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Show Me the Money: The Application of the Asset Forfeiture Provisions of the Trafficking Victims Protection Act and Suggestions for the Future

Jorene Soto*

I. Introduction

Trafficking in persons, a modern-day type of slavery in which people, especially women and children, are sold into forced labor and sexual servitude, is a financially lucrative crime that is prevalent throughout the world. Experts estimate that four million people are trafficked each year,¹ generating up to ten billion dollars annually in illicit funds.² In 2000, the United States took a significant step to abolish trafficking by taking the international lead in implementing the Trafficking Victims Protection Act (TVPA).³ To eliminate the financial profitability of trafficking, the TVPA provided for the civil and criminal forfeiture of proceeds derived from trafficking activities.⁴ In 2003,

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1. Becki Young, *Trafficking of Humans Across Borders: How United States Laws Can be Used to Punish Traffickers and Protect Victims*, 13 GEO. IMMIGR. L.J. 73 (1998).

2. David France, Sarah Downey & Craig Nelson, *Slavery's New Face*, NEWSWEEK, Dec. 18, 2000, at 62 (citing former President Clinton's Inter-Agency Council on Women's estimate valuing the global slave trade as a \$9 million per year industry). See also Ian Peck, *Removing the Venom from the Snakehead: Japan's Newest Attempt to Control Chinese Human Smuggling*, 31 VAND. J. TRANSNAT'L L. 1041, 1044 (1998) (stating that the worldwide profits for smuggling immigrants was estimated at \$3 billion in 1995 and had risen to \$7 to \$10 billion by 1997).

3. Pub. L. No. 106-386. § 103(8), 114 Stat. 1464, 1470 (2000).

4. Pub. L. No. 106-386. § 1594, 114 Stat. 1464, 1489 (2000).

Congress implemented the Trafficking Victims Protection Reauthorization Act of 2003 (Reauthorization Act),⁵ which also added the crime of trafficking in persons to the list of crimes defined as “racketeering activities” under the Racketeer Influenced and Corrupt Organizations Act.⁶ Inclusion in the definition of a racketeering activity subjects any interest in, security of, claim against, or property or contractual right constituting, or derived from, any proceeds which the trafficker obtained, directly or indirectly, from their trafficking activity to criminal forfeiture.⁷

Even with the implementation of the TVPA and the Reauthorization Act, the United States is generally only able to seize the property of those individuals who traffic in persons when that property is within the country’s borders. Recognizing this, it is possible that traffickers in persons may deposit or invest their illicit wealth in foreign countries, thereby avoiding the asset forfeiture laws associated with the Reauthorization Act. As a result of this possible avoidance, the TVPA and the Reauthorization Act may not, by themselves, effectively eliminate the financial profitability of trafficking in persons which entices many criminals to engage in this crime.

The amendments to add asset forfeiture provisions to the TVPA and the Reauthorization Act were significant steps in eliminating the financial profitability of trafficking in persons. However, this article will assert that the United States government must recognize that international cooperation is necessary in order to implement an international asset forfeiture policy. Such a policy would ensure that the assets of traffickers could be seized on a global level. As such, the financial profitability of trafficking in persons would be more effectively eliminated.

This article will first provide a brief historical background of the potential monetary incentives of trafficking in persons. This article will then address the shortcomings of the TVPA and the Reauthorization Act as they relate to asset forfeiture. Section III will provide an overview of the asset forfeiture provisions of the TVPA and the Reauthorization Act. Section IV will explore how civil and criminal forfeiture provisions may be enforced when the trafficker’s assets are located abroad. Section V will provide an overview of the United Nations Convention against Transnational Organized Crime⁸ and the Protocol to Prevent, Suppress

5. H.R. 2620, 108th Cong. (2003) (enacted).

6. H.R. 2620, 108th Cong. §§ 5(a), (b) (2003).

7. *Id.*

8. United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, U.N. GAOR, 55th Sess, U.N. Doc. A/RES/55/25 (2001).

and Punish Trafficking in Persons, Especially Women and Children,⁹ two treaties that allow for international asset forfeiture against traffickers. Section VI will describe an overview of the use of mutual legal assistance treaties to international asset forfeiture against traffickers in persons. Finally, section VII will conclude that the United States should ratify the aforementioned international treaties or implement effective mutual legal assistance treaties so that the United States government may attack the international assets of traffickers in persons in order to more effectively eliminate the financial profitability of the crime.

II. Background

The assurance of a large amount of profit is the force that drives individuals to engage in trafficking.¹⁰ With profits of up to ten billion dollars annually,¹¹ trafficking in persons is the third most profitable trafficking industry behind the trafficking of drugs and weapons.¹² Furthermore, trafficking in persons has the potential to be much more financially lucrative than trafficking in drugs or weapons.¹³ For example, unlike drugs or weapons, which provide a one-time financial transaction, the individual who traffics his victim into any given market has a reusable commodity.¹⁴ Specifically, a trafficker can resell his victim to another trafficker, force his victim to prostitute herself repeatedly, or force her to work countless hours in a sweatshop.¹⁵

A trafficker generally obtains his victim by kidnapping him/her,¹⁶

9. United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, U.N. GAOR, 55th Sess, U.N. Doc. A/55/383.

10. See Peck, *supra* note 2.

11. *Id.*

12. *International Trafficking in Women and Children: Hearings Before the Subcomm. On Near Eastern and South Asian Affairs of the Comm. On Foreign Relations*, 106th Cong. 11 (2000) [hereinafter *Hearings on International People Trafficking*] (statement of Frank E. Loy, Under Sec'y of State, Global Affairs) available at LEXIS, Federal News Service.

13. This concept was discussed in detail in a trafficking in persons seminar given by Professors Laura Lederer and Mohamed Mattar at the Georgetown University Law Center in the spring of 2004.

14. *Id.*

15. Sally Stoecker, *The Rise in Human Trafficking and the Role of Organized Crime*, 8 DEMOKRATIZATSIYA: THE JOURNAL OF POST-SOVIET DEMOCRATIZATION 129, 130. See *Hearings on International People Trafficking*, *supra* note 12 (statement of Regan E. Ralph, Executive Dir., Women's Rights Div., Human Rights Watch providing that traffickers who threaten to resell their victims increase their debt to decrease their resistance).

16. See, e.g., MARTINA VANDENBERG, ISRAEL WOMEN'S NETWORK, TRAFFICKING OF WOMEN TO ISRAEL AND FORCED PROSTITUTION 6-7 (1997) (describing how Russian tourists were being kidnapped and sold in Israel); Yves Gery, *The Dark Side of Europe: Women for Sale*, LE MONDE DIPLOMATIQUE Feb. 1999, at 4, 7, (describing Polish women being drugged and kidnapped from discotheques), available at <http://www.monde->

buying him/her from a family member,¹⁷ or luring him/her with promises of a new job and a better life.¹⁸ The trafficker must then supply the initial financial costs necessary to traffic the victim from the country of origin to the destination country.¹⁹ Such an initial financial investment may include, but is not limited to, the cost of fraudulent or photo-switched passports and other travel documents, airline tickets and other transportation costs, identification cards, driver's licenses, meals, housing, bribes to immigration officials and law enforcement agents,²⁰ and the assistance of professional smugglers.²¹

After the victim is brought into the destination country, the trafficker then passes the initial financial costs onto the victim, generally at an exaggerated price, before he/she may be released from "debt."²² For example, a trafficker may charge a victim from \$900 to \$4,000 to obtain his or her own passport.²³ The trafficker may charge a victim \$700 for an identification card, \$900 for a driver's license, or \$1,000 for both.²⁴ The victim can only repay this "debt" to the trafficker by working in forced labor or the commercial sex industry.²⁵ If the victim objects or does not produce enough money through work, the trafficker often threatens deportation, physical harm, or death.²⁶ The trafficker

diplomatique.fr/en.

17. See TRAFFICKING IN WOMEN IN ASIA, A REFERENCE MANUAL FOR PUBLIC OFFICIALS AND PRIVATE CITIZENS 28 (Kinhide Mushakoji & Monica J. Washington, eds., 1998) (describing families selling their daughters).

18. See AMY O'NEILL RICHARD, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME 3-5 (1999); RENU RAJBHANDARI & LISA GIBSON, WOMEN'S REHABILITATION CENTER (NEPAL), ADVOCACY AGAINST TRAFFICKING IN WOMEN TRAINING MANUAL 33, 34 (1999) (explaining that women's lack of education and employment opportunities make them a target for traffickers).

19. This concept was discussed in detail in a trafficking in persons seminar given by Professors Laura Lederer and Mohamed Mattar at the Georgetown University Law Center in the spring of 2004.

20. See RICHARD, *supra* note 18, at 17 (providing that a Thai trafficker paid law enforcement officials \$12,000 to "turn a blind eye" when they found him with 300 passports, and a Latin American trafficker paid bribes ranging from \$200 to \$500 to state and local police).

21. See *id.* at 19 (providing that a Latin American "coyote's" fee for smuggling a person into the United States ranges from \$700 to \$1,500 per person, whereas a Thai smuggler's fee for smuggling a person into the United States ranges from \$13,000 to \$15,000 per person).

22. See *id.* at 19.

23. See *id.*

24. See *id.*

25. This concept was discussed in detail in a trafficking in persons seminar given by Professors Laura Lederer and Mohamed Mattar at the Georgetown University Law Center in the spring of 2004.

26. See Kelly E. Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN'S L.J., 29, 41 (2001) (noting that mute Mexicans

may also cause physical harm to the victim, such as rape, beating, drugging,²⁷ or starving.²⁸

In addition to the debt related to the victims' initial transportation and smuggling costs, the victims are also charged additional expenses after they arrive in the destination country.²⁹ Such additional expenses only add to the considerable debt that the victim is claimed to already owe.³⁰ Such additional expenses may include rent,³¹ food, clothes, drugs, forced abortions, and any medical services.³² Prostitutes who worked at the Russian Touch Massage parlor in Bethesda, Maryland, for example, were charged \$150 per week for their rent which allowed them to sleep on massage tables at the massage parlor.³³ Unfortunately, most victims are kept in dirty, crowded housing in order to maximize the trafficker's profits.³⁴

Traffickers often earn huge profits through the manual labor or sexual services of their victims, but the victims rarely see any of their individualized earnings.³⁵ Trafficking victims who worked as prostitutes in a New York brothel were forced to charge their clients \$130, \$30 of which went to the madam of the brothel and \$100 of which went to the trafficker.³⁶ In this situation, the victim could only earn money for herself if she received tips from her clients.³⁷ Similarly, traffickers in West Palm Beach, Florida, charged their clients \$22 for 15 minutes with

trafficked to the United States and forced to sell trinkets and beg were beaten if they did not sell enough products or given their entire earning to their traffickers).

27. See VANDENBERG, *supra* note 16, at 6-7 (providing that women who object to prostituting themselves were beaten, raped, and drugged).

28. VORASAKDI MAHATDHANOBOL, CHINESE WOMEN IN THE THAI SEX TRADE 41 (Aaron Stern trans., 1998) (providing that women were often denied food); see also RICHARD, *supra* note 18, at 25 (also providing that women who refused to work were denied food).

29. Gillian Caldwell et al., *Capitalizing on Transition Economies: The Role of the Russian Mafiya in Trafficking Women for Forced Prostitution*, ILLEGAL IMMIGRATION AND COMMERCIAL SEX: THE NEW SLAVE TRADE, at 42, 60 (Phil Williams ed., 1999) (providing that women who worked at the "Russian Touch Massage" massage parlor in Bethesda, Maryland, were charged \$150 per week for their rent which consisted of sleeping on the massage tables at the massage parlor at night).

30. *Id.*

31. *Id.*

32. ASIA WATCH WOMEN'S RIGHTS PROJECT, HUMAN RIGHTS WATCH, A MODERN FORM OF SLAVERY (providing that women were charged for the costs of doctor's visits and medicine), available at <http://www.hrw.org/reports/1993/thailand/>.

33. See Caldwell, *supra* note 29, at 60.

34. See, e.g., STEVEN R. GLASTER & MELANIE E. ORNANT, GLOBAL SURVIVAL NETWORK, TRAPPED: HUMAN TRAFFICKING FOR FORCED LABOR IN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS 20 (1999) (providing that fourteen victims forced to labor in sweatshops were forced to share one room and toilet).

35. *Id.*

36. See RICHARD, *supra* note 18, at 19.

37. *Id.*

a trafficking victim, \$10 of which went to the brothel and \$12 of which went to pay off the trafficking victim's initial "debt" of \$2,000 to \$3,000.³⁸ The situation appears to be similar in foreign countries. Specifically, in Japan, many trafficking victims are forced to sign confusing and deceptive illegal contracts that detail their performance obligations to their trafficker.³⁹ As a result, trafficking victims in Japan are generally unable to pay off their initial "debt" and, instead, accumulate debt that may range from \$35,000 to \$300,000.⁴⁰

The aforementioned methods create a strong economic incentive for those who engage in the crime. While only a few individuals have been convicted of trafficking in persons in the United States in the past decade, those convicted had made millions of dollars doing so.⁴¹ For example, one trafficking ring made \$8 million in fewer than five years by forcing deaf Mexicans to peddle junk.⁴² Another trafficker made \$2.5 million in approximately two years forcing women and girls into prostitution.⁴³ Likewise, a group trafficking in New York made \$1.5 million in approximately one year forcing women into prostitution.⁴⁴ Finally, a group in California made \$8 million in approximately six years by forcing men and women to work in a sweatshop.⁴⁵

III. Status Quo

A. *The Trafficking Victims Protection Act Of 2000*

President Bill Clinton signed the Act into law on October 28, 2000.⁴⁶ Specifically, the Act set forth a three-pronged approach to eradicate trafficking in persons: (1) providing for new protections and assistance to victims; (2) expanding crimes and enhancing penalties available to prosecutors to charge, prosecute, and convict; and

38. *Id.* at 20 (At that rate, it would take a trafficking victim 42 to 62 hours of sexual activity to pay off her initial debt. However, the foregoing figure does not include any additional "expenses" that the trafficking victim may be charged after her arrival in the destination country. As previously noted, such additional charges include rent, food, clothes, drugs, forced abortions, and any medical services they may need.)

39. *See* Caldwell, *supra* note 29, at 64-65 (providing that trafficking victims receive a \$50 allowance per day out of the minimum \$800 they earn for the trafficker per day; further providing that the traffickers are generally allowed to deductive a victim's earning based on their own subjective evaluation of the victim's performance).

40. *Id.*

41. *See* RICHARD, *supra* note 18, at 19-20.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. Bill Summary and Status for the 106th Congress, available at <http://thomas.loc.gov/cgi-bin/bdquerytr/z?d106:HR03244:@@L&summ2=m&>.

(3) expanding international activities of the United States to urge countries to prevent trafficking and to assist them in doing so.⁴⁷ As one of the significant penalties available to prosecutors to charge, prosecute, and convict traffickers in persons, Congress provided for mandatory asset forfeiture provision in the TVPA.⁴⁸ This allows the government to seize a trafficker's assets either through civil or criminal forfeiture.⁴⁹ In particular, this provision states that any individual who traffics or attempts to traffic a person for the purpose of forced labor, peonage, slavery, involuntary servitude, traffics in children for sex, or traffics in adults for sex by force, fraud, or coercion forfeits their interest in real and personal property used for or derived from the crime.⁵⁰

B. Trafficking Victims Protection Reauthorization Act Of 2003

The Reauthorization Act added the crime of trafficking in persons to the list of crimes defined as "racketeering activities" under the Racketeer Influenced and Corrupt Organizations Act (RICO).⁵¹ Specifically, the Reauthorization Act amended RICO's definition of a racketeering

47. William J. Clinton, The President's Radio Address (Oct. 28, 2000), PUBLIC PAPERS OF THE PRESIDENTS 2351 (2002), available at 2000 WL 26850463.

48. Pub. L. No. 106-386, § 1594, 114 Stat. 1464, 1489 (2000). The asset forfeiture provision of the Trafficking Victims Protection Act provides the following:

(b) The Court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—

(1) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

(2) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(c)(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(B) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection.

49. *See id.*

50. *Id.*

51. H.R. Res. 2620, 108th Cong. § 5(b) (2003) (enacted). Specifically, it states: "Section 1961(1)(A) of Title 18, United States Code, is amended by inserting after 'murder-for-hire,' the following: 'section 1589 (relating to forced labor), section 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor), section 1591 (relating to sex trafficking of children or by force, fraud, or coercion.)'"

activity to include: 1) activities related to forced labor;⁵² 2) activities related to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor;⁵³ and 3) activities related to sex trafficking of children or of adults by force, fraud, or coercion.⁵⁴ The amendment of this definition allows prosecutors to seize the trafficker's assets through the process of criminal forfeiture only.⁵⁵ In particular, the criminal forfeiture provisions under RICO subjects any interest in, security of, claim against, or property or contractual right constituting, or derived from, any proceeds which the trafficker obtained, directly or indirectly, from their trafficking activity to criminal forfeiture.⁵⁶ Property subject to criminal forfeiture includes: 1) real property, including things growing on, affixed to, and found in land; and 2) tangible and intangible personal property, including rights, privileges, interests claims and securities.⁵⁷ All rights, title, and interest in property subject to criminal forfeiture

52. 18 U.S.C. § 1589 (2000).

53. 18 U.S.C. § 1590 (2000).

54. 18 U.S.C. § 1591 (2003).

55. *Id.*

56. 18 U.S.C. § 1963(a). Specifically, it provides:

Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of [s]tate law—

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any—

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

57. 18 U.S.C. § 1963(b). Specifically, it provides: "Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims and securities."

vests at the time of the commission of the criminal racketeering act.⁵⁸

IV. The Seizing Of Assets Located Outside Of The United States

Neither the TVPA nor the Reauthorization Act limits the United States' ability to seize a trafficker's assets located outside of the country.⁵⁹ However, the manner in which the United States government seeks to seize a trafficker's assets will depend upon whether the government initiates a criminal or a civil forfeiture action.⁶⁰ Regardless of which forfeiture action the United States government initiates, the cooperation of foreign states is required in order to successfully enforce asset forfeiture orders and seize assets located outside the United States.⁶¹ As such, bilateral agreements or international treaties are necessary to achieve the purpose of the TVPA and the Reauthorization Act.

A. Criminal Forfeiture Action

The TVPA and the Reauthorization Act both provide for a criminal asset forfeiture action.⁶² Criminal forfeiture is an *in personam* action, which means that the court must obtain jurisdiction over the defendant.⁶³ If the court is able to gain jurisdiction over the defendant and the defendant is convicted, it is the convicted defendant's interest in the property that is forfeited rather than the actual property itself.⁶⁴ A convicted trafficker's assets may be automatically included in the criminal forfeiture order, regardless of where those assets are located.⁶⁵ As a practical matter, however, other countries are generally reluctant to enforce a criminal forfeiture provision against an individual criminally convicted in a United States court unless there are provisions allowing

58. 18 U.S.C. § 1963(c). Specifically, it provides:

All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (1) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

59. DEE EDGEWORTH, ASSET FORFEITURE: PRACTICE AND PROCEDURE IN FEDERAL COURTS.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. See *United States v. Gilbert*, 244 F.3d 888, 919-20 (11th Cir. 2001).

65. 18 U.S.C.S. §§ 982(b)(1), 1963(j) (1995); 21 U.S.C.S. § 853(a)(1) (1995).

for such enforcement contained in their domestic law or unless there is a bilateral agreement or international treaty between the two states.⁶⁶

B. *Civil Forfeiture Action*

The TVPA provides for a civil forfeiture action.⁶⁷ Civil forfeiture is an *in rem* action.⁶⁸ As such, the forfeiture action initiated by the government is against the trafficker's property rather than the trafficker himself.⁶⁹ Therefore, it is only necessary for the court to gain jurisdiction over the property in question.⁷⁰ Historically, the property had to be within the court's jurisdiction.⁷¹ However, the United States Congress has amended the legislation related to civil forfeiture so that the government may bring a civil asset forfeiture action in a United States district court regardless of where the assets are located.⁷² Even so, the court's jurisdiction over international property is a legal fiction without the cooperation of the country where the property is located.⁷³ If the foreign country does not agree to enforce a district court's civil forfeiture order, the United States government will be unable to seize the property.⁷⁴

V. Current Applicable International Law

A. *The United Nations Convention Against Transnational Organized Crime*

The United Nations Convention against Transnational Organized Crime (Convention) was adopted by the United Nations General Assembly on November 15, 2000, and entered into force on September 29, 2003.⁷⁵ It is a treaty that imposes legally binding obligations on those nations that ratify or accede to it.⁷⁶ The United States is a signatory to the Convention, but is not a member to the Convention because it has

66. William J. Snider, *International Cooperation in the Forfeiture of Illegal Drug Proceeds*, 6 CRIM. L.F. 377, 381 (1995).

67. EDGEWORTH, *supra* note 59.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. 28 U.S.C.S. § 1355(b)(2) (1995).

73. *Id.*

74. *See* U.S. v. All Funds on Deposit in Name of Meza, 856 F. Supp. 759, 763 (E.D.N.Y. 1994), *aff'd*, 63 F.3d 148 (2d. Cir. 1995).

75. United Nations Convention against Transnational Organized Crime, *supra* note 8. Currently, there are 147 signatories to the Convention and 66 parties.

76. *Id.*

not yet ratified it.⁷⁷

The Convention does not specifically define trafficking in persons as a transnational organized crime. The offenses included within the Convention are defined broadly. They include the following: (1) a serious crime for a purpose relating to the benefit and involving an act undertaken by one of the participants in furtherance of or involving in organized criminal group;⁷⁸ (2) the illicit laundering of the proceeds of crime;⁷⁹ (3) official corruption;⁸⁰ (4) obstruction of justice;⁸¹ and (5) a "serious crime" where the offense is transnational in nature and involves an organized criminal group.⁸² A "serious crime" is defined by the Convention as "conduct constituting an offense punishable by a maximum deprivation of liberty of at least four years or a more serious penalty."⁸³ The Convention's usefulness with respect to trafficking in persons and this article lies in the articles that relate to asset forfeiture.

Article 13 of the Convention describes the obligations of the State Party that submits a request for the confiscation⁸⁴ of the proceeds of crime, property, equipment or other instrumentalities related to trafficking in persons; it further describes the obligations of the state party receiving such a request.⁸⁵ Pursuant to Article 13, the sending

77. *Id.*

78. *Id.* at Art. 3.

79. *Id.* at Art. 5.

80. *Id.* at Art. 6.

81. *Id.* at Art. 8.

82. *Id.* at Art. 23.

83. *Id.* at Art. 2(b).

84. *Id.* at Annex I, Art. 2(g). The Convention describes what is commonly referred to in the United States as asset forfeiture as "confiscation." The Convention defines "confiscation" as the "permanent deprivation of property by order of a court or other competent authority."

85. *Id.* at Art. 13. International cooperation for purposes of confiscation. It provides:

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take

State Party must provide a description of the property to be forfeited and a statement of the facts relied upon for making the request.⁸⁶ In certain cases, the sending state must also provide a legal copy of an order of confiscation upon which the request is based and a description of the action requested.⁸⁷ Under Article 13, the receiving State Party must submit the request to the appropriate authority in order to give effect to it.⁸⁸ The receiving State Party must further attempt to carry out the sending state party's request by taking measures to identify, trace, and freeze or seize proceeds of crime, property, equipment, or other

measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 18 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:

a. In the case of a request pertaining to paragraph 1(a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

b. In the case of a request pertaining to paragraph 1(b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

c. In the case of a request pertaining to paragraph __ of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article, shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. State Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

86. *Id.* at Art. 13.3(a).

87. *Id.* at Art. 13.3(b-c).

88. *Id.* at Art. 13.1(a).

instrumentalities related to trafficking in persons.⁸⁹

Article 14 describes the obligations on the sending and receiving State Parties with respect to the disposal of confiscated proceeds of crime or property related to trafficking in persons.⁹⁰ Ultimate authority concerning the disposition of the proceeds of crime or property confiscated by a State Party lies with the domestic law of the confiscating state.⁹¹ However, the Convention requires all State Parties, if possible, to give priority consideration to returning the proceeds to the requesting state for the purpose of compensating the victim(s) or returning the property to its original owner.⁹² State Parties are also directed to consider donating the proceeds to intergovernmental bodies that specialize in combating organized crime or sharing proceeds with other State Parties.⁹³

B. Protocol To Prevent, Suppress, And Punish Trafficking In Persons, Especially Women And Children

The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Protocol), was implemented as a supplement to the Convention. The Protocol was adopted by the United Nations General Assembly on November 15, 2000

89. *Id.* at Art. 13.2.

90. *Id.* at Art. 14. Disposal of confiscated proceeds of crime or property. Specifically, it provides:

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.
2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.
3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:
 - a. Contributing to the value of such proceeds of crime or property or funds derived from the ale of such proceeds of crime or property or a party thereof to the account designated in accordance with article 30, paragraph 2(c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;
 - b. Sharing with other States Parties, on a regular case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

91. *Id.* at Art. 14.1.

92. *Id.* at Art. 14.2.

93. *Id.* at Art. 14.3.

and it entered into force on December 25, 2003.⁹⁴ The Protocol also imposes legally binding obligations on those nations which ratify or accede to it. The United States has signed, but not ratified, the Protocol and therefore is not a member to it.

Article 1 articulates the relation between the Protocol and the Convention.⁹⁵ Recognizing that, as of the date of its adoption, some member States had not criminalized the act of trafficking in persons or had not implemented a punishment so severe that it would rise to the level of a "serious crime" as defined in the Convention, the Protocol specifically provides that the offenses established in accordance with the Convention include the offense of trafficking in persons.⁹⁶ The Protocol defines trafficking in persons as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁹⁷

The Protocol also provides that the consent of a victim of trafficking in persons is irrelevant where force, fraud, or coercion is used.⁹⁸ Furthermore, the recruitment, transportation, transfer, harboring, or receipt of a person under the age of eighteen for the purpose of exploitation constitutes trafficking in persons.⁹⁹

Although the Protocol does not contain an asset forfeiture provision, it specifically provides that the provisions of the Convention apply to the Protocol.¹⁰⁰ As such, the asset forfeiture provisions contained in the

94. United Nations Convention against Transnational Organized Crime, *supra* note 9. Currently, there are 117 signatories to the Protocol and 45 parties.

95. *Id.* at Art. 1. Relation with the United Nations Convention against Transnational Organized Crime. It provides the following:

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

96. *Id.* at Arts. 1, 3, 5.

97. *Id.* at Art. 3(a).

98. *Id.* at Art. 3(b).

99. *Id.* at Art. 3(c).

100. *Id.* at Art. 1.2.

Convention apply directly to the crime of trafficking in persons.

VI. The Use Of Mutual Legal Assistance Treaties And Other Types Of Bilateral Agreements

Although the United States has failed to ratify the Convention and the Protocol, it has entered into numerous mutual legal assistance treaties. Mutual legal assistance treaties are essentially bilateral treaties that impose legally binding obligations on the two nations that enter into them. Mutual legal assistance treaties and other types of bilateral agreements regarding trafficking would allow the United States to request the seizure of a trafficker's assets in a foreign country even if the United States fails to ratify the Convention and the Protocol. The development of such treaties and other types of bilateral agreements between the United States and other countries has increased rapidly in the past few decades.¹⁰¹ A number of bilateral agreements to which the United States is a party address the issue of asset forfeiture; however, asset forfeiture is generally addressed only with respect to drug trafficking.¹⁰² At least one mutual legal assistance treaty briefly addresses asset forfeiture with relation to trafficking in persons—the

101. See William J. Snider, *supra* note 66. MLAT, Dec. 4, 1990, U.S.-Arg. (entered into force Feb. 9, 1993); MLAT, June 12-Aug. 18, 1987, U.S.-Bah. (entered into force July 18, 1990); MLAT, Mar. 18, 1985, U.S.-Can. (entered into force Jan. 24, 1990); MLAT, Nov. 9, 1982, U.S.-Italy (entered into force Nov. 13, 1985); MLAT, Dec. 9, 1987, U.S.-Mex. (entered into force May 3, 1991); MLAT, Oct. 17, 1983, U.S.-Morocco (entered into force June 23, 1983); MLAT, June 12, 1981, U.S.-Neth., T.I.A.S. No. 10734, 1359 U.N.T.S. 209 (entered into force Sept. 15, 1983); MLAT, Nov. 20, 1990, U.S.-Spain (entered into force June 30, 1993); MLAT, May 25, 1973, U.S.-Switz., 27 U.S.T. 2019, 1052 U.N.T.S. 61 (entered into force Jan. 23, 1977); MLAT, Mar. 19, 1986, U.S.-Thail. (entered into force June 10, 1993); Treaty on Extradition and Mutual Assistance in Criminal Matters, June 7, 1979, U.S.-Turk., 32 U.S.T. 3111 (entered into force Jan. 1, 1981); MLAT, July 3, 1986, U.S.-U.K. (entered into force Mar. 19, 1990) (covering Cayman Is.), amended Nov. 9, 1990 T.I.A.S. No. 11765 (entered into force Nov. 9, 1990) (covering Anguilla, Brit. Virgin Is., Turks & Caicos Is.), amended Apr. 26, 1991 (entered into force April 26, 1991) (covering Montserrat); MLAT, May 6, 1991, U.S.-Uru. (entered into force Apr. 15, 1994). *Id.*

102. Agreement on Transfer of Forfeited Assets from Drug Trafficking, Apr. 19, 1994, U.S.-Cayman Is. (entered into force Apr. 19, 1995); Memorandum of Understanding on Cooperation in Seizure and Forfeiture of Proceeds of Illicit Narcotics Trafficking, July 24, 1990, U.S.-Colom. (entered into force July 24, 1990); Agreement on Cooperation in the Control of Illicit Traffic in Narcotic Drugs, Nov. 5-20, 1971, U.S.-Ecuador, 22 U.S.T. 2109 (entered into force Nov. 10, 1971); Agreement on Confiscation of Proceeds of Drug Trafficking, Nov. 23, 1990, U.S.-Hong Kong (entered into force Jan 18, 1991); Agreement on Investigation of Drug Trafficking Offences and Seizure of Proceeds, Feb. 9, 1988 (as amended Jan. 6, 1994), (U.S.-U.K., T.I.A.S. No. 11649 (entered into force Apr. 11, 1989); Agreement on the Transfer of Forfeited Assets Connected to Drug Trafficking, May 19-22, 1995, U.S.-Mex. (entered into force May 22, 1995).

United States' mutual legal assistance treaty with Switzerland.¹⁰³ This treaty could be used as the framework for future mutual legal assistance treaties with other countries.

Article 1 of the mutual legal assistance treaty between the United States and Switzerland specifically provides that, "Contracting Parties undertake to afford each other, in accordance with provisions of this Treaty, mutual assistance in . . . effecting the return to the requesting State, or a state or canton thereof, of any objects, articles or other property or assets belonging to it and obtained through such offenses."¹⁰⁴ The schedule of offenses contained within the treaty for which compulsory measures are available includes trafficking in women and children. Chapter VII describes the obligations on the State Party sending a request, and Chapter III describes the obligations on the State Party receiving the request.¹⁰⁵ However, neither chapter addresses each state's obligations with respect to asset forfeiture. Specifically, the mutual legal assistance treaty does not provide what type of documentation or level of proof the requesting state must send to the receiving state to prove that it has a right to obtain forfeited property, nor does it state the level of cooperation the receiving State Party must provide to the requesting party. Accordingly, it is unclear how the asset forfeiture provision of the mutual legal assistance treaty between the United States and Switzerland is effectively carried out. In the future, a more descriptive mutual legal assistance treaty that details the obligations of each State Party with respect to the issue of asset forfeiture is necessary to effectuate the international forfeiture of proceeds related to trafficking in persons.

VII. Conclusion

Trafficking in persons is a highly profitable crime.¹⁰⁶ The United States must develop an effective asset forfeiture policy against traffickers in persons in order to eliminate the profit of the crime. The current asset forfeiture provisions contained in the TVPA and the Reauthorization Act, by themselves, are insufficient because traffickers in persons are able to evade domestic forfeiture laws by placing their assets and property outside of the United States. The United States needs international cooperation in order to have an effective asset forfeiture policy that is able to successfully eliminate the financial profitability of trafficking in

103. MLAT, May 25, 1973, U.S.-Switz., 27 U.S.T. 2019, 1052 U.N.T.S. 61 (entered into force Jan. 23, 1977).

104. *Id.* Art. 1.

105. *Id.* Chs. III, VII.

106. *See* Peck, *supra* note 2.

persons. Therefore, it is essential that the United States ratify the Convention and the Protocol as quickly as possible and pursue the creation of comprehensive mutual legal assistance treaties with those countries who have not ratified the Convention or the Protocol.

