated from the Charter, requiring only a majority vote for approval. While the five permanent countries were critical for establishing the United Nations, more than seven decades have passed since, bringing with them unanticipated challenges. By leveling the voting power between all fifteen Security Council members, the body should be able to take decisive action with the support of the majority.

Beyond amending the Charter to equalize the voting process, the Security Council should revise its permanent members to

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<sup>136</sup> See Joshua Partlow, *The Layers of Jeffrey Epstein's Connections*, WASH. POST (Aug. 21, 2019).

<sup>137</sup> U.N. Charter Art. 27, ¶ 3.

<sup>138</sup> U.N. General Assembly, *Report of the Open-Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council*, U.N. Doc. A/58/47(SUPP), at 13 (2004).

<sup>139</sup> CFR Staff, *The U.N. Security Council*, COUNCIL ON FOREIGN RELATIONS (Sept. 16, 2020), <https://www.cfr.org/background/un-security-council>.

encompass one nation from each continent.<sup>140</sup> South America, Australia, and Africa remain unrepresented in the permanent positions, yet France and the United Kingdom both hold permanent seats while situated less than 1,000 miles apart.<sup>141</sup> To better balance the Security Council, the United Nations should amend its Charter to replace France and the United Kingdom with Brazil and Australia. Furthermore, the Security Council would benefit from the addition of Iceland as a sixth permanent member to gain a new perspective from the most gender-equal country, awarded to Iceland for the eleventh consecutive year.<sup>142</sup> Finally, as proposed by the Ezulwini Consensus,<sup>143</sup> the Security Council should include an African country, like Egypt, as a seventh permanent member to bring forward the interests of its continent.<sup>144</sup> These reformations would provide seven diverse countries with consistent representation, leaving eight seats available for elected, termed membership. By redistributing voting authority and reorganizing which States are permanently represented, the Security Council would have a more inclusive perspective as an international actor and would be better positioned to use the tools it is vested with for the maintenance of international peace and security.

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<sup>140</sup> U.N. Charter Art. 27, ¶ 3.

<sup>141</sup> *Id.*

<sup>142</sup> World Economic Forum, *Global Gender Gap Report 2020*, 6 (Dec. 17, 2019).

<sup>143</sup> The Ezulwini Consensus is a United Nations proposal created by the African Union in 2005. The proposal emphasizes the international dangers of the continuing HIV/AIDS issue in Africa, highlights the relationship between the worsening conditions of poverty and the degradation of the environment, and calls for structural reform to better represent the needs of African countries. African Union, *The Common African Position on the Proposed Reform of the United Nations: The Ezulwini Consensus*, Ext/EX.CL/2 (VII) (March 8, 2005).

<sup>144</sup> Egypt finds itself at the intercepting point of the most developed and largest population of African countries. According to the *Human Development Report 2020: The Next Frontier*, Egypt is the eighth most developed nation in Africa. U.N. Development Program, at 17, U.N. Sales No. E.21.III.B.1 (2020). With the third largest population in Africa, Egypt boasts over 102 million people, behind Nigeria and Ethiopia. *African Countries by Population (2022)*, WORLDOMETER (last visited Apr. 14, 2022).

## V. POTENTIAL INITIATIVES

## A. Cyber Initiatives

With the emergence of the worldwide web, sex trafficking has transitioned from an underground enterprise to an online marketplace. With the availability of adult websites, sex trafficking has become more accessible than ever. According to a report by Shared Hope International, pornography is the primary gateway to purchasing humans for commercial sex.<sup>145</sup> Porn websites serve as an advertisement for trafficking: the product being sexual exploitation of victims, some of whom are trafficked for the sole purpose to produce pornography.<sup>146</sup> Beyond the market created by it, the personal gratification derived from watching pornography can create a drug-like addiction which perverts the perception of sex and conditions the mind to expect access to sexual fulfillment *on demand*.<sup>147</sup>

To preliminarily address global sex trafficking, the General Assembly adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (“Trafficking Protocol”).<sup>148</sup> It requires that parties “exercise due diligence to prevent trafficking in persons, to investigate and punish the perpetrators,” and protect and assist the victims thereof.<sup>149</sup> Specifically, it calls for widespread criminalization of trafficking, the creation of security measures to detect trafficking, and international cooperation toward the

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<sup>145</sup> Shared Hope Int’l, *Demand. A Comparative Examination of Sex Tourism and Trafficking in Jamaica, Japan, the Netherlands, and the United States* (2011). According to Merriam-Webster, pornography or porn is defined as “material (such as books or a photograph) that depicts erotic behavior and is intended to cause sexual excitement.” Merriam-Webster.com Dictionary, *Pornography*, <https://www.merriam-webster.com/dictionary/pornography> (last visited November 21, 2021).

<sup>146</sup> Luke Gilkerson, *My Husband Sold Me Into Porn*, COVENANT EYES (June 29, 2011), <https://www.covenanteyes.com/2011/06/29/my-husband-sold-me-into-porn/>.

<sup>147</sup> WILLIAM M. STRUTHERS, WIRED FOR INTIMACY: HOW PORNOGRAPHY HIJACKS THE MALE BRAIN 19 (2009).

<sup>148</sup> See Trafficking Protocol, *supra* note 15, at 32.

<sup>149</sup> Human Rights Council Res. 11/3, U.N. Doc. A/HRC/11/3, at 1 (June 17, 2009).

suppression of trafficking in persons.<sup>150</sup> Included in this supplemental treaty are provisions to protect victims from perpetrators' retaliation or intimidation, to provide victims a right for restitution or compensation, and to prohibit the deportation of victims in specific circumstances.<sup>151</sup> From 2008 to 2018, the Global Programme against Trafficking developed training materials for law enforcement, legislators, judges, which provided tools for prevention, like data collection and victim protection.<sup>152</sup> Outside of these implementation support materials, the agreement does not include enforcement procedures nor any reporting requirements.

While the Trafficking Protocol's objectives are sincere and its measures ought to be effective, its fatality rests in the State parties' failure to fulfill its obligations and the freedom of non-parties to continue trafficking practices. Of the 195 countries across the globe, 178 countries are parties to the Trafficking Protocol.<sup>153</sup> Its success is significantly impeded by some of the worst afflicted regions—Iran, the Republic of the Congo, and Somalia—remaining unbound to the Trafficking Protocol.<sup>154</sup> Fortunately, given that the majority of countries have accepted the Trafficking Protocol, the United Nations could leverage the remaining States to adopt the Protocol using trade embargoes and other sanctions vested in the Security Council. Given that these highly-affected regions rely heavily on foreign aid, suspending that income would undoubtedly encourage adoption of the Trafficking Protocol. Worldwide acceptance would ensure criminalization of trafficking in every country, taking the first step towards its eradication. Beyond expanding the agreement's parties, its effective implementation has not yet been achieved in many States, as evidenced by a significant presence of trafficking victims. To better achieve the Protocol's purposes, States with insufficient counter-

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<sup>150</sup> See Trafficking Protocol, *supra* note 15, at 32.

<sup>151</sup> *Id.*

<sup>152</sup> The Global Programme against Trafficking is an administrative body created to “support Member States in preventing and combating human trafficking by promoting the ratification and implementation” of the Trafficking Protocol. U.N. Centre for Int'l Crime Prevention & U.N. Interregional Crime and Justice Research Inst., *Global Programme Against Trafficking in Human Beings: An Outline for Action* (1999).

<sup>153</sup> Trafficking Protocol, *supra* note 15.

<sup>154</sup> U.S. DEP'T OF THE STATE, TRAFFICKING IN PERSONS REPORT 38 (2019).

trafficking measures should be subject to sanctions until its obligations are met. Without worldwide participation in the prosecution of traffickers, perpetrators are able continue their heinous abuse in safe haven countries, supporting the industry's international survival.

To combat internet use for trafficking, the United Nations should adopt a resolution to add requirements for cyber initiatives to protect young internet users as part of the Trafficking Protocol. First, websites providing access to porn should have heightened regulations to ensure that the only available sexual content is created and published with the consent of the parties involved. An example of a sex work-friendly business model is the newly popular website OnlyFans, a platform where creators sell photo, video, and textual content to followers for a monthly subscription fee.<sup>155</sup> The website recently introduced a verification process requiring account holders to present a form of identification alongside a then-taken photo of oneself.<sup>156</sup> By documenting creators' identities, OnlyFans can resolve claims of content sold without appropriate consent, ensuring that creators are only selling their own content. This business model supports women who chose sex work for employment, stimulates the supply of porn created lawfully, and establishes clear boundaries to exclude minors from buying or selling via the website. In contrast, websites like Pornhub have been widely criticized for hosting nonconsensual content and ineffective responses to victims of these incidents.<sup>157</sup> By limiting the availability of on-demand sexual content to consented activity alone, traffickers will lose their platform for advertising victims and selling videos of their abuse.

The internet allowed child pornography to grow in popularity, increasing the demand for child sex trafficking.<sup>158</sup> In November of

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<sup>155</sup> See ONLYFANS, *How It Works*, <https://onlyfans.com/how> (last visited Apr. 14, 2022).

<sup>156</sup> See *id.*

<sup>157</sup> See Ana Valens, *Pornhub Pulls Girls Do Porn Videos Amid Sex Trafficking Charges*, THE DAILY DOT. (Oct 15, 2019), <https://www.dailydot.com/irl/pornhub-girls-do-porn-federal-charges/>.

<sup>158</sup> See Francis Fortin & Jean Proulx, *Sexual Interests of Child Sexual Exploitation Material (CSEM) Consumers: Four Patterns of Severity Over Time*, 63(1) INT'L J OF OFFENDER THERAPY & COMPARATIVE CRIMINOLOGY 55, 55–57 (2018).

2019, hundreds were arrested in connection with a South Korean-based website selling child pornography in exchange for bitcoin.<sup>159</sup> From the discovery of this online forum, law enforcement was able to rescue over twenty-three underage victims around the world who were being actively abused by the website's users.<sup>160</sup> Traffickers also utilize the internet to recruit new victims.<sup>161</sup> Using social media, dating websites, multiplayer videogames, and chatrooms, predators will engage with young users to cultivate a relationship based on a false sense of trust.<sup>162</sup> It is common for victims to be lured into a trafficker's possession with offers of friendship or protection for runaways.<sup>163</sup>

Organizations actively lobbying for the removal of consent laws and child marriage laws contribute to the dangers of internet communications.<sup>164</sup> While these groups may not be so conspicuous, their presence has been documented for several decades.<sup>165</sup> The most prominent international organization promoting these views is the Ipce—formerly known as International Pedophile and Child Emancipation—which publishes pro-pedophilia newsletters and magazines, in addition to holding annual meetings to provide an opportunity for members to become acquainted with each other.<sup>166</sup> Within Ipce membership are country-specific organizations, like Canada's Coalition Pédophile Québécois for example.<sup>167</sup> Its largest member-group is the North American Man/Boy Love Association

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<sup>159</sup> Andy Sullivan & Raphael Satter, *Dark Web Child Porn Bust Leads to 338 Arrests Worldwide*, REUTERS (Oct. 16, 2019), <https://www.reuters.com/article/us-usa-crime-exploitation/dark-web-child-porn-bust-leads-to-338-arrests-worldwide-idUSKBN1WV1WW>.

<sup>160</sup> *Id.*

<sup>161</sup> U.S. DEP'T OF JUSTICE, CHILD SEX TRAFFICKING (May 28, 2020), [HTTPS://WWW.JUSTICE.GOV/CRIMINAL-CEOS/CHILD-SEX-TRAFFICKING](https://www.justice.gov/criminal-ceos/child-sex-trafficking).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> RONALD M. HOLMES & STEPHEN T. HOLMES, CURRENT PERSPECTIVES ON SEX CRIMES 165 (3rd ed. 2002).

<sup>165</sup> See Corrine Purtill, *This Man is a Pedophile, and Proud of It*, GLOBALPOST (Mar. 18, 2015), <https://www.pri.org/stories/2015-03-18/man-pedophile-and-proud-it>

<sup>166</sup> Ipce, <https://www.ipce.info> (last visited Nov. 21, 2021).

<sup>167</sup> IAN O'DONNELL & CLAIRE MILNER, CHILD PORNOGRAPHY: CRIME, COMPUTERS AND SOCIETY 11 (2012).

(NAMBLA), a pedophilia advocacy organization in the United States.<sup>168</sup> As found on its website, NAMBLA “is strongly opposed to age-of-consent laws and all other restrictions which deny men and boys the full enjoyment of their bodies and control over their own lives,” and “call[s] for fundamental reform of the laws regarding relations between youths and adults.”<sup>169</sup> While only a handful of NAMBLA members remain publicly involved, the organization finds its support on anonymous websites like Boychat.org and Reddit.<sup>170</sup>

Child sex predators find solace in the company of individuals with like interests on anonymous websites like these. In a 2000 wrongful death lawsuit, NAMBLA was accused of inciting the murder and rape of a ten-year-old boy through its online literature which taught members “how to gain children’s trust, gain access to children nationwide, and avoid police investigating pedophilia cases.”<sup>171</sup> Although this literature has since been removed from its public webpage, the group’s advocacy and support for adult-child relationships and intimacy remains a danger to the communities who unknowingly host these pro-pedophilia members.<sup>172</sup> Given the worldwide presence of these groups, action taken against them must necessarily be a globally coordinated effort. To combat the existence of these pro-pedophilia groups, the United Nations should expand the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* to require States to create systems for investigating and sharing information about these organizations.<sup>173</sup>

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<sup>168</sup> NAMBLA, *Who We Are* (2014), <https://www.nambla.org/crimyout.html> (last visited Nov. 21, 2021).

<sup>169</sup> *Id.*

<sup>170</sup> Mike Pearl, *Whatever Happened to NAMBLA?*, VICE (March 24, 2016), <https://www.vice.com/en/article/7bd37e/whatever-happened-to-nambla>.

<sup>171</sup> *See generally* Curley v. Nat’l Am. Boy Love Ass’n, NO. 00-CV-10956-GAO, 2001 WL 1822730 (D. Mass. 2001); *see* Bryan Robinson, *ACLU Represents Man-Boy Love Group*, ABC NEWS (Jan. 7, 2006), <https://abcnews.go.com/US/story?id=95942&page=1>.

<sup>172</sup> *See* Bryan Robinson, *ACLU Represents Man-Boy Love Group*, ABC NEWS (Jan. 7, 2006), <https://abcnews.go.com/US/story?id=95942&page=1>.

<sup>173</sup> G.A. Res. 54/263 at 2 (May 25, 2000).

Being the most widely ratified human rights treaty in history, the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, requires that its 176 State parties “adopt or strengthen . . . laws, administrative measures, social policies and [programs] to . . . protect children.”<sup>174</sup> Its third article directs State parties to criminalize sexual exploitation of a child and provide various forms of support to victims.<sup>175</sup> Moreover, Article IV of the treaty requires that parties take necessary measures to ensure their jurisdiction over the prescribed criminal activities and vest in itself the authority to assign penalties for offenders.<sup>176</sup> The Committee on the Rights of the Child (CRC)—a body of eighteen independent experts recognized for their competence in the field of human rights—is responsible for monitoring the implementation of this treaty in State parties.<sup>177</sup> The obligations of this treaty clearly require the United Nations and its members to act in opposition to the sexual exploitation of children that continues to plague millions across the world today.<sup>178</sup> However, like the aforementioned treaties, this Protocol includes few enforcement measures for countries not in compliance with its obligations. The CRC considers submissions by individuals alleging violations of the treaty’s obligations as well as State-to-State complaints, which results in mandated State actions when necessary.<sup>179</sup> While this reporting mechanism is a step towards treaty enforcement, it remains a reactive solution to human rights violations rather than serving to promote implementation of treaty obligations across the board. To become a successful player in protecting children, like the treaty intends to, the CRC needs to proactively investigate the status of implementation in State parties and report any insufficiencies to the Security Council for the application of sanctions. Sweeping criminalization of child sexual exploitation, if coupled with thorough

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<sup>174</sup> G.A. Res. 54/263, at 6 (May 25, 2000).

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> UHCHR, Committee on the Rights of the Child, <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>.

<sup>178</sup> G.A. Res. 54/263, at 2 (May 25, 2000).

<sup>179</sup> UHCHR, Human Rights Bodies—Complaints Procedures, <https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>.

investigation and prosecution, would impede traffickers' ability to inconspicuously smuggle children across State borders.

Further, the aforementioned protocol should require stringent regulation of social media platforms to protect minors from interacting with adults. Given that most social media platforms are internationally accessible, the jurisdiction to regulate them can be unclear.<sup>180</sup> In the United States, social media regulations do not exist, leaving giants like Facebook to regulate themselves.<sup>181</sup> As an international organization, the United Nations is uniquely situated to require State parties of the Trafficking Protocol to implement social media safeguards. Following OnlyFans' lead, social media platforms should require that users confirm their age and identity, in addition to banning adult users from accessing the content of users under the age of majority.

#### B. Heavy Criminalization Molestation

One in four victims of trafficking are children, indicating significant demand for minors in the commercial sex industry.<sup>182</sup> In some regions it is typical for parents in poverty to sell their children for money.<sup>183</sup> To reduce the market for the sale of children, measures must be taken to reduce the demand.

One method of inhibiting for child traffickers would be to criminalize child brides, a step beyond the United Nations' performative resolution that merely condemned child, early, and forced marriages.<sup>184</sup> Without actually requiring State parties to enact systems for combatting these arrangements, young girls continue to be

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<sup>180</sup> See Devin Coldewey, *Who Regulates Social Media?*, TECHCRUNCH (Oct. 19, 2020), <https://techcrunch.com/2020/10/19/who-regulates-social-media/>.

<sup>181</sup> *Id.*

<sup>182</sup> See TRAFFICKING IN PERSONS 2018, *supra* note 36, at 25.

<sup>183</sup> *Id.* at 57.

<sup>184</sup> In G.A. Res. A/C.3/73/L.22/Rev.1, Promotion and Protection of the Rights of Children (Nov. 12, 2018), the General Assembly—consisting of 193 countries—agreed to cooperate in response to child, early, and forced marriages, “including through the strengthening of child protection systems, protection mechanisms such as safe shelters, access to justice and the sharing of best practices across borders.” *Id.* at 5.

sold as brides to grown men.<sup>185</sup> These arrangements meet the definition of sex trafficking given the purpose for lifelong sexual exploitation and imbalance of power in an adult-child relationship.<sup>186</sup> Beyond requiring criminalization of child brides, the Trafficking Protocol should make child-like sex dolls illegal in every Member State. While some argue that these dolls can act as a deterrent to child molestation, the reality is that it actually normalizes sexual attraction to children.<sup>187</sup> The availability of anatomically correct dolls resembling children for sexual pleasure allows users to act on their grotesque desires in a way that simulates reality, fostering a distorted view of sexual fulfillment similar to pornography.<sup>188</sup>

Religious groups are some of the most difficult contributors to regulate. Reports alleging the sexual abuse of children have polluted nearly every religion across the globe.<sup>189</sup> Aside from the imbalance of power in an adult-child relationship, religious leaders found to be sexually abusing a minor meet the definition of sex trafficking by their extraordinary position as a trusted faith guide.<sup>190</sup> In 2019, three of the United States' largest religious groups—Roman Catholics, Southern Baptists, and United Methodists—were investigated for sexually abusing hundreds of child victims.<sup>191</sup> Yet, religious groups have been notoriously under-prosecuted, with clergy finding refuge under statutes of limitation.<sup>192</sup> Prosecution has become increasingly

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<sup>185</sup> *Id.*

<sup>186</sup> Trafficking Protocol, *supra* note 15.

<sup>187</sup> David Cox, *Would Child Sex Robots Stop Pedophilia—or Promote it?*, NBC NEWS (Jan. 4, 2018), <https://www.nbcnews.com/mach/science/would-child-sex-robots-stop-pedophilia-or-promote-it-ncna834576>.

<sup>188</sup> *Id.*

<sup>189</sup> Mary Leary, *Religion and Human Trafficking*, THE CATHOLIC UNIVERSITY OF AMERICA (2015).

<sup>190</sup> Trafficking Protocol, *supra* note 15.

<sup>191</sup> See David Crary, *Three of U.S.'s Biggest Religious Denominations in Turmoil Over Sex Abuse, LGBT Policy*, ASSOCIATED PRESS (May 3, 2019), <https://www.pbs.org/newshour/nation/3-big-us-churches-in-turmoil-over-sex-abuse-lgbt-policy>.

<sup>192</sup> See Lindsay Schnell, *Most Priests Accused of Sexually Abusing Children Were Never Sent to Prison. Here's Why*, USA TODAY (Nov. 14, 2019).

challenging with the misuse of religious freedom arguments.<sup>193</sup> Religious groups have failed to create a uniform system for investigating allegations which further impedes justice.<sup>194</sup> International organizations are best situated to regulate these entities. To oversee the activities of international religious groups, the United Nations should create an agency responsible for reporting cases of sexual abuse by clergy in Member States. Many of the religious leaders accused of sexual abuse continue in their roles within the church without an investigation or repercussions because the allegations are reported within the religious community rather than to local police.<sup>195</sup> By establishing an agency specific to these types of abuse, victims can report allegations to an impartial body outside of the religion who bear a duty to investigate and prosecute cases.

## VI. CONCLUSION

The United Nations was created for the purpose of maintaining international peace and security; its Charter mentions human rights on seven occasions and its *Universal Declaration of Human Rights* is the accepted standard for issues requiring international protection.<sup>196</sup> Its treaties create binding obligations on State parties, which members agree to uphold when joining the organization.<sup>197</sup> Outside of its mission to protect human rights, the United Nations has enacted treaties centered on forced prostitution, transnational organized crime, trafficking of women and children, and sexual exploitation of children.<sup>198</sup> Within these agreements are obligations to

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<sup>193</sup> See generally Fraidy Reiss, *Why Can 12-Year-Olds Still Get Married in the United States?*, WASH. POST (Feb. 10, 2017), <https://www.washingtonpost.com/posteverything/wp/2017/02/10/why-does-the-united-states-still-let-12-year-old-girls-get-married/>.

<sup>194</sup> See Schnell, *supra* note 192.

<sup>195</sup> See Nathalie Swanwick, *Child Sexual Abuse Swept Under Carpet by Roman Catholic Church*, SIMPSON MILLAR (Nov. 11, 2020), <https://www.simpsonmillar.co.uk/media/child-sexual-abuse-swept-under-carpet-by-roman-catholic-church/>.

<sup>196</sup> U.N. Charter art. 1; see U.N. Charter arts. 1–111.

<sup>197</sup> See U.N. Charter arts. 5–6.

<sup>198</sup> See G.A. Res. 317 (IV), Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Dec. 2, 1949); see Trafficking Protocol, *supra* note 15; see G.A. Res. 54/263 *Optional Protocol to the*

enact legislation, implement preventative measures, and report data to monitoring bodies.<sup>199</sup> While the measures considered in these treaties ought to be effective, failure to enforce their implementation in party States is essentially an acquiescence to the trafficking industry's survival. As the organ created to specifically address human rights violations, the Office of the High Commissioner for Human Rights has a special duty to act in opposition to sex trafficking.<sup>200</sup> Unfortunately, without authority to discipline States identified as human rights violators, the OHCHR cannot effectively carry out its function.

The United Nations is empowered with various tools which should be better utilized in opposition of global sex trafficking. The Security Council is responsible for maintaining international peace and is authorized to accomplish that function using various sanctions: trade sanctions, travel bans, arms embargoes, criminal prosecutions, and military intervention.<sup>201</sup> Several of these measures could be utilized as a method for ensuring implementation of treaty obligations or as a judicial remedy for criminal acts committed by international actors. However, without reorganizing the Security Council's representatives and redistributing their voting authorities, the body will remain effectively powerless. Alongside the enforcement tools entrusted to the Security Council, the United Nations could amend its trafficking-focused treaties to include policies aimed at the demand side of child sex trafficking, like the prohibition of pedophilia-supporting products and creation of a reporting body for victims of religious clergy. Other recommended policies include cyber initiatives targeted at pornographic material and international pedophilia advocacy groups lobbying against child marriage and consent laws. While sex trafficking is an issue of massive scale, its eradication begins with a coordinated effort on the part of every country across the globe,

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*Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, at 2 (May 25, 2000).

<sup>199</sup> See G.A. Res. 317 (IV) (Dec. 2, 1949).

<sup>200</sup> INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, *ASSESSING THE EFFECTIVENESS OF NATIONAL HUMAN RIGHTS INSTITUTIONS* (2005).

<sup>201</sup> See U.N. Charter art. 39–51.

and who better to lead the campaign than the largest international organization.