

**Human Rights in World Politics**  
**Policy Paper**

***Trafficking of Women in Europe:***  
*How can it be stopped?*

**May 10<sup>th</sup> 2005**

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Acronyms:

CATW	=	Coalition Against the Trafficking of Women (NGO)
CEDAW	=	Convention on the Elimination of all forms of Discrimination Against Women
ECHR	=	European Court of Human Rights
EU	=	European Union
ECOSOC	=	Economic and Social Council
ICC	=	International Criminal Court
ICCPR	=	International Covenant on Civil and Political Rights
ICESCR	=	International Covenant on Economic, Social and Cultural Rights
NGO	=	Non-Governmental Organization
OSCE	=	Organization for Security and Cooperation in Europe
SEE	=	Southeast Europe/ European
UDHR	=	Universal Declaration of Human Rights
UN	=	United Nations

Between 600,000 and 800,000 people are internationally trafficked in one way or another each year.<sup>1</sup> This estimate excludes the millions who are trafficked inside their home nations. The number of Central and Eastern European women being trafficked from countries such as Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Romania and Serbia-Montenegro is rising and may be as high as 175,000.<sup>2</sup>

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of 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 prostitutions of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs”.<sup>3</sup>

Europe has the most advanced regional human rights regime in the world yet egregious human rights abuses continue to occur. Since the end of the Cold War in 1989, organized crime has grown as it is no longer kept in check by communism. Many Southeast European (SEE) states have experienced conflict and economies have weakened, leading to increasing poverty especially for women.<sup>4</sup> Prostitution is an international phenomenon and increasingly follows global capital flows.

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<sup>1</sup> U.S. Department of State (2004) Facts About Human Trafficking [online] Bureau of Public Affairs, Washington D.C. Available from: <http://www.state.gov/r/pa/ei/rls/33109.htm> [Accessed 20th April 2005].

<sup>2</sup> Long, L. (2002) Trafficking in Women and Children as a Security Challenge in Southeast Europe, Journal of Southeast European & Black Sea Studies, Vol. 2 Issue 2, pp.55

<sup>3</sup> Article 3, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children

<sup>4</sup> Unknown (2000) Trafficking in women, The Economist, August 24<sup>th</sup> 2000, two-thirds of the unemployed in Russia are women.

Traffickers have taken advantage of wealth inequalities by offering females menial jobs, such as becoming a nanny or a maid, in Western Europe. Once the woman has agreed, she is transported to an intermediary country and sold into prostitution, if she resists she is beaten and/ or raped.<sup>5</sup> Sometimes traffickers do not even offer a job, but simply abduct women, transport them to other countries and force them into sexual slavery. Others consciously enter into agreements to work as sex workers or pay to be smuggled across a border. Due to the vulnerability of those being smuggled, smuggling can often lead to trafficking as women are then forced to work for minimal or no remuneration and beaten.<sup>6</sup>

What follows is an examination of the legal mechanisms in place and the foreign policies of states to deal with the trafficking of women, and the attempts of non-governmental organizations to stamp out the problem in Europe.

### Current legal framework

The trafficking of women is prohibited under international law. Article 8 of the International Covenant on Civil and Political Rights (ICCPR) has codified the prohibition of slavery and involuntary servitude of the Universal Declaration on Human Rights (UDHR).<sup>7</sup> Under the UDHR, states were under no obligation to abide by its principles; however, the ICCPR is a “harder” law as states are required to file reports to the ICCPR committee.

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<sup>5</sup> Economist - pp.2

<sup>6</sup> Long - pp.56

<sup>7</sup> ICCPR Article 8 (1) “No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. (2) No one shall be held in servitude.”

Though Article 2 (1) of the ICCPR states that the nationality of a person is immaterial to the rights they are afforded,<sup>8</sup> trafficked women often remain in legal-limbo as they are regularly viewed as a criminal instead of the victim. In one instance a local police officer was asked to protect a trafficked woman from a brothel-owner; the policeman refused and instead arrested the trafficked woman.<sup>9</sup> States do not feel any responsibility to the trafficked woman because they are usually foreigners and instead solve the issue by repatriation. If these trafficked women were citizens of the country, however, they would be seen as victims. These actions contravene Article 2 of the ICCPR as they are not treating trafficked women with the same rights as their own citizens.

Europe has three, regional organizations which have overlapping mandates;<sup>10</sup> they are the Council of Europe, the European Union (EU) and the Organization for Security and Co-operation in Europe (OSCE). The Council of Europe created the general European Convention on Human Rights (ECHR).<sup>11</sup> The ECHR was the first comprehensive human rights treaty creating the first ever complaint procedure and the first international court<sup>12</sup> and is broadly accepted by the other two organizations. The EU's human rights policy is criticized because it is, "splintered in many directions, lacks the necessary leadership and profile, and is marginalized in policy-making".<sup>13</sup> The OSCE

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<sup>8</sup> ICCPR Article 2 (1) "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdictions the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

<sup>9</sup> Long – pp.65

<sup>10</sup> Steiner & Alston – pp.793

<sup>11</sup> Claude & Weston – pp.9 The distinction is made between four categories of human rights instruments. (1) General Conventions, (2) Topically specific conventions, (3) conventions on group protection and (4) convention prohibiting discrimination.

<sup>12</sup> Steiner & Alston – pp.786

<sup>13</sup> Steiner & Alston – pp.791

similarly suffers in that its human rights commitments are non-binding. Its main focus is “promoting a cooperative security system”<sup>14</sup> and therefore the trafficking of women is not its main priority. If the focus of trafficking of women was shifted to being a regional security concern, then the organization may be more prepared to tackle the issue. Because trafficking and organized crime has a destabilizing affect on state sovereignty and challenges the rule of law, this shift in focus should not be problematic.

The European Court of Human Rights is the main enforcement mechanism of the ECHR. The ECHR Court has no jurisdiction, however, if a domestic court is resolving the matter. Article 4 prohibits trafficking by stating: “(1). No one shall be held in slavery or servitude... (2) No one shall be required to perform forced or compulsory labor”. The court has had trouble coping with the rapid increase in cases and cases were taking five years and eight months for cases to be decided.<sup>15</sup> Although reforms have been made to ease the burden on the court, the continuing expansion of the EU is causing the number of pending cases to rise exponentially. Despite these problems, the ECHR is still considered the strongest human rights mechanism in the world.

In the preamble of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), a group protection convention, an acknowledgement is made to the existing legal framework under the UDHR, ICESCR and the UN Charter. Gross inequalities against women continue and so the convention aims to support and extend the rights of women. The treaty imposes active duties on states to “ensure through law”, “to establish legal protection of the rights of women”, “to

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<sup>14</sup> Steiner & Alston - pp.792

<sup>15</sup> Steiner & Alston - pp.788

encourage the provision” and to “eliminate discrimination”.<sup>16</sup> The language of CEDAW is proactive. Article 6 declares that, “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.<sup>17</sup> Article 6 specifically prohibits the trafficking of women. By using “shall” as opposed to “should”, it establishes that states are obligated to adhere to the articles set out in CEDAW rather than the treaty being voluntary.

Article 11 (b) of CEDAW stresses the rights of women to economic equality and “the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment”. If this article were fully implemented it would slow the number of women trafficked considerably as economic hardship and lack of opportunities are the main reasons why women are coerced abroad by traffickers into a life of sexual slavery. The notion of equality is a contentious issue in many parts of the world however; in Muslim Shari’a law, the interpretation of verse 4:34 of the Koran legitimizes the subordinate role of women. “Men have *qawama* [guardianship and authority] over women because of the advantage they [men] have over them [women] and because they [men] spend their property in supporting them [women]”.<sup>18</sup> Many of the Southeast European states, where the victims of the traffickers are from, have large Muslim populations who may be unwilling to implement the CEDAW requirements.

A dilemma exists over whether negotiators should weaken a treaty so as to get as many states as possible to ratify it or be uncompromising to protect the integrity of the treaty. In the case of CEDAW, equality for women is argued as a culturally relative issue and thus many states have included reservations when ratifying it. CEDAW has more

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<sup>16</sup> Steiner & Alston – pp.180

<sup>17</sup> CEDAW Convention 1981

<sup>18</sup> Steiner & Alston – pp.393

reservations than any other human rights treaty.<sup>19</sup> States are eager to include reservations as it means that they can give an impression of cooperating whilst protecting their sovereignty. The effectiveness of the treaty is questioned as many reservations are in direct contravention to the fundamental provisions of the treaty.

There is no enforcement mechanism under CEDAW per se to ensure compliance. Under Article 18, states are required to submit reports for review by the Committee on the Elimination of Discrimination Against Women, which, via the Economic and Social Council, makes annual reports to the UN General Assembly and makes recommendations. Thus enforcement comes solely from horizontal<sup>20</sup> pressure from other states; the treaty is soft law as no action will be taken if a state is not in compliance.

The International Criminal Court (ICC) has jurisdiction to prosecute human traffickers as well. Article 7 (1) G and (2) C prohibits sexual slavery and the trafficking of women respectively.<sup>21</sup> The ICC has jurisdiction if a state fails to prosecute or does so improperly in its domestic courts. A case may come before the ICC if a state party refers it to the court, if the Security Council under Chapter VII of the Charter of the UN refers it to the ICC or if the ICC's prosecutor initiates an investigation. The USA remains opposed to the ICC and thus few cases are likely to be referred via the Security Council. Darfur is the first big challenge to the effectiveness of the ICC and it remains to be seen

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<sup>19</sup> Steiner & Alston – pp.180

<sup>20</sup> Steiner & Alston - pp.1082 “Horizontal” pressure can be understood as pressure from other states for a state to conform to international norms. “Vertical” pressure relates to a domestic judiciary that exerts pressure within a state.

<sup>21</sup> Rome Statute of the International Criminal Court, Article 7 (1) G “Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” and Article 7 (2) C “‘Enslavement’ means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.”

how effective the ICC will be; however, it is an additional forum to enforce compliance if states fail to fulfill their obligations.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, which supplements the topically specific UN Convention against Transnational Organized Crime, entered into force on the 25<sup>th</sup> December 2003. Similar to CEDAW, the protocol legitimates itself by stating in its preamble that although instruments exist which proscribe trafficking, “there is no universal instrument that addresses all aspects of trafficking in persons”.<sup>22</sup> Article 5 sets out requirements by states to criminalize trafficking within domestic law if not done so already, Article 6 goes even further and requires states to assist and protect the persons who have been trafficked. Previously the victims or prostitutes have been charged or repatriated; the protocol attempts to ensure that women will be helped back into society, given employment and other benefits as opposed to basic repatriation. The protocol helps increase awareness of trafficking of women, however, again there are no enforcement mechanisms and many states have ratified with reservations. Thus compliance rests on pressure from other states. Like the ICC this treaty is very new and its effectiveness has yet to be proven.

The above examination has shown that an extensive legal framework exists to address the issue of trafficking of women. Many of the treaties overlap. The ability to properly enforce and implement the treaties is missing; this lack of enforcement represents a weakness and is unlikely to deter traffickers. On the other hand, even if enforcement was operational and states were penalized with economic sanctions, it might exacerbate the problem by increasing poverty levels and provoking women to seek opportunities abroad, making them vulnerable to abuse at the hands of human traffickers.

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<sup>22</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children

### Current NGO status

Traditionally non-governmental organizations only monitored governments. It was assumed that governments should police actions within their borders.<sup>23</sup> The trafficking of women is most prevalent in states where the government cannot police their own populations effectively. Members of governments are also sometimes involved themselves in the trafficking of women.

The Coalition Against the Trafficking of Women (CATW), one of the largest anti-trafficking NGO's, purports to be affiliated with a host of regional networks and individual groups.<sup>24</sup> It has been especially effective at lobbying "cointerest groups to mobilize their support".<sup>25</sup> CATW coordinated a coalition of more than 140 NGO's who advocated for the definition of trafficking to encompass all victims of trafficking and not just women who could prove they were abducted.<sup>26</sup> This definition was used in the Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children discussed above. Despite the prevalence of NGO's, The Economist is disparaging towards what it calls "NGO swarms", such as the one organized by CATW, claiming that they have no leadership and can destroy the negotiations they set out to influence.<sup>27</sup> Yet CATW maintain that they led the 140 plus NGO's and can point to the broader definition of trafficking as one of their accomplishments.

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<sup>23</sup> Claude & Weston - pp.374

<sup>24</sup> Coalition Against Trafficking in Women, <http://www.catwinternational.org/about/index.php> [accessed 1<sup>st</sup> May 2005]

<sup>25</sup> Claude & Weston - pp.375

<sup>26</sup> CATW <http://www.catwinternational.org/about/index.php>

<sup>27</sup> Steiner & Alston - pp.942

With the active participation of CATW, “One can no longer relegate NGO’s to simple advisory or advocacy roles in this process [of treaty negotiations]. They are now part of the way decisions have to be made.”<sup>28</sup> The participation of NGO’s has reduced State sovereignty and political authorities are now held accountable.<sup>29</sup> In addition, CATW holds category II Consultative Status at the UN and NGO’s are invited to make reports in the first week of CEDAW. Though NGO’s have increased their influence the difficulty they face, as both Wiseberg<sup>30</sup> and Luard<sup>31</sup> establish, is keeping the issue at or near the top of the international agenda.

### Current Foreign Policy Status

International norms have been created by the international community, as information is shared via organizations such as Europol and NGO’s. Though “Education, eradication, and interdiction programs at the regional and global levels”<sup>32</sup> are in place, the trafficking of women in Europe is still pervasive.

Evan Luard suggests that states are often slow to protect human rights as governments need to interact with each other, and they are fearful of breaking the traditions of state sovereignty.<sup>33</sup> Aside from Luard’s rationale, the relationship between states is unlikely to be harmed by outside intervention as the traffickers are not confined to one state. Fears of breaking the norm of state sovereignty are also unfounded as states

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<sup>28</sup> Steiner & Alston - pp.951 The is from a speech by the Canadian Foreign Minister Axworthy to NGO’s

<sup>29</sup> Claude & Weston - pp.372

<sup>30</sup> Claude & Weston - pp.374

<sup>31</sup> Claude & Weston - pp.301

<sup>32</sup> Williams –pp.117

<sup>33</sup> Claude & Weston - pp. 296-298 Luard gives other reasons: human rights policies are “ineffectual” and that countries are reluctant to criticize a hegemon. The SEE are evidently not hegemons and Luard discredits the first reason by stating that facts show that human rights policies are effective.

have to cooperate and act in concert with each other and no single government is responsible for these crimes.

Another reason states have been slow to curb the trafficking of women is because the world is traditionally run by men; this bias may be reflected in the policies and thought-processes of those in positions of authority. The attention that the exploitation of women receives may be sexist as reports on the trafficking of women “may sensationalize the problem (and at worst are voyeuristic thus, again exploiting the victims)”.<sup>34</sup> Yael Tamir asserts that the disproportionate attention that female genital mutilation receives “commonly reveal[s] a patronizing attitude toward women, suggesting that they are primarily sexual beings.”<sup>35</sup> Typically, women are made to work in low-paying industries and are the first to be fired and the last hired;<sup>36</sup> of the forty-one judges on the European Court of Human Rights only eight or 19.5% are women.<sup>37</sup> These statistics illustrate the inequality that exists and may contribute to the lack of will by governments, made up from a majority of men, to deal with the problem of trafficking in women.

One option open to members of the UN Security Council is to impose sanctions on states that are breaching their international obligations. Simma, Aschenbrenner and Schulte affirm, however, that negative measures such as sanctions infringe on state sovereignty.<sup>38</sup> The SEE countries only received full independence after the Cold War and may be sensitive to such infringements. Then again, trafficking is usually undertaken by

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<sup>34</sup> Long – pp.54

<sup>35</sup> Steiner & Alston – pp.422

<sup>36</sup> Claude & Weston - pp.65

<sup>37</sup> Steiner & Alston – pp.800

<sup>38</sup> Steiner & Alston - pp.1121 a new emphasis is placed on positive measures as opposed to negative inducements such as sanctions.

non-state actors and weak states are often unable to implement the agreements they have signed, sanctions are thus unlikely to be effective as these states lack the ability to enforce the treaties. Poor countries are the breeding-ground for organized crime; women are lured by traffickers with promises of well-paid jobs. Imposing sanctions may only intensify the problem by increasing poverty levels. Targeted sanctions against individual traffickers may be an alternative, but if enough evidence exists to impose sanctions against individuals then it would be better to try them in domestic courts, the European Court of Human Rights or the ICC.

The European Union offers a better alternative to sanctions as it is in a powerful position to aid and exert pressure on the SEE countries. Bulgaria is now a member of the EU, Croatia and Romania are candidate countries and the Former Yugoslav Republic of Macedonia's application is pending.<sup>39</sup> The other SEE countries not listed here still desire involvement in international organizations and reap the benefits of acting in partnership with other nations. The EU is in a strong position to use the carrot to more effect than the stick.

### Conclusions and recommendations

The world is becoming a more integrated, interdependent environment. The trafficking of women in Europe, in part, comes from the opening up of the SEE economies after the Cold War. One response by the international community to the trafficking of women in SEE has been to increase integration between nations by creating treaties and international organizations. Consequently, international laws are in place prohibiting the trafficking of women. Legislation to end the trafficking of women in

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<sup>39</sup> <http://www.eurunion.org/legislat/agd2000/agd2000.htm> [accessed 4th May 2005]

Europe, however, is not the whole answer. Repatriation of women does nothing to solve the problem; women are returned to an environment they were trying to escape from. Rather, a multifaceted approach is essential. The following recommendations outline some of the ways a multifaceted approach may be taken.

*Focus on the instability trafficking causes.* NGO's and Intergovernmental Organizations should frame the issue of trafficking in persons in terms of national security. Organized crime erodes the sovereignty of nation-states, creates economic instability and weakens democratic rule. Framing the issue in terms of security will lead to an increased willingness by states to resolve the problem.

*NGO's must maintain pressure on governments to act.* CATW and others have managed to make the trafficking of women a concern, keeping the issue at the top of a nations agenda is more problematic. CATW must keep the issue at the top of the agenda as Luard and Wiseberg recommend by using their category II consultative status at the UN and making reports in the first week of the CEDAW sessions to speak on behalf of the victims of trafficking.

*Pressure the SEE countries to fulfill their treaty obligations.* Often horizontal pressure from other states does not materialize or is ineffective. If the issue is framed in terms of national security, however, the European Union and other regional organizations will take a more active role. In addition, the EU has much to offer the SEE states through membership benefits of the EU and other treaty regimes such as the World Trade Organization.

*Help the victims of trafficking.* Repatriation by Western-European nations merely repatriates the problem. Article 2 (1) of ICCPR states that all persons should be treated

equally regardless of their origins. Western nations need to fulfill their obligations and provide assistance in the form of opportunities and legal aid as required under the ICCPR. Article 6 of CEDAW also requires SEE countries to assist the victims of trafficking when they return.

*Assist in boosting the economies of the SEE nations.* Women are second-class citizens in some of the SEE countries and are tempted to take up offers of employment from traffickers believing this will lead to a more prosperous life. An effort to reduce the economic reasons for leaving and create an environment of equality should be mounted in line with the principles espoused in CEDAW and the economic rights of International Covenant on Economic, Social and Cultural Rights (ICESCR).

*Educate the potential victims and sex-consumers.* The work undertaken by affiliates of CATW should be expanded and enhanced. Young women in Southeastern Europe need to be educated on the dangers of abduction and of working abroad. Consumers of the sex trade in Europe, sex tourists and males in general must be educated on the plight of these women and punished for sex tourism. To this end, states should implement domestic legislation allowing prosecution of sex tourists. These efforts would help curb demand and make it harder for the traffickers to recruit their victims.

*Educate the police force and judiciary.* The victims of trafficking are often seen as the criminals rather than the victim. The police force and judiciary must be educated on the duty of states to help victims, as enumerated in CEDAW and the Protocol on Trafficking.

Finally, States must examine the opportunity to co-opt NGO's to deliver services.<sup>40</sup> The autonomy of NGO's from governments will remain intact as the perpetrators in SEE are traffickers, not the state. NGO's are best placed to deliver the vital education to potential victims, law enforcers and males. The local NGO's have legitimacy in that they are local people and are well placed to help the women rebuild their lives. These commitments require extensive resources which NGO's cannot provide alone and therefore governments should consider whether to provide them with the necessary funds.

The legislation to end the trafficking of women in Europe exists in abundance, but the political will to enforce these laws is lacking. Then again, a human rights strategy requires more than legislation to be effective. The international community must initiate the multifaceted approach outlined above to eradicate this most egregious of abuses. Though this paper has primarily concentrated on the victims of trafficking in Europe, many of the recommendations outlined above would be effective at targeting traffickers around the world.

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<sup>40</sup> Claude & Weston - pp.377 Wiseberg outlines the dilemma faced by NGO's over whether to accept funds from governments and hence limit their autonomy.