

NOWHERE TO HIDE: ENDING ANONYMITY IN THE FIGHT AGAINST HUMAN TRAFFICKING

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The current legal framework for combating human trafficking for sexual exploitation is reviewed noting its strengths and weaknesses. Next, the Palermo Protocol is evaluated to determine which legal weaknesses are now adequately addressed and which continue to be a problem. A strategy is then suggested to overcome the remaining loopholes in the legal fight to end human trafficking for sexual exploitation. This strategy involves the development of a database of those who have been convicted of human trafficking for sexual exploitation and related crimes in an effort to unify the definition of human trafficking, serve as a tool for prosecuting human trafficking, and increase the amount of case law available on human trafficking crimes. The obstacles for combating human trafficking for sexual exploitation are compared to those for combating sex crimes in domestic legislation. The positive effect of having a database similar to a sex offender registry is discussed and the potential negative consequences that could result from such a database are considered. Conclusions are drawn recommending the development of such database, as it will make the implementation of the Palermo Protocol and the prosecution of human traffickers, transparent to the international community. It will also act as a deterrent to those who participate in human trafficking for sexual exploitation.

INTRODUCTION

A nineteen-year old girl thought her stars had aligned when a woman approached her at the bus station. This woman offered her an opportunity to join her husband and get a job in the United States. She promised to help her. After days of cooking and cleaning for the woman to “earn her transportation to the United States,” her benefactress turned her over to three men who beat her, drugged her, and sold her for sex.¹ For three months, she was locked in a small room as both men and women paid to rape and torture her. Her nightmare continued until American immigration officials discovered her in the trunk of her captor’s car at the U.S.-Mexico border. But she had to spend six months in a detention center and endure

1. *Diary of a Trafficking Victim*, THE VICTIM’S INFORMER, 1, 10 (June/July 2011), http://www.tdcj.state.tx.us/documents/Victims_Informer_Vol_16_02.pdf (anonymous trafficking victim describing her experiences in sexual slavery).

consultations with multiple attorneys before she was “officially” identified as a trafficking victim.²

This is testimony from a trafficking victim who survived. But what happened to the men and women who tortured and raped her in Mexico? Or her captors who continually drugged and beat her? What happened to the woman who fraudulently promised to help her obtain employment but instead sold her into sexual slavery?

Human trafficking for sexual exploitation is on the rise all over the globe.³ All too often, victims are ignored by authorities or fall through the cracks of a society whose priorities are elsewhere. Perhaps even more appalling is the fact that the people responsible for these heinous crimes often suffer little or no penalty. Instead, lower-level criminals present when police raid a trafficking ring receive a slap on the wrist, and all other individuals involved in the criminal enterprise suffer little if any penalty. All they lose are a few slaves that are easy to replace or re-apprehend.

The human trafficking problem has not gone unnoticed. The United Nations Convention Against Transnational Organized Crime (“UNTOC”) and one of the accompanying protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“the Supplementary Protocol”),⁴ have tried to foster international cooperation to end this cycle.⁵ There has been little success to date due to the vague language found in both treaties and the lack of a specific tool to come out of these agreements to unify both the definition and prosecution of trafficking. Without such as tool, enforcement of human trafficking has been patchwork at best as national governments fruitlessly try to stem the flow of a crime that, because of its international character, requires international action.

This Note will focus on human trafficking for sexual exploitation (“HTSE”). The current legal and enforcement framework to combat HTSE is deficient in a number of ways. These deficiencies allow HTSE to flourish because countries are secretly able to renege on their treaty

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2. *Id.* (anonymous trafficking victim describing her experiences in sexual slavery).
 3. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 45 (2012), <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm> (finding that “the ILO identified a higher percentage of sex trafficking victims than in the 2005 Report”); *see also* LOUISE SHELLEY, HUMAN TRAFFICKING: A GLOBAL PERSPECTIVE (2010) (discussing various forms of human trafficking and comparing human trafficking in various countries).
 4. Both of these documents will be referred to individually as well as jointly in this Note. When the U.N. Convention Against Transnational Organized Crime is referred to individually, it will be referred to as UNTOC. When the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children is referred to individually, it will be referred to as “the Supplementary Protocol.” When they are both referred to at the same time, the two documents together will be referred to as “the Palermo Protocol.”
 5. *See generally* United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2225 U.N.T.S. 209.

obligations. To unify the definition of HTSE, aid in the enforcement of treaty obligations, and diminish the prevalence of HTSE by exposing all of those who support this crime, countries must adopt the Offenders of Humanity Database. The new tool proposed by this Note will allow individuals, NGOs, and governments to track the implementation of HTSE treaty obligations.

This Note does not in any way include those involved in legal prostitution. While there are arguments as to whether prostitution is inherently exploitive, this Note focuses on the parts of the sex industry that are illegal.

Part I of this Note will define and discuss the current status of HTSE. Part II will discuss the current international legal framework concerning HTSE and its deficiencies. Part III will provide a specific solution to address these deficiencies in the form of the Offenders of Humanity Database.

I. HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION

A. *The Current Status of Human Trafficking for Sexual Exploitation*

Simply, human trafficking is slavery.⁶ Some of the earliest information on slavery comes from the Code of Hammurabi in the eighteenth century B.C. and from sources from the seventh century B.C. on the role of slaves in Greek society.⁷ Human trafficking is the modern manifestation of slavery.⁸ HTSE first rose to prominence as an international issue in the late nineteenth and early twentieth centuries.⁹ At that time, the problem was commonly known as “white slavery” and focused “primarily . . . on trafficking in women for ‘immoral purposes’ or prostitution.”¹⁰ Early treaties on this subject “emphasized the coordination of information among state parties and discussed steps to repatriate the victims.”¹¹

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6. *Quick Facts About Human Trafficking*, END HUMAN TRAFFICKING NOW (last visited November 8, 2013), <http://www.endhumantraffickingnow.com/quick-facts-about-human-trafficking/> (stating that human trafficking is “a contemporary form of slavery”).
 7. Bamber Gascoigne, *History of Slavery*, SLAVERY WORLD, <http://www.historyworld.net/wrldhis/plaintexthistories.asp?historyid=ac41> (last visited Oct. 25, 2013) (tracing the history of slavery from its earliest known historical sources).
 8. Enrique A. Maciel-Matos, Comment, *Beyond the Shackles and Chains of the Middle Passage: Human Trafficking Unveiled*, 12 SCHOLAR 327, 328 (2010) (discussing how human trafficking constitutes “the largest manifestation of slavery” today).
 9. Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 STAN. J. INT’L L. 1, 6 (2004) (stating that “[h]uman trafficking has risen to prominence . . . in the late nineteenth and early twentieth centuries.”).
 10. *Id.*
 11. *Id.* at 8.

This issue reemerged into international concern during “the growing global movement for women’s rights” in the 1970s.¹² Currently, it is estimated that about 20.9 million persons are trafficked a year, and of these, over 4.5 million are trafficked for sexual exploitation.¹³ Despite the estimated 20.9 million trafficking victims, only 41,210 were identified as such in 2011.¹⁴ Trafficking can occur domestically, within a State, or across international borders.¹⁵ While the human trafficking operation takes many forms,¹⁶ often traffickers use force or lure their victims with false promises in order to obtain control over their victims and shuttle them across borders.¹⁷ Although men and boys are trafficking victims, the majority of victims are women and girls.¹⁸ In fact, 98% of individuals trafficked for sexual exploitation are female.¹⁹ While the business model for human trafficking can range anywhere from the small-scale entrepreneur model to global organized crime networks, the U.N. Office on Drugs and Crime (“UNODC”) estimates that yearly profits from all aspects of human trafficking reach upwards of \$31.6 billion.²⁰ Profits for individual human traffickers vary, with sophisticated cartels “fetching \$400,000 a head for

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12. *Id.* at 10.
 13. ILO 2012 *Global Estimate of Forced Labour Executive Summary*, INTERNATIONAL LABOUR ORGANIZATION 1, 1 (2012) http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_181953.pdf.
 14. U.S. DEP’T OF STATE, *supra* note 2, at 44.
 15. *Id.* at 45.
 16. INTERPOL, *Types of Human Trafficking*, <http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking> (last visited Oct. 26, 2013) (briefly detailing sexual exploitation, forced labour, commercial sexual exploitation of children in tourism, and trafficking for organs as the most prevalent forms of human trafficking).
 17. Deven Brewer, *Globalization and Human Trafficking*, HUMAN RIGHTS & HUMAN WELFARE 46, 47 (2009), <http://www.du.edu/korbel/hrhw/researchdigest/trafficking/Globalization.pdf> (quoting the United Nations Convention Against Transnational Organized Crime definition of human trafficking, which states: “trafficking in persons means the recruitment, transportation, transfer, harboring, or receipt of persons either by threat or use of abduction, force, fraud, deception or coercion”).
 18. UNITED NATIONS GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING, *Human Trafficking: The Facts*, 1, http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_THE_FACTS_-_final.pdf (finding that 98% of the human trafficking victims that are sexually exploited “are women and girls”).
 19. U.S. DEP’T OF STATE, *supra* note 2, at 45 (finding that “98 percent of sex trafficking victims” are female).
 20. UNITED NATIONS GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING, *supra* note 16, at 2.

sex or forced labor.”²¹ Estimates of human trafficking are imprecise because of the “disparities in governmental and non-governmental definitions and the underground nature of human trafficking.”²² However, the monopolistic competition model can likely best explain a human trafficking business enterprise.²³ This form of imperfect competition includes many producers that sell products that are slightly differentiated from each other but are not perfect substitutes.²⁴ “There are many sellers in the [human trafficking market]” made up of “organized groups of criminals or small, loose networks of entrepreneurs.”²⁵ And they are all selling the same product: human beings.

Currently, the benefits to be gained from human trafficking far outweigh the costs, which assures “a willing cadre of traffickers.”²⁶ While the profits are in the billions, due to the hidden nature of human trafficking, the exact effects of this business and the economic consequences if it is eliminated are not known.²⁷

While HTSE has gained increasing media attention in the last few years, its prevalence is not a new problem. Since the passing of UNTOC and the Supplementary Protocol, (together the “Palermo Protocol”) in 2000, many countries are beginning to proactively combat human trafficking.²⁸ These countries have set up their own frameworks to combat HTSE and human trafficking for labor purposes. However, of the limited resources available, more resources are devoted to labor trafficking instead of sex trafficking.²⁹ This lack of focus on HTSE can compound the problems associated with combating HTSE.³⁰

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21. *Minnesota: A Human Trafficking Battleground*, KARE11 (Feb. 16, 2012, 12:14 AM), <http://www.kare11.com/rss/article/959535/14/Minnesota-A-human-trafficking-battleground>.
 22. Elizabeth Wheaton, et al., *Economics of Human Trafficking* 48 INT’L MIGRATION 114, 118 (2010).
 23. *Id.* at 118-19.
 24. ENCYCLOPEDIA BRITANNICA, *Monopolistic Competition Definition*, <http://www.britannica.com/EBchecked/topic/390037/monopolistic-competition> (last visited Oct. 26, 2013) (defining the model as a “market situation in which there may be many independent buyers and many independent sellers but competition is imperfect because of product differentiation, geographical fragmentation of the market, or some similar condition”).
 25. WHEATON, *supra* note 20, at 118-19.
 26. *Id.* at 119.
 27. *Id.* at 118 (noting that “[a]ll agencies and researchers cite the need for more information in order to understand and reduce trafficking in humans.”).
 28. U.S. DEP’T OF STATE, *supra* note 2, at 44 (finding a global increase in reported prosecutions of traffickers, convictions, and victims identified since the passing of The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003).
 29. DUREN BANKS & TRACEY KYCKELHAHN, U.S. DEP’T OF JUSTICE, *CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS 2008-2010* (2011) (noting that between January 2008 and June 2010, most suspected trafficking incidents were sex trafficking (82%), but “[f]ederal agencies were

Ironically, despite being a profitable enterprise for the traffickers, the modern human trafficking trade is rooted in the poverty of the victims.³¹ Traffickers feed off the economic desperation of their victims and prey on their vulnerabilities in order to coerce, trick, or forcibly recruit them.³² Traffickers lure their victims by exploiting “the dreams and fears of the poor” and by such means as “fraudulently advertising employment opportunities.”³³ The key to the traffickers’ success is the targeting of the individuals who are “the most vulnerable and marginalized in society—people who are already struggling to survive.”³⁴ This most marginalized segment of society consists of women and girls because of “their greater susceptibility to poverty, illiteracy, and lower social status,” making it more difficult for women and girls to escape HTSE once they are enveloped in it.³⁵ Economic disparities have contributed to the continued rise of HTSE, mostly in developed nations, and are aided by “cultural views of women as less valuable than men.”³⁶ These views produce “a more tolerant view of prostitution and sexual violence”³⁷ leading to a general lack of public pressure to diminish HTSE in areas where it is the most prevalent.³⁸

While the root of human trafficking is poverty, its continuation and growth is fed by demand. Much of this “demand” is from the developed world, while the “supply” of victims is from the developing world.³⁹ People who purchase sexual services, a majority of whom are men, “rarely think about the prostitutes with whom they have sexual relations” and either do

more likely to lead labor trafficking investigations (29%) than sex trafficking investigations (7%).”).

30. *Id.*
31. See Maciel-Matos, *supra* note 6, at 330-34 (stating that “[p]overty creates an environment where women and young people, in seeking to improve their economic condition, can more easily fall prey to traffickers’ false promises of a better life elsewhere.”).
32. *Id.* at 330 (stating that human trafficking is successful because traffickers prey on “people who are already struggling to survive on the lowest rungs of the socioeconomic hierarchy.”).
33. *Id.* at 332.
34. *Id.* at 330.
35. *Id.* at 331.
36. *Id.*
37. *Id.*
38. Kyle Kim, *U.S. Report: Worst Human Trafficking in Africa, Middle East*, SOCIAL CAPITAL REVIEW (Jul. 18, 2011), <http://socialcapitalreview.org/u-s-report-worst-human-trafficking-in-africa-middle-east/> (highlighting how the worst offenders are in Africa and the Middle East).
39. SHELLEY, *supra* note 2, at 5 (stating that “the supply exists because globalization has caused increasing economic and demographic disparities between the developing and developed world” and that “current world conditions have created increased demand and supply.”).

not care, never bother to find out, or turn a blind eye to whether those women are there consensually.⁴⁰ This attitude makes victims exponentially more difficult to identify as those with the best access to them are doing the least to help them.

Human trafficking is “built on widespread individual human suffering”⁴¹ and is difficult to combat due to the multiplicity of actors, the statistical unlikelihood of punishment, and the incredible financial advantages for participants.⁴² To that end, the international community came together in 2000 in Palermo, Italy to set up a framework to fight this complicated, transnational, and increasingly lucrative criminal practice. This framework is known as the Palermo Protocol.

B. Defining Human Trafficking for Sexual Exploitation

The U.N. definition of HTSE is relatively expansive compared to national definitions. Trafficking in persons is defined in the Palermo Protocol as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of 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.⁴³

Human trafficking “does not require an international border to be crossed” nor “necessarily involve movement or transfer of the victim.”⁴⁴ It can occur transnationally or completely within a single State, which is known as domestic trafficking. The Palermo Protocol definition of human trafficking (“U.N. definition”) covers both possibilities. It also

40. *Id.* at 39 (suggesting that men “happily hire the services of a younger woman who is compliant and affordable without thinking of why these services are so accessible.”).

41. *Id.* at 39-40.

42. See *Infra* Part II. See also *Quick Facts About Human Trafficking*, END HUMAN TRAFFICKING NOW (last visited November 8, 2013), <http://www.endhumantraffickingnow.com/quick-facts-about-human-trafficking/> (stating that the “risk of prosecution is often small in most countries. Punishment for the crime of human trafficking is lower than for trafficking drugs.”).

43. A Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, art. 3, Dec. 15, 2000, 2237 U.N.T.S. 319 [hereinafter *The Supplementary Protocol*].

44. BENJAMIN PERRIN, *INVISIBLE CHAINS: CANADA’S UNDERGROUND WORLD OF HUMAN TRAFFICKING* 8 (2010).

encompasses sex trafficking, exploitative labor trafficking, child soldiers, and even organ trafficking.⁴⁵

Since the adoption of the Palermo Protocol, all “relevant U.N. organizations and agencies, as well as other intergovernmental organizations” working on HTSE have accepted and use this definition.⁴⁶ The U.N.’s adoption of this definition of trafficking was controversial—particularly due to the use of the phrase “sexual exploitation.” Certain groups advocated the removal of this phrase, arguing that it could transform the issue of sex trafficking into one that “turn[s] on whether one believes that all activities in the sex industry constitute ‘sexual exploitation’ or whether one believes the term . . . only include[s] situations of forced labor, servitude, or slavery-like practices.”⁴⁷ The delegates crafting the Palermo Protocol eventually compromised by listing the “various forms of trafficking.”⁴⁸ However, this same controversy continues at the national and regional level as national legislatures and law enforcement agencies grapple with drafting legislation that adequately responds to the multiplicity of factors involved in combating HTSE.

The broad scope of this definition has led to criticism. Such critics believe that since the definition covers so many different types of exploitation, it “obscures important differences between trafficking and exploitation as well as between different exploitative practices.”⁴⁹ On the other hand, the wide scope of this definition “extends beyond those involved in moving [the victim] into the situation of exploitation to potentially include the individual exploiter [the person who physically uses the victim for sex].”⁵⁰

C. *Legal Problems Resulting From Human Trafficking for Sexual Exploitation*

A big obstacle to the implementation of the U.N. definition on an international scale is the lack of a definition of the word “exploitation.” While the U.N. definition of human trafficking is reflected in the anti-trafficking statutes of the majority of States,⁵¹ the differences in how countries define “exploitation” results in a plethora of important

45. SHELLEY, *supra* note 2, at 11 (summarizing the Palermo Protocol).

46. ANNE T. GALLAGHER, *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING* 42 (2010).

47. LeRoy G. Potts, Jr., Note, *Global Trafficking in Human Beings: Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons*, 35 *GEO. WASH. INT’L L. REV.* 227, 238 (2003).

48. *Id.*

49. GALLAGHER, *supra* note 42, at 49.

50. *Id.*

51. *Id.* at 42 (remarking on how “since 2000, the majority of States have enacted comprehensive anti-trafficking laws that generally reflect the internationally agreed definition”).

differences among said statutes. Although there is no international consensus as to what constitutes exploitation, “most activists and scholars appear to accept the validity of some kind of a ‘seriousness’ threshold.”⁵² Due to the lack of a universally enforced definition of HTSE, not all situations that constitute HTSE under the U.N. definition are prosecuted as such within a given State. This hinders cooperation between States. Additionally, because the prosecutions of these incidents are not transparent to the international community and do not use the same definition, there is very little usable case law for lawmakers to utilize. These problems erode the successes of the practical application of the Palermo Protocol and need to be addressed in order for the international community to make significant inroads in the fight against HTSE.

1. Lack of a Universal Definition

Customarily, UNTOC and the Supplementary Protocol leave the form and content of national legislation prohibiting HTSE to the discretion of each national government.⁵³ An unintended byproduct of this is that an act of human trafficking in one country is not necessarily an act of human trafficking in another. For example, Canada’s definition of human trafficking is far narrower than the U.N. definition.⁵⁴ The Canadian definition of HTSE only addresses persons who are recruited through the use of force or the threat of force. Therefore, someone who was forced into trafficking to pay a debt or through psychological manipulation would not be criminally liable for HTSE in Canada.⁵⁵ The U.N. definition, on the other hand, includes those who are recruited through coercion.⁵⁶

52. *Id.*

53. The Supplementary Protocol, *supra* note 39, at art. 8-9 (stating that the “State Parties shall establish comprehensive policies, programmes and other measures to prevent and combat human trafficking”).

54. PERRIN, *supra* note 40, at 137 (arguing that the Canadian definition “centres on the victim’s fear for safety or the safety of someone known to the victim” and fails to address other methods which should be included including “deception, fraud, abuse of power/position of vulnerability, or payment of someone to control the victim”).

55. *Canadian Criminal Code*, R.S.C. 1985, c. C-46, § 423 (Can.). This statute states: “Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,

- (a) uses violence or threats of violence to that person or his or her spouse or common-law partner or children, or injures his or her property;

- (b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;

- (c) persistently follows that person;

This definitional issue is also a problem within the United States framework for combating human trafficking: the Trafficking Victims Protection Act (“TVPA”). The U.S. passed the TVPA in October 2000 with the goal of “preventing human trafficking overseas, the protection and assistance of victims in the U.S. and more stringent prosecution and punishment of traffickers.”⁵⁷ This Act, which claims to fulfill the requirements of the Palermo Protocol, in fact limits its HTSE definition.⁵⁸ Under the TVPA, victims of trafficking are eligible for special visas to remain in the U.S. while their traffickers are prosecuted but only if they have been victim to “severe trafficking.”⁵⁹ This “severe” standard is problematic and “prevents many victims of human trafficking” from receiving the special visa, creates “the impression that other types of human trafficking are less offensive,” and requires law enforcement to “classify” a victim of human trafficking.⁶⁰ This classification process often hinges on the assistance a victim can provide to the prosecution of her trafficker. However, “the more severe the trafficking, the more a victim may be psychologically incapable of assisting law enforcement after rescue” and as such, may not qualify as a victim of severe trafficking.⁶¹

The narrowness of the TVPA definition is simply the tip of the iceberg. Each of the U.S.’s fifty individual states has its own HTSE law.⁶² This

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- (d) hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;
 - (e) with one or more other persons, follows that person, in a disorderly manner, on a highway;
 - (f) besets or watches the place where that person resides, works, carries on business or happens to be; or
 - (g) blocks or obstructs a highway.”
56. The Supplementary Protocol, *supra* note 39, at art. 3(a) (stating that “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion” is human trafficking).
57. *Id.* at 329.
58. Maciel-Matos, *supra* note 6, at 336-37 (asserting that “the ‘severe forms of trafficking’ language raises problems by limiting “assistance and benefits to a particular type of victim, while creating the impression that other types of human trafficking are less offensive.”).
59. *Id.* at 336 (“Severe trafficking is: (a) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained [eighteen] years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.”).
60. *Id.* at 336-37.
61. *Id.*
62. *Wyoming Becomes 50th State to Outlaw Human Trafficking*, POLARIS PROJECT (Feb. 27, 2013), <http://www.polarisproject.org/media-center/press-releases/742-wyoming-becomes-50th-state-to-outlaw-human-trafficking> (announcing that

creates additional complications as these laws “are as varied as the states themselves.”⁶³ As the current state of the law in the U.S. illustrates, HTSE definitions are not uniform even within the same country. Without uniformity, prosecution of HTSE remains patchwork and cooperation efforts stalled. Without cooperation, HTSE continues to flourish.

2. Transnational Issues That Hinder Cooperation

Domestic HTSE, situations in which persons are trafficked within their own State, occurs in a majority of countries.⁶⁴ However, victims of HTSE can also be victims brought to a State from other States.⁶⁵ To combat this type of HTSE, international coordination is essential as “State-centered approaches to combat trafficking are proving obsolete and futile since human trafficking knows no [S]tate boundaries.”⁶⁶

Whether the trafficking is international or domestic, human trafficking networks “are often highly organized, sophisticated mobile enterprises,” and are capable of quickly relocating “to avoid detection and prosecution.”⁶⁷ Catching up to these mobile networks requires significant cooperation between different law enforcement agencies within a State and even more coordination when the networks are transnational.

To stop the international traffic in human beings, a tool such as the Offenders of Humanity Database must expose the patterns of HTSE criminal networks to the public. This will ensure these networks are targeted by anti-trafficking legislation and law enforcement efforts. Unfortunately, currently networks are able to flourish invisible to public view.⁶⁸ For example, many wealthy pedophiles from countries like the

Wyoming became the last American state to pass a HTSE law when Governor Mead signed the state’s “first bill to protect victims and prosecute traffickers”).

63. Kelly Heinrich and Kavitha Sreeharsha, *The State of State Human Trafficking Laws*, 52 THE JUDGES’ JOURNAL 28, 29 (Winter 2013) (discussing how widely HTSE state laws vary across the United States).
64. *Sex Trafficking in the United States*, INTERNATIONAL CRISIS AID, <http://www.crisisaid.org/ICAPDF/Trafficking/traffickstats.pdf> (Despite the U.S.’s proactive prosecution of HTSE, almost 300,000 American children are at risk for trafficking into the sex industry).
65. *Human Trafficking FAQs*, U.N.O.D.C. (last visited Nov. 4, 2013), http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What_is_human_trafficking (stating how “trafficking often occurs from less developed countries to more developed countries”).
66. Brewer, *supra* note 15, at 47 (2010) (discussing how globalization has facilitated human trafficking).
67. Miriam Cohen, Note, *Piracy and Human Trafficking*, 16 BUFF. HUM. RTS. L. REV. 201, 223 (2010) (discussing how globalization has provided an ideal environment for trafficking networks to maximize their territory).
68. Darla Carmichael, *Human Trafficking In My Backyard*, SEX, VIOLENCE, PARENTING & OTHER CHARACTER FLAWS (Aug. 22, 2012 9:37 AM), <http://darlasbooks.wordpress.com/2012/08/23/human-trafficking-in-my-backyard> (“Someone mentioned human trafficking. My first thought was – no, this is Fort

United States, Japan, and parts of Western Europe participate in child prostitution through the sex tourism industry in Asia and Latin America. This industry is officially illegal but is secretly subsidized by corruption. The sex tourism industry generally flourishes in States “that do not have a stable or strong economy,” and those where “a large part of the population is undernourished . . . and is dying of the consequences of malnutrition.”⁶⁹ Since “minors constitute a large percentage of the population,”⁷⁰ these States are breeding grounds for HTSE. Travel agencies, hotel owners, and governments alike, their cooperation hidden from public view, facilitate and promote this industry.⁷¹ As the illegal sex industry “flourishes by exploiting the misery of famished families,”⁷² the public is often unaware of the institutions in their own home countries that support this miserable enterprise. Once the general public is aware of the illegal sex industry, it may be easier to significantly diminish it.

3. Lack of Transparency in Prosecution

Despite the sophistication of the HTSE enterprises, human traffickers are being prosecuted. “Five thousand trafficking prosecutions were recorded globally” in 2008 alone, leading to “almost three thousand convictions.”⁷³ However, in 2008, an estimated 2.5 million persons, two-thirds of whom are women and children, were forced into commercial sex trafficking.⁷⁴ In this context with this number of victims, these conviction numbers are unacceptably low; especially considering how the number of individuals trafficked is likely substantially higher than the official estimates given the covert nature of the HTSE.

In addition, many of these prosecutions and the process by which they come about are not visible to the public. Neither are the all the actors that participate in HTSE. This lack of transparency inhibits societies from recognizing the true scope of the problem. An important reason for this

Worth, an urban city with a uniquely small town feel. Nothing ever happens in Fort Worth.”).

69. *Id.* at 582 (elaborating on the socio-economic background of the supplying countries).
70. *Id.* (pointing out that child prostitution is mainly present in underdeveloped and developing countries).
71. Karene Jullien, Note, *The Recent International Efforts to End Commercial Sexual Exploitation of Children*, 31 *DENV. J. INT’L L. & POL’Y* 579, 585 (2003) (discussing how some governments in developing countries ignore or profit from sex tourism involving minors).
72. *Id.* at 582-83 (discussing how the fight for survival leads children in indigent families to become engaged in prostitution).
73. PERRIN, *supra* note 40, at 118 (discussing the small number of HTSE related convictions in Canada).
74. SHELLEY, *supra* note 2, at 5 (citing data from the International Labour Organization).

problem is the diversity of actors that participate in HTSE.⁷⁵ Some of these actors are criminal in that the entirety of their occupation violates HTSE laws; others have an official job that is legal, but use it to facilitate HTSE crimes; still others walk the fine line between legal and illegal.⁷⁶

Criminal actors could be anyone—from the main organizers and regional leaders to the procurers (those who actually “obtain” the victims) or pimps.⁷⁷ While the roles of individuals vary in each criminal group and the context of different cases, all of these actors are directly involved in HTSE, and are often the same nationality as their victims.⁷⁸ These individuals are more likely to be charged and prosecuted because they are among the most visible members of the trafficking operation.

The other types of participants are legal and semi-legal actors. These individuals generally benefit from human trafficking indirectly, and are deliberately or willfully blind in facilitating HTSE.⁷⁹ They may be taxi drivers, travel agents, and restaurant owners.⁸⁰ While their day jobs do not directly involve them in HTSE, they use these roles to facilitate HTSE as a business enterprise. For example, a landlord may rent out rooms to women he knows are being forced to exchange sexual services for money. He benefits through the rent provided, and the traffickers get a safe place to exploit their victims. Under the current HTSE international framework, he is generally not prosecuted although he is aiding and abetting HTSE by providing a safe place for traffickers to exploit and profit. Since the landlord plays a significant role in facilitating HTSE, this Note seeks to end the impunity of individuals like the landlord who facilitate HTSE by making their facilitation public.

All of these actors, whether directly involved in HTSE criminal networks or simply indirectly supporting or participating in the human trafficking system, must be prosecuted for HTSE to be effectively eliminated. Heightened public awareness of sex trafficking could incentivize prosecutors to prosecute traffickers with greater zeal. As this Note discusses later, the public is generally unaware of HTSE prosecution efforts.⁸¹ This results in an absence of public support for combating HTSE,

75. *Id.* at 6 (discussing the diversity of actors who participate in human trafficking).

76. *See infra* note 164.

77. MINNA VIUHKO & ANNIINA JOKINEN, HUMAN TRAFFICKING AND ORGANIZED CRIME: TRAFFICKING FOR SEXUAL EXPLOITATION AND ORGANIZED PROCURING IN FINLAND 76 (2009) (discussing the division of labor between various criminal actors involved in HTSE).

78. *Id.* at 76-77 (explaining that the main organizers of pandering groups operating in Finland are often Estonians or Russians).

79. *Id.* at 81 (describing the roles of different legal and semi-legal actors).

80. *Id.* (identifying categories such as taxi drivers, owners and staff of hotels, bars and restaurants, as well as ferry companies, as beneficiaries of HTSE).

81. *See supra* Part III.

which allows prosecutors to get away with offering minimal sentences for individuals perpetrating HTSE.⁸²

Canada is an example of a country with weak public support for combating HTSE, brought on among other things by a non-transparent prosecution system. This lack of support results in weak sentences for HTSE crimes that contribute more to impunity than actual prosecution. For example, the first person convicted of human trafficking in Canada was in 2008, five years after the Palermo Protocol supposedly was in effect in Canada.⁸³ After pleading guilty to charges of human trafficking, the trafficker received less than four years in prison. He was found guilty of forcing both a fourteen-year-old girl and an eighteen-year-old woman into prostitution for two years through violence and threats. He received hundreds of thousands of dollars from his victims.⁸⁴ While prosecution of traffickers is increasing in Canada, progress of prosecuting more traffickers is slow as officials continue to deport witnesses and charge traffickers with lesser offenses that carry far lower sentences in an effort to keep cases from being taken to the Supreme Court.⁸⁵ If the Canadian efforts to fight HTSE were more transparent, prosecutors, judges, and law enforcement officials alike would be incentivized to vigorously pursue and impose just sentences and fully implement Canada's anti-trafficking laws.

4. Lack of Case Law

While many countries have national legislations prohibiting HTSE, very few use them to the extent necessary to competently prosecute and diminish HTSE. In 2011, the UNODC developed a database in an effort to “increase both the capacity and awareness of the law enforcement to better respond to trafficking . . . [and to] . . . provide immediate, public access to officially documented instances of this crime.”⁸⁶ Access to reliable and informative case law is necessary due to the “lack of knowledge and understanding on the global stage” of HTSE.⁸⁷

82. Margie Reese, *Sex Traffickers Must Be Dealt Heavier Penalties*, THE SOUTHWESTERN COLLEGE SUN, (Nov. 6, 2012), <http://www.theswcsun.com/sex-traffickers-must-be-dealt-heavier-penalties/> (discussing Proposition 35 and the hope that sex traffickers will face higher sentences).

83. Tamara Cherry, *Human Traffic Twist*, TORONTO SUN, (Dec. 26, 2008), <http://www.torontosun.com/news/canada/2008/12/26/7852636-sun.html> (discussing how human trafficking was added to the Canadian Criminal Code in November 2005, but the first convictions were in 2008).

84. PERRIN, *supra* note 40, at 123-24 (discussing Canada's first convicted human trafficker).

85. *Id.* at 130 (discussing the apparent reluctance of Canadian prosecutors to bring human trafficking charges against criminal actors).

86. *Id.* (“The database contains details on victims’ and perpetrators’ nationalities, trafficking routes, verdicts and other information related to prosecuted cases from across the world.”).

87. *Id.* (discussing how the database aims at increasing awareness and understanding regarding the legal issues behind human trafficking).

The UNODC database, however, does not go far enough. Contribution to the database is voluntary and it is often individual law firms or NGOs that make the contributions.⁸⁸ These contributors may not be in the best position to report accurate information on these cases, and their information may come solely from the specific areas in a country where they operate. Case law needs to come from an official and verifiable source, such as the national governments of these countries as they are in the best position to report on HTSE prosecutions and incidents from all over their respective countries.

The lack of HTSE case law creates significant problems in prosecuting HTSE, as there is a lack of legal precedent that prosecutors can use in prosecuting HTSE cases. This leads to less HTSE cases prosecuted, which may deter law enforcement from investigating alleged HTSE incidents. These conclusions are supported by the Urban Institute-Northeastern Institute June 2012 study researching HTSE in the U.S. This study found that state prosecutors in the U.S. have difficulty pursuing human trafficking cases because they, among other factors, “lack legal precedent and case law to guide effective use of state human trafficking laws.”⁸⁹ This demonstrates how even one of the most powerful and wealthy countries in the world with an active HTSE prosecution framework continues to struggle with HTSE due to the lack of legal precedent. This issue must be addressed for any successful global effort to significantly reduce HTSE.

Four problems damage efforts to combat HTSE: the lack of a universal definition, limited international cooperation, minimal transparency in prosecutions, and limited case law. While some of these problems are addressed in the international legal framework to combat HTSE, many still exist and hinder progress to eliminate HTSE. Any internationally successful campaign to combat HTSE needs to effectively address these four problems and the other major deficiencies in the Supplementary Protocol. The time for such a campaign is now.

II. DEFICIENCIES IN THE INTERNATIONAL LEGAL FRAMEWORK TO COMBAT HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION

The four problems with the current battle against HTSE have been partially caused and exacerbated by the deficiencies in the Palermo Protocol. These deficiencies need to be solved.

88. UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Human Trafficking Case Law Database*, <https://www.unodc.org/cld/en/about/contributors.html> (last visited Oct. 25, 2013) (listing institutions and individuals who have contributed to the UNODC human trafficking case law database).

89. URBAN INSTITUTE, *Identifying Challenges to Improve the Investigation of State and Local Human Trafficking Cases*, 1, 7, (2012), <http://www.urban.org/UploadedPDF/412592-State-and-Local-Human-Trafficking-Cases.pdf> (discussing the challenges law enforcement and prosecutors face in prosecuting cases using human trafficking statutes).

A. The International Legal Framework

The international framework used to combat HTSE is made up of UNTOC and the Supplementary Protocol. UNTOC was signed in December of 2000 in Palermo, Italy, and came into force in December 2003.⁹⁰ UNTOC focuses on organized crime generally. The language of UNTOC “represents the interests of governments rather than individuals.”⁹¹ This important distinction accounts for the lack of language concerning support for trafficking victims. Instead, any victim support is provided to victims through a Party’s respective national legislation. With these issues in mind, UNTOC was supplemented through U.N. Resolution by the Supplementary Protocol, which focuses on HTSE and emphasizes women and children as victims of sex trafficking.⁹²

Taken together, UNTOC and the Supplementary Protocol, along with the Conference of the Parties established by UNTOC as an oversight mechanism,⁹³ make up the international legal framework to combat HTSE. This framework, however, is deficient in a number of ways and these deficiencies cripple the effectiveness of this framework.

B. The Deficiencies in the UNTOC in the Context of Human Trafficking

The drafters of UNTOC and the Supplementary Protocol drafted both instruments with weak and problematic language, which creates deficiencies with serious consequences. These deficiencies cripple the effectiveness of both UNTOC and the Supplementary Protocol and contribute to the continuance of what former U.N. Secretary General Kofi Annan considers “one of the most egregious violations of human rights [human trafficking] the United Nations now confronts.”⁹⁴ Some of the deficiencies created by the language of UNTOC are in Articles 27 and 28.

Article 27 is entitled “Law enforcement cooperation” and discusses law enforcement cooperation on organized crime.⁹⁵ The Article begins with

90. SHELLEY, *supra* note 2, at 10 (discussing the adoption of the United Nations Convention on Transnational Organized Crime).

91. *Id.* (explaining why the text of UNTOC does not address the needs of trafficking victims and national and regional legislation on human trafficking).

92. G.A. Res. 55/25, ¶ 12, U.N. Doc. A/RES/55/25 (Nov. 15, 2000) (“Adopts the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially of Women and Children . . .”).

93. GALLAGHER, *supra* note 42, at 466 (finding that the role of the Conference of the Parties is “to promote and review implementation of UNTOC” and is “entrusted with oversight function.”).

94. Kofi A. Annan, Forward to United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, Nov. 15, 2000, 2225 U.N.T.S. 209.

95. United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, art. 27, Nov. 15, 2000, 2225 U.N.T.S. 209 [hereinafter UNTOC].

strong language: “State Parties *shall* cooperate closely with one another” on the crimes demarcated in UNTOC [emphasis added].⁹⁶ Additionally, “each State Party *shall*, in particular, adopt effective measures” of creating and enhancing modes of communication between parties [emphasis added].⁹⁷ This robust language is essential to the success of UNTOC because it holds the State Parties to a specific promise in order to comply with UNTOC.

However, the strong language is not consistent throughout the Article and stops short of requiring Parties to make agreements or arrangements that facilitate cooperation. For example, instead of using language such as *shall enter into* or *shall adopt*, the Article suggests that States “shall *consider* entering into bilateral or multilateral agreements or arrangements on direct cooperation” [emphasis added].⁹⁸ This less forceful language allows the State Parties to avoid the requirements laid out in the text while still objectively complying with UNTOC. Article 27 moves on to inform Parties that they “may consider this Convention as the basis for mutual law enforcement cooperation” and “shall make full use of agreements or arrangements . . . to enhance the cooperation between their law enforcement agencies” whenever appropriate.⁹⁹ The Article concludes with “State Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.”¹⁰⁰

Weak language, such as “shall endeavor,” “may consider,” or “shall” with the qualifier “whenever appropriate” grants too much discretion to the Parties and enables them to avoid the Article’s directives while still objectively complying with UNTOC. As such, it provides no compulsion for States to engage in activities that are essential to combat HTSE. The Article also fails to delineate any particular framework or avenue for the specified cooperation. It also does not provide any means of tracking the compliance with this Article. In sum, this weak language allows Parties to technically comply with UNTOC without actually taking the steps required to do so.

Article 28 is simpler than Article 27 as it does not require the Parties to adopt or create anything new. Instead, it asks each State Party to collect data and analyze the organized crime within its borders, to share this analytical expertise with one another, and to monitor the effectiveness of its developed strategies to diminish organized crime.¹⁰¹ While each of these requests is crucial to effective international cooperation on this issue, Article 28 does not require the State Parties take such steps. Instead, this

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at art. 28.

Article only provides that each State Party “shall consider” taking the above actions.¹⁰²

Article 28 fails to provide a means of accountability of the implementation of UNTOC’s provisions because the State Parties are not *required* to collect data on organized crime (which would include human trafficking). Without this data a State will not know whether its efforts to combat are successful. And if such efforts are unsuccessful, a State will not know that it needs to develop a new strategy. As with Article 27, much of the language in Article 28 is far too weak to adequately support the exceptionally important provisions it contains.

2. The Deficiencies Illustrated Through the Story of Cambodia

Cambodia is a party to UNTOC and an enlightening example of its deficiencies.¹⁰³ Unofficial estimates of sex trafficking suggest “there are as many as 15,000 prostituted persons from Phnom Pehn and that up to 35% of them have been smuggled into Cambodia from China or Vietnam.”¹⁰⁴ These “girls are bound by contracts to a brothel owner” and have to pay off this debt through providing sexual services before they can keep any of their earnings for themselves.¹⁰⁵

Cambodia is listed as a Tier 2 country by the U.S. State Department Trafficking in Persons Report,¹⁰⁶ which signifies that Cambodia does not comply with the minimum requirements of the TVPA¹⁰⁷ but is making significant efforts to do so.¹⁰⁸ Despite Cambodia’s alleged significant efforts, the Cambodian police cannot put “the Svay Pak brothel area outside Phnom Penh, where children are exploited in the sex trade” out of business as it “continues to operate despite numerous attempts by police to close it down.”¹⁰⁹ According to the State Department Report, the “sale of

102. *Id.*

103. UNTOC, *supra* note 90, at list of parties.

104. Donna M. Hughes, Laura J. Sporcic & Nadine Z. Mendelsohn, *Coalition Against Trafficking in Women: Factbook on Global Sexual Exploitation* (October 2004), http://www.continuetolearn.uiowa.edu/laborctr/child_labor/materials/pdf/modules/child_trafficking.pdf.

105. *Id.*

106. U.S. DEP’T OF STATE, *supra* note 2, at 106 (“Cambodia is a source, transit, and destination country for men, women, and children who are subjected to forced labor and sex trafficking.”).

107. *Id.* at 41 (explaining that Tier 2 Countries are those that “do not fully comply with the TVPA’s minimum standards but are making significant efforts to bring themselves into compliance with those standards”).

108. *Id.* at 107 (“The Government of Cambodia does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.”).

109. *Id.*

virgin girls continues to be a serious problem in Cambodia.”¹¹⁰ Cambodian men “form the largest source of demand for child prostitution though a significant number of men from the United States and Europe, as well as other Asian countries, travel to Cambodia to engage in child sex tourism.”¹¹¹ Cambodia not only has large numbers of persons trafficked internally, it also acts as a transit center for victims trafficked to Thailand and Vietnam.¹¹² Cambodia’s lack of partnerships with Thailand, Vietnam, and other countries in the region hinder any effort it may be exerting to curb HTSE, as they are unable to coordinate anti-HTSE efforts without these partnerships.¹¹³

Aside from lack of cooperation, the State Department has singled out another issue in its recommendations to Cambodia:¹¹⁴ the fact that there are serious prosecution, transparency, and impunity issues as a result of corruption. Without an international monitoring system, Cambodia is unable to fulfill its obligation to increase prosecutions as required by the Palermo Protocol. For example, in 2010 “three convicted foreign pedophiles—one of whom is also a sex trafficking offender and one of whom was convicted in the largest child sex offender case in Cambodian history—were pardoned and released early from prison.”¹¹⁵ Additionally, in 2011 the former head of the Phnom Penh Municipal Police’s Anti-Human Trafficking and Juvenile Protection Department “was convicted in absentia and sentenced to seven years’ imprisonment on complicity charges, including accepting payments from brothels in exchange for protection and information on future raids.”¹¹⁶ Corruption charges and concerns coming

110. *Id.*

111. *Id.*; see also *supra* notes 69-72.

112. HUMANTRAFFICKING.ORG, *Structure of Cambodian Taskforce on Human Trafficking*, http://www.humantrafficking.org/uploads/publications/Coordination_Structure_-_Diagram1.pdf (listing Vietnam and Thailand as target areas for a national taskforce on human trafficking).

113. U.S. DEP’T OF STATE, *supra* note 2, at, 107 (recommending that Cambodia “increase engagement with governments of destination countries”).

114. *Id.* at 107.

115. *Id.* at 108.

116. *Id.* (recommending that Cambodia “increase engagement with governments of destination countries”); see also (discussing allegations of “law enforcement and government officials are believed to have accepted bribes to facilitate the trafficking and sex trade. There are reports of government officials who are complicit in the trafficking by accepting bribes.”); *Cambodia: Human Trafficking Crackdown Also Hits HIV Prevention*, PLUSNEWS (Oct. 21, 2008), <http://www.plusnews.org/Report/81036/CAMBODIA-Human-trafficking-crackdown-also-hits-HIV-prevention> (“Sex workers called the crackdown a ‘moral crusade’ in protests during June, after reports revealed that the police were detaining sex workers as traffickers and sometimes demanding sexual favors and bribes.”).

out of this incident were never investigated or addressed.¹¹⁷ Local observers believe that “the cause of impunity” afforded to perpetrators contribute to trafficking.¹¹⁸

Without a proper incentive, Cambodia will continue to allow corruption and impunity to reign while continuing to make “significant efforts” to combat HTSE. If there is increased transparency the rest of world will know when to provide pressure to facilitate change. As demonstrated above, the deficiencies in UNTOC exacerbate the HTSE issues already confronted by Cambodia. A tool is needed to solve these problems as well as to confront the other obstacles to HTSE elimination in Cambodia: impunity and corruption.

3. The Deficiencies Illustrated Through the Story of Canada

Canada is another example of a country that exhibits the Palermo Protocol’s deficiencies. Despite having signed the Supplementary Protocol and UNTOC, Canada did not make “trafficking in persons” a criminal offense until late 2005.¹¹⁹ Canada only added this offense after experiencing political embarrassment when the country was rated Tier 2 in the State Department Human Trafficking Report of 2003.¹²⁰ The first conviction for HTSE did not occur until June 2008.¹²¹

A few years ago, UNODC asked Canada to provide information on human trafficking prosecutions and convictions in Canada, presumably for the UNODC human trafficking case law database.¹²² However, Canada declined to provide this information because “no central database in Canada collects this information and most prosecutions are carried out locally.”¹²³ As a result, there were *no* official statistics to report.¹²⁴ Additionally, when Crown prosecutors looked for case law to find sentencing references for their new HTSE cases, they could not find any.¹²⁵

117. U.S. DEP’T OF STATE, *supra* note 2, at 108.

118. *Id.*

119. PERRIN, *supra* note 40, at 118 (Canada took until late 2005 to make ‘trafficking in persons’ a *Criminal Code* offence and did not secure its first conviction until June 2008.”).

120. U.S. DEP’T OF STATE, *supra* note 2, at 46 (listing Canada as a Tier 2 status country).

121. PERRIN, *supra* note 40, at 118.

122. *Id.* at 120 (“When the federal government was asked recently to provide the information to the U.N. Office on Drugs and Crime for its annual Report on Trafficking in Persons.”).

123. *Id.* at 118.

124. *Id.* at 120.

125. *Id.* at 120-21 (discussing the lack of case law available due to most sentences did not appear in typical databases used by the legal profession making it difficult to find case law.).

The prosecutors needed these sentencing references because by 2009, sentences handed down for the few HTSE cases prosecuted were so pitiful that the Canadian Parliament “introduced Bill C-268 in January 2009 [to establish] a mandatory minimum sentence of five years for convicted child traffickers.”¹²⁶ But this was only for child traffickers as judges in Canada seemed to have “succumbed to the myth of the fallen woman: that women forced into prostitution have no value or virtue, so crimes committed against them . . . do not merit punishment.”¹²⁷ This myth has had practical consequences “on the handful of pimps who have been convicted of human trafficking generally receive overly lenient sentences—a slap on the wrist.”¹²⁸ Currently, Canada is ranked as a Tier 1 country, which is a country that meets the minimum standards for the elimination of trafficking as determined by the U.S. State Department.¹²⁹

Despite Canada’s Tier 1 status, many researchers and experts find that Canada’s definition of HTSE, as discussed earlier, is too narrow.¹³⁰ Additionally, Canada’s “limited coordination between the federal and provincial governments on anti-trafficking efforts continue[] to hamper more effective collaboration.”¹³¹ The U.S. State Department’s recommendations encourage Canada to increase its cooperation efforts, HTSE data gathering, investigations, and prosecutions of Canadians who participate in HTSE abroad.¹³² As the Canadian example illustrates, a country can “comply” with UNTOC but still have serious issues with its anti-HTSE network. This is a serious consequence of the deficiencies in UNTOC that erodes the success of anti-HTSE efforts.

D. Did the Supplementing Protocol “Cure” These Deficiencies?

Before discussing the practical problems caused by the weak language of Articles 27 and 28, it must first be determined whether the Supplementary Protocol renders these problems moot. If the Supplementary Protocol resolved the deficiencies created by these Articles, then the international HTSE framework is solid or “cured,” since the

126. Michael Rappaport, *Canada’s Pitiful Track Record in Combating Human Trafficking*, THE LAWYERS WEEKLY (Feb. 4, 2011), <http://www.lawyersweekly.ca/index.php?section=article&articleid=1342> (discussing sexual exploitation in Canada).

127. *Id.*

128. *Id.*

129. U.S. DEP’T OF STATE, *supra* note 2, at 38 (A tier 1 country is one that meets “the minimum standards for the elimination of trafficking”).

130. *Id.* (discussing the suggestion that Canada’s definition of exploitation for the purposes of the offenses is too narrow.)

131. *Id.*

132. U.S. DEP’T OF STATE, *supra* note 2, at 110 (recommending that Canada “increase investigations and prosecutions of Canadian child sex tourists abroad; continue efforts to improve trafficking data collection; and strengthen coordination among national and provincial governments”).

Supplementary Protocol “is to be interpreted together with U.N. Convention against Transnational Organized Crime.”¹³³

1. The Deficiencies That Were “Cured”

Article 10 the Supplementary Protocol, entitled “Information Exchange and Training,” is the section that could cure the deficiencies in UNTOC’s Articles 27 and 28. This Article discusses multiple topics on human trafficking that State Parties should share.¹³⁴ It also imposes an obligation on the Parties to train and strengthen their law enforcement on the prevention of HTSE.¹³⁵ However, the language of the Supplementary Protocol does not reach the crux of the deficiencies in UNTOC because it stops short of requiring State Parties to share this information.

2. The Deficiencies That Were Not “Cured”

a. Lack of a Universal Definition

Since the HTSE definition comes from the Supplementary Protocol and not UNTOC, the Supplementary Protocol did not cure the lack of a universal definition of HTSE.¹³⁶ While the Parties may have intended the definition to be universal, this is not how it is used in practice.¹³⁷

b. Lack of International Cooperation

While Article 10 of the Supplementary Protocol focuses on international cooperation on HTSE data, it holds that “State Parties shall, *as appropriate*, cooperate with one another by exchanging information, *in accordance with their domestic law*” [emphasis added]. The Article then lists the various subject matters on which the State Parties should collaborate.¹³⁸ The “as appropriate” and “in accordance with their domestic law” qualifiers supply the State Parties with far too much discretion in complying with the Supplementary Protocol.

Further expounding this problem, the last section of Article 10 states “a State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.”¹³⁹ This final provision allows a State, after actually being moved to share information, to put any restrictions on the use of the information.

133. The Supplementary Protocol, *supra* note 39, at art. 1.

134. *Id.* at art. 10.

135. *Id.* (discussing the necessity that Parties strengthen their law enforcement training).

136. *See supra* Part I.

137. *Id.*

138. The Supplementary Protocol, *supra* note 39, at art. 10 (discussing that Parties should share information regarding individuals crossing international borders with travel documents that do not belong to them or by using means and methods that are known practices of organized crime).

139. *Id.*

Hypothetically, a State could “share” information and render it completely useless at the same time by not allowing this information to be used in an effective manner.

c. Lack of Transparency in Prosecution

Just as there is no facilitation of international cooperation in the Supplementary Protocol, there is also no requirement that States make their trafficking information available to the public or to other State Parties. The absence of such a provision calls into question the entirety of the information sharing aspect of the Supplementary Protocol in Article 10.¹⁴⁰ After all, if countries do not need to gather this information and make it transparent by publishing it, then other countries will not know what information to request. Also, if countries are not required to gather information, a country may not have any information to share when asked. The lack of transparency thus continues to wreak havoc with the implementation of the Palermo Protocol.

d. Lack of Case Law

Since States are not required to gather or publish information, there is even less case law available on HTSE. The Supplementary Protocol did not solve this problem as it does not put the obligation to collect information on the States. For all of these reasons, the Supplementary Protocol does not fix the deficiencies in the international framework to combat HTSE.

e. Examples of the “Grey Zones” Caused by the Failure of The Supplementary Protocol to Cure These Deficiencies

The presence of the deficiencies in the Palermo Protocol create “grey zones” or places where a State is technically complying with the text of the treaties without taking the substantive action necessary to curb HTSE such as sharing HTSE data with other States. The grey zones present in this international framework are best explained through the examples of Australia and France, both of whom are parties to the Palermo Protocol and are listed as Tier 1 countries in the U.S. State Department’s Trafficking in Persons Report.¹⁴¹

The U.S. State Department found Australia to comply with the Palermo Protocol’s minimum standards.¹⁴² Despite this status, Australia only prosecuted one person for labor trafficking in 2013, a decrease from four convictions and thirteen prosecutions from the previous year.¹⁴³

140. *Id.*

141. U.S. DEP’T OF STATE, *supra* note 2, at 51 (stating that Tier 1 status signifies that the country is complying with the minimum standards of the Palermo Protocol, as determined by the U.S. State Department).

142. *Id.* at 74 (discussing that Australia is complying with the minimum standards to eliminate trafficking).

143. *Id.*

Australia's anti-trafficking focus is on *transnational* sex trafficking, which while meritorious, comes at the expense of domestic trafficking. In fact, the Australian government has "never identified or prosecuted a domestic sex trafficking offense"¹⁴⁴ and bases the existence of domestic trafficking on the amount that is reported.¹⁴⁵ This is a flawed strategy as it ignores the problems of domestic trafficking until it is officially reported. Instead, Australia should proactively try to determine whether there is any domestic trafficking in Australia. This would allow Australia to confront domestic trafficking problems and curb domestic HTSE instead of hiding from the issue all together.

France is also listed as a Tier 1 country by the U.S. State Department.¹⁴⁶ While the French government has increased prosecutions and the transparency of its anti-trafficking efforts, certain French laws cause many trafficking cases to be charged as pimping cases.¹⁴⁷ This makes international collaboration on HTSE difficult as such collaboration would require law enforcement or policy makers to separate out the trafficking cases from the pimping cases in order to develop successful strategies to target HTSE.¹⁴⁸ The mixing of HTSE and pimping cases together makes it more difficult to see HTSE patterns and therefore successfully develop strategies to confront them. It also increases the difficulty of gathering information on HTSE in France to support HTSE prevention efforts and share to with international and regional partners.

As demonstrated through the examples of Australia and France, the Palermo Protocol did not fix the problems with the current framework to combat HTSE, and in certain circumstances, exacerbated the situation. While nations cannot be made to cooperate on HTSE through force, there are ways to apply political pressure to facilitate this exchange. But to do so, the public must be aware of the situation.

III. THE SOLUTION: THE OFFENDERS OF HUMANITY DATABASE

To solve the deficiencies described previously as well as other issues with the current framework to combat HTSE, a single, easy-to-use instrument is required. This Note proposes, as a tool to fix the current

144. *Id.* at 73-74.

145. *Strengthening Australia's Response to Human Trafficking*, ANTI-SLAVERY PROJECT (Mar. 30, 2010), <http://www.awcaus.org.au/resources/documents/TraffickingUpdate-UTS.pdf> (discussing that limited statistical information is available about trafficking in Australia only accounts for victims of trafficking who have come into contact with law enforcement authorities).

146. U.S. DEP'T OF STATE, *supra* note 2, at 159 (listing France as a Tier 1 Country).

147. *Id.* (discussing France's flaws in classifying crimes as pimping rather than trafficking).

148. *Id.* (discussing France's flaws in classifying crimes as pimping rather than trafficking).

deficiencies with the HTSE framework, increase transparency, and diminish the demand for HTSE, the institution of the Offenders of Humanity Database (“the Database”). Nations that are Parties to the Palermo Protocol will be required to submit the requisite information.¹⁴⁹ This Database should be on the Internet, managed by the UNDOC, and it will serve as a centralized information center where NGOs, governments, and individuals can obtain information on HTSE and the implementation of the Palermo Protocol. Putting this tool on the Internet will make it available to an audience that spans socioeconomic backgrounds.¹⁵⁰ The Database will provide information on HTSE prosecutions and sentences to fill the case law void and provide transparency on the implementation of the Palermo Protocol.

A. *The Basics of the Database*

The Database will be a combination of an American sex offender registry and an international case law database, such as the database run by UNODC on human trafficking that was discussed previously.¹⁵¹ The Palermo Protocol will be amended to require all of the Parties to submit certain data on HTSE to UNODC.¹⁵² The Database will replace the current UNODC database.

UNODC is the logical choice to house the Database because UNODC already has a system set up to receive information from all over the world. It also has the institutional knowledge and expertise along with an established funding network.¹⁵³ While the U.S. State Department is another option, as it analyzes and compiles significant amounts of information on HTSE for its Trafficking in Persons reports, the information comes from U.S. embassies and not the countries themselves.¹⁵⁴ Also, since the U.S. State Department decides what countries are complying with the standards of the Palermo Protocol, there is too much room for suspected bias.¹⁵⁵ An

149. GALLAGHER, *supra* note 42, at 370 (the international community has “acknowledged the need for an effective criminal justice response to trafficking”).

150. Nicole Ferraro, *The Internet & the Developing World*, INTERNET EVOLUTION (Jan. 24, 2008), http://www.internetevolution.com/document.asp?doc_id=143698 (remarking on how “costs have been driven down to affordable levels for people on very low incomes”).

151. U.N.O.D.C., *supra* note 82.

152. UNTOC, *supra* note 90, at art. 30 (a State Party to UNTOC may propose an amendment, which will be considered by the Conference of the Parties. If a consensus is not reached, the amendment will go to a vote and be passed by a 2/3 vote).

153. U.N.O.D.C., *supra* note 82.

154. U.S. DEP’T OF STATE, *supra* note 2, at 37.

155. *Id.*

agency not tied to a particular State, like the UNODC, will avoid any such accusations.¹⁵⁶

The data that Parties to the Palermo Protocol will be required to submit to the Database should at a minimum include:

- The name, nationality, home address, age, and photograph of all persons convicted of any and all HTSE charges;¹⁵⁷
- The country or organization who apprehended the person;
- The country or organization that tried and convicted the person;
- The full case law and criminal history of such persons including a detailed explanation of the facts of the case;
- The sentence imposed for all persons convicted of any and all HTSE charges, including where and when the sentence will be served.

The data outlined above should be made accessible to the general public free of charge as the UNODC database is now.¹⁵⁸ However, when national or international law requires, the names of witnesses or victims and any other witness or victim identifying information may be redacted to protect these witnesses and victims. Additionally, individuals who are accused of HTSE offenses but are acquitted will not have their names or personal information listed; however, the case law will still be published to increase the amount of case law available on HTSE. The Database will also have a search feature, which will allow users to search for a particular person's name or an individual country's case law. If a person's information is already in the Database, then any new charges or additional information should be added to his or her entry. These suggestions do not provide a ceiling on what information may be provided to the Database but rather a floor; the more information provided the better the prosecution and prevention efforts will be.

B. *The Purposes of the Database*

The Database has several purposes. It will fill the deficiencies in the Palermo Protocol, diminish the demand for HTSE, end the impunity of those who facilitate HTSE but are not yet being prosecuted as traffickers, and deter others from becoming involved in HTSE in the first place. As detailed above, this will be achieved through providing an accessible and

156. Compare Huiqin Du, *Many Countries Denounce US Trafficking in Persons Reports*, CAIXUN NEWS (Jun. 26, 2012) <http://watchingamerica.com/News/164763/many-countries-denounce-us-trafficking-in-persons-report/> (discussing the criticisms of the Trafficking in Persons Report from around the globe such as Russia refusing “to accept the report's content and pointed out that the U.S. provides its soldiers stationed abroad with prostitutes”).

157. See UNTOC, *supra* note 90, at art. 18 (this article requires much of this information to be shared among nations upon receipt of a mutual assistance request).

158. See U.N.O.D.C., *supra* note 82 (providing an example of free online database similar to what the author is describing).

easy-to-use way to determine whether State Parties are implementing the Palermo Protocol.

1. Building a Universal Definition

Providing a central location for the compilation on prosecutions of HTSE cases will allow a true international definition of HTSE to emerge. As cases are prosecuted and prosecutors and judges from around the world are able to read these decisions, a definition that fits the crime of HTSE will develop as decision-makers will have enough data to make an informed decision. While the U.N. definition may be too broad, other definitions such as the TVPA's are too narrow and leave many HTSE cases un-prosecutable as such. As countries cooperate and build anti-HTSE prosecution strategies from each other's case law, the practical implementation of human trafficking definitions will standardize and bring about a true international definition of HTSE.¹⁵⁹

2. Encouraging International Cooperation

Through publishing the names and personal information of those convicted of HTSE offenses, as well as the applicable case law, countries will find it easier to cooperate on HTSE issues because they will be able to track HTSE more effectively. For example, with respect to Cambodia's booming sex tourist industry, discussed previously,¹⁶⁰ the Database would allow Cambodian customs officials to check a tourist's name before giving him a visa. If officials discover that the tourist was convicted of any HTSE charges, they can deny him a visa based on the conviction as he is likely a sex tourist. These efforts will encourage international cooperation and save countries a lot of time and effort in the long run. Countries will now be able to keep sex tourists out of the country efficiently and at low cost by simply checking the Database.

By having all State Parties record their HTSE data in one central location, each State Party will now know what other information and expertise that other State Parties possess. Ideally, this knowledge will aid in their requests for mutual assistance.¹⁶¹

3. Providing Transparency in Prosecutions

By making each conviction and sentence public, the local populace and the international community will be aware of a nation's efforts towards combating HTSE. Moreover, the use of the Database will also expose which countries are not actively prosecuting traffickers. Ideally, this

159. HUMAN TRAFFICKING, THIS IS A PROJECT OF SOC 266 GLOBAL CHANGE, *The U.N. Thematic Debates on Human Trafficking* (Nov. 28, 2012), <http://mkhatdija.wordpress.com/2012/11/28/httpwww.unorggapresident62lettershtraffickingsummary280708-pdf/> (discussing the lack of a universal definition of HTSE in practice).

160. *Supra* Part II.

161. *See* UNTOC, *supra* note 90, at art. 18 (details the requirement for mutual legal assistance under UNTOC).

evidence will allow political pressure to build up both inside and outside these countries to force those governments to make combating HTSE a priority. Countries will have an incentive to gather this evidence so they are able to monitor the progress of their own programs. While it may seem natural that countries would already have such a system in place, not all do.

By putting the information of the nationality of the traffickers, where they are found, and including as traffickers anyone who purchases services from a trafficked person online, patterns of the illegal sex tourism industry will emerge, enabling governments and organizations to organize to counteract it. Requiring countries to find, collect, analyze, and send this information to a central Database will help countries with their own prosecution and prevention efforts. Such information is necessary to effectively prosecute those purposefully involved HTSE. This information is required to formulate the best enforcement and coordination strategies among law enforcement agencies.¹⁶²

The Database will also allow other State Parties, NGOs, and international entities to track the progress of the implementation of the Palermo Protocol. The number of convictions, sentences, and the supporting case law will also be accessible on the Internet. When this data is then compared to reports, such as the Trafficking in Persons report issued by the U.S. Department of State, the world will know who is successfully (or at the least attempting) to combat HTSE and who is not. For the countries that need more resources, this tracking should help indicate exactly where the fundraising dollars should go. At the same time, it will aid provide international and local political pressure to do even more.

4. Creating a Usable Body of Case Law

The Database will serve as a tool for judges, prosecutors and lawmakers to avoid problems such as in Canada where HTSE is an official crime but Crown prosecutors cannot find sentencing references to prosecute the case.¹⁶³ Once other nations begin depositing their applicable court records into the Database, it will provide references for sentences and the charges to fit the different crimes that make up HTSE.

5. Exposing the Various Participants in HTSE

The last main purpose of the Database is to expose the various players in the HTSE scheme. There is a diverse group of actors in HTSE: those that operate illegally, those whose business are themselves legal, and those who

162. See INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, *The Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation*, <http://www.vaw.umn.edu/documents/completehtguide/completehtguide.pdf> (finding that “victim identification can be one of the most challenging tasks for law enforcement”).

163. See PERRIN, *supra* note 40, at 121 (referencing problems encountered in Canada once HTSE crimes were incorporated into the criminal system).

fall somewhere in between.¹⁶⁴ Many of these actors operate anonymously and are insulated from facing consequences for their actions. One of the main impacts the Database will have is the removal of the veil of anonymity from these actors. It will help make those who buy and use sex slaves accountable just as those who kidnap them and pimp them on the streets. This will eat away at the demand for sex trafficking, which is key towards successfully reducing the profitability and existence of trafficking.¹⁶⁵

In these five ways, the Database will keep the promise the signatures to the Palermo Protocol made when they created it in 2000. The purpose of the Palermo Protocol as stated in the Supplementary Protocol is:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children; (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and (c) To promote cooperation among States Parties in order to meet those objectives.¹⁶⁶

With the aid of the Database, this purpose can finally be fulfilled.

C. *The Function of the Database*

The Database will function similar to sex offender registries in the United States. These registries “contain the names, addresses, and photographs of sex offenders” and are “easily accessible on the Internet.”¹⁶⁷ “A sex offender is anyone who is convicted of a sex crime;”¹⁶⁸ however, crimes that “qualify as a sex crime vary by state.”¹⁶⁹ This type of cataloging parallels the people to be included in the Database—they will all be convicted of HTSE or associated offenses, but what actions qualify as a HTSE or an associated offense will depend on each individual country’s definitions and evidence requirements. However, the goal is to standardize these definitions and evidence requirements in order to increase the efficiency of investigation and prosecution of HTSE incidents. For this goal to be accomplished the Database must be as easily accessible as sex offender registries generally are in the United States.

164. See SHELLEY, *supra* note 2, at 84 (“The commitment to trafficking as an activity differs between commercial actors.”).

165. See WORKING GROUP ON TRAFFICKING IN PERSONS, *Proposed Areas of Future Work* (Oct. 10-12, 2011), available at http://www.unodc.org/documents/treaties/organized_crime/2011_CTOC_COP_WG4/2011_CTOC_COP_WG4_6/CTOC_COP_WG4_2011_6_E.pdf (mentioning how “demand reduction through awareness-raising and criminalization of demand is a topic for discussion”).

166. The Supplementary Protocol, *supra* note 39, at art. 2.

167. Amanda Agan, *Sex Offender Registries: Fear Without Function?*, 54 J.L. & ECON. 207, 207 (2011).

168. *Id.* at 210.

169. *Id.*

The core of the average American sex offender registry, which will be part of the Database, is the address of the offender. Part of a sex offender registry's purpose in the U.S. is to notify the public where these individuals live so the community is informed and local law enforcement can keep an eye on them.¹⁷⁰ This purpose mirrors the Database as the specific location of the human trafficker is essential to discover not only the nationality and identity of the trafficker, but where he is conducting HTSE. While a trafficker can still change locations, being able to pinpoint even a general location of trafficking activities will help law enforcement, policy makers, and legislatures better tailor their actions to the nature and scope of the problem.

In addition to similar functions, both instruments also have similar goals in that both try to prevent these crimes from being re-committed through lowering the probability of recidivism through increased monitoring. Both the Database and sex offender registries can reduce recidivism through making law enforcement aware of offenders and their backgrounds.¹⁷¹ They also raise public awareness, which can “increase the cost of finding a victim and thus cause offenders to change their behavior.”¹⁷² Both of these tools operate to destroy the anonymity of those that facilitate these crimes, which should prevent the reoccurrence of these crimes by both current and future offenders.

D. Going Beyond the Deficiencies in the Palermo Protocol

1. Diminishing the Demand for Human Trafficking for Sexual Exploitation

A problem not sufficiently addressed by the current international framework to combat HTSE is the demand for HTSE. This is an issue that the Working Group on Trafficking in Persons recently addressed.¹⁷³ Both the Palermo Protocol and national legislation do not adequately focus on what is fueling the demand for HTSE, which hinders prevention efforts.¹⁷⁴

HTSE is fueled by the demand for compliant and affordable sex purchased by clients who rarely think about the people whose services they buy.¹⁷⁵ The anonymity of the buyers and sellers in sex trafficking makes it

170. *Id.* at 211-12.

171. *Id.* (stating that these registries help to increase police monitoring of sex offenders).

172. *Id.* at 212.

173. See WORKING GROUP ON TRAFFICKING IN PERSONS, *supra* note 155, (mentioning how “demand reduction through awareness-raising and criminalization of demand” is an issue that must be addressed in the future).

174. *Id.*

175. See SHELLEY, *supra* note 2, at 39 (discussing how “demand fuels the growth of human trafficking.” and comparing men who purchase women for sex to people who accept human trafficking in other professions such as clothing manufacturing and domestic servants).

all too easy to ignore whether the women and children being purchased are in the business consensually.¹⁷⁶ According to a Finnish study, “the Internet [in particular] makes it eas[y] for the customers to remain anonymous; they do not have to go and look for women on the street . . . they just make a telephone call for an appointment.”¹⁷⁷ Ending this anonymity is key to reducing the demand for sex slaves. This is what the Database seeks to do. In a survey done by the Chicago Alliance Against Sexual Exploitation, 87% of the men surveyed said “that seeing their photo or name appear in a local paper would serve as a deterrent from buying sex.”¹⁷⁸ Putting the personally identifiable information of the persons engaging in HTSE easily accessible online should deter many of those who seek to exploit human beings for their own selfish desires.

2. Ending Impunity: Those Who Exploit Without Consequence

One of the crucial effects of the Database is the facilitation of increased prosecution and conviction of traffickers. This increased enforcement will be accomplished through:

- being a resource for sentencing;
- making convictions (and therefore the implementation of parts of UNTOC) transparent; and
- providing an avenue to “name and shame” all of the actors involved in HTSE by publically reporting on those who fall short of their obligations under the Palermo Protocol.

The Database provides an avenue for all of those who participate in HTSE to be listed as international criminals without regard to their level of participation. By implementing this Database, all of those who facilitate HTSE, particularly the legal and semi-legal actors, will be identified as people who participate in HTSE. Including these individuals will end the impunity enjoyed by these actors because although they have not faced prosecution before, their convictions are crucial to diminishing the prevalence of HTSE.¹⁷⁹

3. Increasing Deterrence

The Database will also promote both specific and general deterrence. Specific deterrence is when a person is individually convinced to not take a

176. See PERRIN, *supra* note 40, at 71-77 (comparing various internet resources and telephone services where people can purchase sex remotely).

177. JOKINEN, *supra* note 71, at 87-88.

178. Alizah Salario, *U.S. Anti-Sex Trade Aims New Legal Focus on Men Who Buy Sex*, WENEWS (Apr. 18, 2011), <http://m.trust.org/trustlaw/news/us-anti-sex-trade-aims-new-legal-focus-on-men-who-buy-sex/>.

179. Yuko Narushima, *Diplomatic Impunity: Trafficking Women to the United States*, THE WASHINGTON SPECTATOR (Mar. 1, 2013), <http://www.washingtonspectator.org/index.php/Human-Trafficking/diplomatic-impunity-trafficking-women-to-foreign-embassies-in-us.html> (discussing how members of foreign diplomatic corps who help traffic persons have enjoyed impunity until now).

certain course of action.¹⁸⁰ The Database will promote specific deterrence by “naming and shaming,” both traffickers and sex buyers by putting their personal information online, which should deter them from continuing to engage in HTSE. This easily accessible information may deter these people from ever participating in the sexual slave trade again.

This deterrent will be especially effective for the sex buyers or the clients who purchase sexual favors from the people trafficked. These people are generally indirect participants in HTSE.¹⁸¹ Sex buyers “have had a fairly invisible role” in both prostitution and HTSE efforts as authorities generally focus “their efforts on controlling the women . . . and leave their customers out of the picture.”¹⁸² Since the Internet has helped sex buyers remain anonymous and hide their activities, deterring them will require using the Internet against them.¹⁸³

There is data that identifies the Internet as a successful way to deter sex buyers. A study by the Chicago Alliance Against Sexual Exploitation shows that “that seeing [the sex buyers’] photo or name appear in a local paper would serve as a deterrent from buying sex.”¹⁸⁴ In this study, sex buyers were questioned about what would deter them from purchasing sex.¹⁸⁵ Overwhelmingly, the possibilities these individuals admitted would have the greatest deterrent effect were options that would publicize their choice to purchase sex.¹⁸⁶ Each person listed in the Database will be specifically deterred from ever becoming involved in HTSE again.

General deterrence involves convincing the greater populace to refrain from participating in a particular activity.¹⁸⁷ General deterrence is achieved through the Database by making individual traffickers known and easier to track, which will require organizations to constantly recruit new individuals

180. EUROPEAN ROAD SAFETY OBSERVATORY, *General Deterrence vs. Specific Deterrence* (2007), http://ec.europa.eu/transport/wcm/road_safety/erso/knowledge/Content/21_speed_enforcement/general_deterrence_vs_specific_deterrence.htm (providing a brief summary of general and specific deterrence).

181. SHELLEY, *supra* note 2, at 39 (Sex buyers “rarely think about the prostitutes with whom they have sexual relations.”).

182. JOKINEN, *supra* note 71, at 86.

183. *Id.* at 85-86 (discussing how the internet is used by those involved in the sex trade to stay anonymous).

184. Salario, *supra* note 169.

185. Rachel Durchlag & Samir Goswami, *Deconstructing the Demand for Prostitution: Preliminary Insights From Interviews With Chicago Men Who Purchase Sex*, CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION (2008), <http://www.slaverynomore.org/wp-content/uploads/2011/07/Deconstructing-the-Demand-for-Prostitution.pdf> (examining the effect of deterrence in sex trafficking by publicizing a sex buyer’s choice to purchase sex through posting his photo and name in a local paper, on a billboard, or on the Internet).

186. *Id.*

187. See EUROPEAN ROAD SAFETY OBSERVATORY, *supra* note 172 (providing a brief summary of general and specific deterrence).

into the business. This should force the cost of HTSE as a business model to skyrocket. This higher overhead should decrease the profitability of HTSE. Once this practice is no longer lucrative, there will far less incentive for any person to engage in it.¹⁸⁸

Additionally, this Database will also make clear which Parties are not implementing the Palermo Protocol by not imposing sufficiently serious sentences for convicted traffickers. This should provide incentives for the Parties to assign serious sentences to offenders. As more traffickers are convicted and sentenced to significant prison terms, people who would otherwise be involved in HTSE will be deterred from doing so.¹⁸⁹

Through diminishing demand, ending impunity, and promoting deterrence, the Database will attack the organized criminal enterprises engaged in HTSE from new directions while strengthening the institutions already in place. Together, this multi-pronged attack will quickly diminish the prevalence of HTSE and set up the institutional framework to keep it from flourishing ever again.

F. *The Negative Consequences of the Database*

1. Ruining the Innocent

Despite all the advantages of the Database, there are several potential negative consequences. For one thing, it has the ability to destroy the lives of those unjustly charged with HTSE offenses, and attaches stigma to a person's name long after he has served his sentence.¹⁹⁰ Similar the sex offender registries in the U.S., the Database will make life more difficult for those listed. Some of the critics of sex offender registries in the U.S. argue that the registries do not deter sex offenders, but they do “lower property values near offenders,” promote vigilante justice and harassment of offenders, and isolate offenders from society to such an extent that

188. Alexis Aronowitz, Gerda Theuermann & Elena Tyurykanova, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime*, OFFICE OF THE SPECIAL REPRESENTATIVE AND CO-ORDINATOR FOR COMBATING TRAFFICKING IN HUMAN BEINGS, 29-30 (2010), <http://www.osce.org/cthb/69028?download=true> (stating how “trafficking organizations operate as businesses, with the objective of reducing overhead costs while increasing profits” and as long as trafficking “continues to be profitable [there will be incentive to] continue involvement in these activities.”).

189. Valerie Wright, *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment*, THE SENTENCING PROJECT 1, 2 (Nov. 2010), <http://www.sentencingproject.org/doc/deterrence%20briefing%20.pdf>

(discussing how the severity of punishment, i.e. increased prison sentences, may influence behavior of potential offenders if they weigh the consequences of their actions and conclude that the risks of punishment are too severe).

190. CONSTITUTIONALFIGHTS.WORDPRESS.COM, *How Sex Offender Registries Ruin the Lives of Teenagers* (May 20, 2010), <http://constitutionalights.wordpress.com/2010/05/20/how-sex-offender-registries-ruin-the-lives-of-teenagers/> (discussing how the stigma attached to being a part of a sex offender registry can add punishment that does not fit the crime).

reintegration is impossible.¹⁹¹ These consequences of being listed in the Database would be particularly egregious if the persons listed were innocent. Many countries, especially those in the developing world, do not have judicial systems that render fair judgments. The questionable determinations by these judicial systems could both undermine the Database and ruin the lives of individuals falsely accused of engaging in HTSE.¹⁹²

2. Lacking in Support For Victims

With a focus on transparency and increased prosecutions, the Database provides no direct relief or services to the victims of HTSE. The Database does not provide an incentive for countries to provide victims with increased services.

3. Providing Perverse Incentives For Increased Transparency

The Database will provide both international and domestic pressure for governments to combat HTSE and publically record their efforts. This pressure may create perverse incentives. Governments will have an incentive to look as though their HTSE prosecution and prevention efforts are successful in order to win political prestige, receive more foreign aid, or other benefits. With these valuable temptations, some governments may find distorting the data they submit to the Database to be cheaper and easier than actually combating HTSE. One of the main avenues they could use to achieve false successes in combating HTSE is to narrow the definition of trafficking or sexual slavery, in order to make it look like their country has less of a problem than it does. Alternatively, a legislature could expand definitions to include other common crimes to make it look as though they have increased prosecutions.

Examining Canada's definition of human trafficking illuminates this possibility. Recall that Canada's definition of human trafficking is far narrower than the U.N. definition,¹⁹³ with the result that many of incidents that the U.N. would qualify as human trafficking do not qualify as such in Canadian jurisdictions. For example, the Canadian definition of HTSE does not deal with those exploited through coercion, as it only addresses those

191. Agan, *supra* note 157, at 207, 211-13.

192. See Karin Brulliard, *Palestinian Anti-Corruption Court Secures Conviction but Raises Questions of Bias*, WASH. POST (Jun. 20, 2012) http://www.washingtonpost.com/world/palestinian-anti-corruption-court-secures-conviction-but-raises-questions-of-bias/2012/06/20/gJQAYsXjpV_story_1.html (discussing how the mistrust of courts creates doubt as to the validity of the judgment handed down).

193. PERRIN, *supra* note 40, at 137 (discussing the gaps in Canada's human trafficking laws); see also *supra* p. 12.

who use force or the threat of force.¹⁹⁴ This analysis does not encompass the psychological hold that pimps often hold over those they exploit.¹⁹⁵

Another way records of HTSE prosecutions could be distorted is the existence of plea-bargaining in countries where prostitution is illegal. In countries where prostitution is *not* legal, there is the threat of plea-bargaining corrupting the integrity of the data contributed to the Database. For example, if someone is charged with trafficking, that charge could be plea-bargained down to prostitution by the prosecutor. This bargaining would skew the reported data, which would create complications in forming successful strategies to combat HTSE. Countries that have legalized prostitution such as Germany and the Netherlands will not have this plea bargaining problem.¹⁹⁶

E. The Mediums for Destroying the Effectiveness of the Database

1. Corruption

Corruption exists everywhere but is particularly prevalent in developing countries, due to the high rates of poverty and unemployment.¹⁹⁷ Developing countries are among the primary sources of HTSE.¹⁹⁸ Corruption “at all levels, from the police officer to the judge” makes prosecuting traffickers difficult;¹⁹⁹ often law enforcement will either be paid off to turn a blind eye toward certain HTSE incidents or else will release arrested traffickers prematurely.²⁰⁰ The authorities “may use the prostitution services themselves or the criminals try to bargain with authorities and offer ‘compensation’ for their cooperation.”²⁰¹ In fact, much HTSE activity could not function “without the complicity of law

194. *Canadian Criminal Code*, R.S.C. 1985, c. C-46, § 423 (Can.).

195. J. Patrick Coolican, *The Psychology of Pimping, and How a Community Can Help*, LAS VEGAS SUN (Apr. 21, 2012), <http://www.lasvegassun.com/news/2012/apr/21/psychology-pimping-and-what-community-can-do/> (reviewing some of the avenues pimps use to manipulate the people they exploit).

196. PROCON.ORG, *100 Countries and Their Prostitution Policies* (Dec. 22, 2011), http://prostitution.procon.org/view_resource.php?resourceID=000772 (providing a summary of the legal status of prostitution in 100 countries).

197. TRANSPARENCY INTERNATIONAL, *Corruption Perceptions Index 2012* <http://www.transparency.org/cpi2012/results> (last visited Oct. 26, 2013) (providing a summary of corruption by country).

198. Rita Chi-Ying Chung, *Human Trafficking for Sexual Exploitation: Psychological & Cultural Impacts*, 2 GEO. MASON GLOBAL STUDIES REVIEW (2006), available at <http://www.globality-gmu.net/archives/960> (“[T]rafficking usually moves people from less developed countries into developed and industrialized countries.”).

199. Jullien, *supra* note 64, at 584.

200. See HUMANTRAFFICKING.ORG, *supra* note 106 (discussing allegations of “law enforcement and government officials are believed to have accepted bribes to facilitate the trafficking and sex trade. There are reports of government officials who are complicit in the trafficking by accepting bribes.”).

201. JOKINEN, *supra* note 71, at 84.

enforcement and the corruption of officials in source, transit, and destination countries.”²⁰² An infamous example of law enforcement complicity is the NATO-led military peacekeepers who trafficked Bosnian women in the aftermath of the violent breakup of Yugoslavia.²⁰³ While the peacekeepers were in the former Yugoslavia to aid in the transition at the end of the war, they also raped and trafficked women for their own benefit.²⁰⁴ The Database will unlikely have any significant impact on corruption and in fact corruption may frustrate the purposes of the Database by being an obstacle to the successful prosecution of traffickers and data collection on HTSE.

2. Cultural Bias

Another potential shortcoming of the Database is that it will also likely have very little effect on the cultural biases that perpetuate HTSE. Recall that the cultural “views of women as less valuable . . . have produced a more tolerant view of prostitution and sexual violence” against women in some areas of the world.²⁰⁵ Aside from the traditional prejudice against the victims of sexual exploitation,²⁰⁶ in some countries and cultures there are social pressures that facilitate the perpetuation of HTSE. The International Organization for Migration collected survey data that showed that “a client’s first experience with a prostitute was more likely to have been arranged by friends . . . than the result of an independent decision.”²⁰⁷ For the majority of men surveyed, “the initial decision to buy sex” was a “public and social matter.”²⁰⁸ Some of the men studied, particularly those from Thailand, discussed how “buying sex can be part of a ‘rite of passage,’ as well as a ritual to consolidate relationships with male friends.”²⁰⁹ Such cultural exercises perpetuate HTSE and will likely be unaffected by the institution of the Database.

202. *Id.*

203. Martina Vandenberg, *Complicity, Corruption, and Human Rights: Trafficking in Human Beings*, 34 CASE W. RES. J. INT’L L. 323, 326 (2002) (discussing the involvement of U.S. civilian contractors in trafficking related activities).

204. Neil MacFarquhar, *Peacekeepers’ Sex Scandals Linger, On Screen and Off*, N.Y. TIMES (Sept. 7, 2011), <http://www.nytimes.com/2011/09/08/world/08nations.html?pagewanted=all&r=0> (“Those girls are whores of war,” growls the male bureaucrat heading the United Nations mission. “It happens; I will not dictate for morality.”).

205. Maciel-Matos, *supra* note 6, at 337.

206. HUMANTRAFFICKING.ORG, *Reintegration*, http://www.humantrafficking.org/combat_trafficking/reintegration (last visited Oct. 25, 2013) (discussing the obstacles, including stigma, of reintegrating trafficking victims into their home communities).

207. INTERNATIONAL ORGANIZATION FOR MIGRATION, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study*, IOM MIGRATION RESEARCH SERIES 17 (2003).

208. *Id.*

209. *Id.*

Corruption and cultural bias could limit the Database's effectiveness in some countries. But these obstacles are well known, and the benefits of the Database for most countries far outweigh the possible negative impact that these forces could have on others. The Database will be an effective tool to implement the true purpose of the Palermo Protocol: to unite the world in a common cause, the end of HTSE.

CONCLUSION

When the U.N. developed UNTOC and its supplementing protocols, it did not go far enough as inherent weaknesses within these treaties, likely a result of political posturing, created an international framework without an enforcement mechanism. As a consequence, HTSE still exists and flourishes.

Though the creation of the Offenders of Humanity Database cannot end HTSE on its own, it can steer efforts in the right direction by providing an accessible tool for use by national and international law enforcement agencies. The Database can provide sentencing guidelines, a way to make the implementation of the Palermo Protocol transparent and available, and destroy the anonymity of those who profit from HTSE. The Database will also help prevent cultural attitudes from being an obstacle to the elimination of HTSE by making the issue more transparent. This process should add political pressure to keep politicians from breaking their promises- promises they made by signing these treaties.

The world can come together again and finish what it started: diminishing HTSE to the extent that it only exists as a dark chapter in the history of the human race, instead of as an ever-present travesty. But for this to happen, the veil of secrecy under which human traffickers operate and flourish must be lifted. Once enemies are visible, they are far easier to defeat.

