

Out of Sight, Out of Mind: The Lax and Underutilized Prosecution of Sex Trafficking in the United Kingdom and Israel

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I. INTRODUCTION AND PURPOSE

The issue of human trafficking for the purposes of sexual exploitation has plagued mankind for all of human history. It is only in the last 250 years, however, that attempts have been made to address the issue in the legal community. As eighteenth century international bodies began to recognize the abhorrence of forced slavery as a violation of fundamental human rights and dignity, so too did the international community start to address the issue of human sex trafficking, an industry that stands in direct contradiction to these new humanitarian ideals. In many parts of the world, great strides have been made since the first international treaties were signed in the mid-nineteenth century. However, these advancements in the curtailment of the global sex trade industry have not had an evenhanded international impact.

Typically, the more well-developed and prosperous countries of the world also exhibit the greatest demand for sex industry workers. Thus, the greatest number of trafficked victims are brought into these so-called “destination countries” via international trade lanes to fulfill the insatiable demand of the domestic sex trade and to recoup the trafficker’s investment. Fortunately, perhaps, these destination countries have also seen the greatest success in forming legislation, implementing enforcement methods, prosecuting traffickers and participants of the trade, and rehabilitating the victims. However, not all destination countries have had the same experiences, and success in this area varies greatly between countries.

It is the purpose of this Comment to explore the efforts of two such destination countries to curtail the global sex trafficking industry within their borders: the United Kingdom and Israel. Despite both being highly westernized with complex economies, these two countries have developed vastly different methods of dealing with the problem, and the international community has issued starkly different reactions to their efforts.¹ This Comment will outline the legislation each of these

1. For many years, the United States Department of State has ranked the United Kingdom as a tier-one country in its annual Trafficking in Persons Report. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 369 (2011) [hereinafter U.S. DEP’T OF STATE (2011)], *available at* <http://www.state.gov/documents/organization/164452.pdf>. As a tier-one country, the United Kingdom supposedly acknowledges “the existence of human trafficking, has made efforts to address the problem, and meets the [Trafficking Victims Protection Act’s] minimum standards.” *Id.* at 11. Israel, on the other hand, had consistently ranked in tier two, meaning it did not fully comply with the Trafficking Victims Protection Act, but was making significant efforts. *Id.* at 13, 200. By 2012, Israel was finally included as a tier-one country; however, the information and analysis of this Comment remains the same. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 194 (2012), *available at* <http://www.state.gov/documents/organization/192595.pdf>.

countries has implemented in accordance with United Nations treaties and protocols, as well as their efforts to prosecute traffickers. In particular, it will focus on the terminology used in the legislation, the sentencing guidelines that accompany the crimes, and the actual effectiveness of these laws in securing convictions and stymieing the industry. Finally, it will explore what else needs to be done and what method, if any, has proven to be more effective and could serve as a model for other countries.

A. *Distinguishing Between Smuggling and Trafficking*

Slavery is still very much alive and well in the modern world. In fact, the United Nations estimates that trafficking in persons and human smuggling are two “of the fastest growing areas of international criminal activity” in the last decade.² These two activities are not synonymous, however. Human smuggling is the “facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border, in violation of one or more countries [sic] laws, either clandestinely or through deception.”³ Smuggling is often characterized as a “commercial transaction between two willing parties who go their separate ways once their business is complete.”⁴ It most commonly features a migrant who consents to being smuggled.⁵

Trafficking, on the other hand, is a criminal enterprise. Its sole purpose is to profit from the exploitation of the victim through fraud, force, or coercion.⁶ Either the victim does not consent to being trafficked, or any initial consent is vitiated by the subsequent actions of the traffickers.⁷ It is this coercive element that singlehandedly distinguishes smuggling from trafficking. While physical movement of the victim is not necessarily required, there must be some exploitation of the person for economic gain in order for the action to constitute trafficking.⁸

2. THE HUMAN SMUGGLING & TRAFFICKING CTR., U.S. DEP’T OF STATE, FACT SHEET: DISTINCTIONS BETWEEN HUMAN SMUGGLING AND HUMAN TRAFFICKING I (2006), *available at* <http://www.state.gov/documents/organization/90541.pdf>.

3. *Id.* at 2.

4. *Id.*

5. *Fact Sheet: Human Trafficking*, ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP’T OF HEALTH & HUMAN SERVS., http://www.acf.hhs.gov/sites/default/files/orr/fact_sheet_human_trafficking_english.pdf (last visited Oct. 18, 2012).

6. THE HUMAN SMUGGLING & TRAFFICKING CTR., *supra* note 2, at 2.

7. *Fact Sheet: Human Trafficking*, *supra* note 5.

8. *See id.*

As defined by the United States Department of State, sex trafficking occurs when an adult is “coerced, forced, or deceived into prostitution—or maintained in prostitution through coercion.”⁹ It also occurs when women or girls are forced into continuing prostitution through “the use of unlawful ‘debt’ purportedly incurred through their transportation, recruitment, or even their crude ‘sale’—which exploiters insist they must pay off before they can be free.”¹⁰ Initial consent is largely irrelevant in determining whether prostitution constitutes sex trafficking or bondage; the participants are considered trafficking victims if they are at all “held in service through psychological manipulation or physical force” following the initial consent.¹¹

B. Scale, Economic Scope, and Contributing Factors of Human and Sex Trafficking

Conservatively, the number of people held in “slavery or slavery-like conditions” is estimated to be in the range of 27 million people.¹² As a result of human trafficking, no country is immune to slavery.¹³ The Council of Europe estimates that revenues from human trafficking in general have risen to over \$42 billion, the equivalent to those of Microsoft and more than twice the revenues of Coca-Cola.¹⁴ The U.N. Office of Drugs and Crime ranks human trafficking as the second most profitable form of international and transnational crime.¹⁵ In fact, the trade falls comfortably in between the sale of drugs and the sale of arms as one of the most profitable transnational crimes.¹⁶ To illustrate the economic drive behind the industry, a teenage virgin trafficked into prostitution in the United Kingdom will fetch nearly \$8,000 on the open market and will return an average profit of \$200,000 a year for his or her pimp.¹⁷

The human trafficking industry is not only profitable, but pervasive. The U.S. Department of State estimates that between 600,000 and 800,000 people (mostly women and children) are trafficked annually

9. U.S. DEP'T OF STATE (2011), *supra* note 1, at 7.

10. *Id.*

11. *Id.*

12. Regina E. Rauxloh, Note, *No Air To Breathe: Victims of Sex Slavery in the U.K.*, 13 TEX. WESLEYAN L. REV. 749, 750 (2007).

13. The Lord McColl of Dulwich, *Human Trafficking . . . A Global Problem*, 60 MERCER L. REV. 791, 793 (2009).

14. *Id.* at 792.

15. LOUISE SHELLEY, HUMAN TRAFFICKING: A GLOBAL PERSPECTIVE 7 (2010).

16. *Id.*

17. McColl, *supra* note 13, at 801.

across international borders alone.¹⁸ The numbers become even more staggering when those trafficked within a country's own borders are factored in.¹⁹

Not all trafficking is the same, however. Of those falling victim to trafficking, some statistics estimate that between seventy and ninety percent will become involved in the commercial sex industry.²⁰ Recent studies using data from the International Labor Organization estimate that the commercial sex trade involves approximately 1.4 million trafficked people and annual profits around \$33.9 billion.²¹ Data collected from the U.S. Department of State would push the total number of victims of sex-related trafficking even higher, into the range of 1.5 to 3.7 million people a year.²²

Although each country has its own distinguishing characteristics for recruitment of women into the trafficking industry, there are certain commonalities that make a person more susceptible to becoming a sex trafficking victim. Women are often induced into trafficking situations either by promises of a prosperous job in another country or by another type of fraud (such as a false marriage proposal that disintegrates into a bondage situation).²³ They are also sometimes sold into the trade by family members or significant others, or they are simply kidnapped by the traffickers themselves.²⁴ It is also not uncommon for women to find themselves in the sex trafficking industry by way of "debt bondage," whereby the traffickers claim that the victims owe them money for providing the victims' living expenses and transportation and that the victims must use their personal services in the sex trade to repay the debt.²⁵

The procurement of trafficking victims particularly flourishes in those countries that have recently experienced major political or social upheaval.²⁶ Traffickers also easily exploit those countries that have

18. *Id.* at 792.

19. *Id.* at 792-93.

20. Martti Lehti & Kauko Aromaa, *Trafficking for Sexual Exploitation*, 34 *CRIME & JUST.* 133, 133 (2006).

21. Shelley, *supra* note 15, at 7.

22. Lehti & Aromaa, *supra* note 20, at 186.

23. *Fact Sheet: Human Trafficking*, *supra* note 5.

24. Shelley, *supra* note 15, at 54.

25. *Fact Sheet: Human Trafficking*, *supra* note 5.

26. Shelley, *supra* note 15, at 49-52. Areas that have experienced political upheaval and revolution, as well as people who are stateless, have become ripe grounds for traffickers. *Id.* at 49-51. Shelley particularly notes the rise of trafficking as a result of the collapse of the USSR at the end of the Cold War. *See id.* at 49. As the political and social "safety net" of the Communist regime collapsed in the Soviet Bloc, women and children became susceptible to trafficking due to the lack of governmental protection and the threats of "powerful and venal transnational crime

experienced a population explosion without a correlating growth in the job market.²⁷ Women appear to be particularly susceptible to trafficking in regions of the world where there exists a gender bias against women in terms of their legal rights, education, and employment, and where women are often left to survive in squalid economic conditions.²⁸

After securing their victims, traffickers turn to professional smugglers to move the “goods” across the globe to their ultimate destinations.²⁹ Whenever possible, traffickers move their victims through “legal” methods such as student, tourist, entertainment, or temporary work visas.³⁰ When these legal avenues are unavailable, traffickers rely on the intricate network of trade routes established by organized crime groups, which circumvent border controls by traveling via constantly varying passages under the control of powerful, interconnected criminal organizations.³¹

II. THE INTERNATIONAL COMMUNITY’S LEGAL RESPONSE TO HUMAN SEX TRAFFICKING

A. *Premillennial Efforts: From 1815 to 2000*

The abolition of the slave trade was first introduced in the 1815 Declaration Relative to the Universal Abolition of the Slave Trade.³² It was one of the first international declarations to condemn slavery and to articulate a nation’s duty to stop, prevent, prosecute, and punish slavery and similar offenses.³³ The first international agreement to specifically address the human sex trade was the 1904 International Agreement for

groups.” *Id.* She also emphasizes the impact of regional conflicts that produce vulnerable refugee populations. *Id.* at 50. With no viable means to support themselves and totally dependent on foreign aid organizations, refugees have proven to be a fruitful supply of untapped economic potential that arises from the profit revenue of the sale of humans or manpower for rebel armies in the form of child soldiers. *Id.* at 50-51.

27. *Id.* at 52. Without a corresponding growth in the economic sphere, the more youthful generations are left either unemployed or underemployed. *Id.* Similarly, when people migrate from the rural countryside into the urban centers seeking better employment, traditional family values are eroded as the family unit attempts to adjust to impoverished conditions in overcrowded and growing cities. *Id.* at 53. Traffickers often use this breakdown of the family unit as a “steppingstone” to exploiting their victims. *Id.*

28. *Id.* at 53-54.

29. See VICTOR MALAREK, THE NATASHAS: INSIDE THE NEW GLOBAL SEX TRADE 19-20 (2004).

30. *Id.* at 20.

31. *Id.*

32. HEATHER J. CLAWSON ET AL., ICF INT’L, PROSECUTING HUMAN TRAFFICKING CASES: LESSONS LEARNED AND PROMISING PRACTICES, app. A (2008), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/223972.pdf>.

33. *Id.*

the Suppression of the “White Slave Traffic.”³⁴ The signatories³⁵ promised to cooperate in prosecuting and punishing those involved in the trafficking of “white slaves,”³⁶ although there was no affirmative duty to do so. Article 1 of the Agreement states that each nation “undertakes to establish or name some authority charged with the co-ordination of all information relative to the procuring of women or girls for immoral purposes abroad.”³⁷ Signatories are obliged to monitor modes of transportation that might be used to move these victims “destined for an immoral life” and to provide officials with all legally applicable information to detect the actual or suspected criminal traffic.³⁸

By 1921, even more countries had agreed to cooperate in ending the trafficking of women and children for sexual exploitation, and the idea had spread to North American, Central American, and Asian countries.³⁹ The International Convention for the Suppression of the Traffic in Women and Children is the first convention that specifically required signatories⁴⁰ to both investigate and prosecute traffickers.⁴¹ It also is the first international treaty to provide for the cooperation of its signatories in the extradition of accused or convicted offenders of trafficking crimes.⁴² Although this was an important first step, it had a limited geographic scope.

The major turning point for international cooperation in tackling the industry occurred at the end of World War II. It was at this time that the international community vowed to prevent the atrocities that had transpired during the war from ever happening again, and thus the United Nations was born as an international peacekeeping organization.⁴³ After a nearly two-year negotiation, the U.N. General Assembly adopted the

34. International Agreement for the Suppression of the “White Slave Traffic,” *opened for signature* May 18, 1904, 35 Stat. 1979, 1984 (entered into force July 18, 1905) [hereinafter 1904 “White Slave Traffic” Agreement].

35. Belgium, Denmark, France, Germany, Italy, the Netherlands, Portugal, Russia, Spain, Sweden, Norway, Switzerland, and the United Kingdom. *Id.*

36. *Id.*

37. *Id.* art. 1.

38. *Id.* art. 2.

39. See International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921, 9 L.N.T.S. 415 (entered into force June 15, 1922).

40. Albania, Austria, Belgium, Brazil, the British Empire (including Canada, Australia, South Africa, New Zealand, and India), Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Estonia, Germany, Greece, Hungary, Italy, Japan, Latvia, Lithuania, the Netherlands, Norway, Persia, Poland, Portugal, Romania, Siam, Sweden, and Switzerland. *Id.*

41. *Id.* arts. 2-3.

42. *Id.* art. 4.

43. See *The Universal Declaration of Human Rights: History of the Document*, UNITED NATIONS, <http://www.un.org/en/documents/udhr/history.shtml> (last visited Nov. 2, 2012).

Universal Declaration of Human Rights (UDHR) on December 10, 1948, to serve as a “road map to guarantee the rights of every individual everywhere.”⁴⁴

Specifically pertinent to the discussion of human trafficking, the UDHR contains very specific language regarding an individual’s fundamental right to freedom. Article 3 states, “Everyone has the right to life, liberty and the security of person.”⁴⁵ From there, article 4 states, “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”⁴⁶ The latter article is particularly significant because it clearly states that *all forms* of slavery are a violation of international concepts of human rights, unlike prior international agreements that only disapproved of specific types of slavery.⁴⁷ The UDHR has served as the foundation for all subsequent protocols on human trafficking.

Shortly after the adoption of the UDHR, the U.N. General Assembly also adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.⁴⁸ The Convention obligates signatories to punish any person who “[p]rocures, entices or leads away [another person], for purposes of prostitution,” or who exploits the prostitution of another (even if they have been given their consent).⁴⁹ It also calls for signatories to punish those who keep, manage, or knowingly finance brothels or rent buildings for the purposes of prostitution.⁵⁰ To a large extent, the Convention simply applied the International Agreement for the Suppression of the White Slave Trade to the members of the United Nations, greatly expanding its applicability and cooperation among its signatories.⁵¹

By 2000, the international community formally recognized the significance of the issue of transnational criminal activity and specifically the role of organized crime in facilitating the movement of

44. *Id.*

45. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 3, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

46. *Id.* art. 4.

47. For instance, the “White Slave Traffic.” See 1904 “White Slave Traffic” Agreement, *supra* note 34.

48. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, G.A. Res. 317 (IV), U.N. Doc. A/RES/317(IV) (Dec. 2, 1949) [hereinafter 1949 Convention].

49. *Id.* art. 1.

50. *Id.* art. 2.

51. *Id.* pmb. Although Israel adopted the Convention in 1950, other major countries such as the United Kingdom and the United States have never agreed to the Convention. See *id.*

illegal goods.⁵² “With the signing of the United Nations Convention against Transnational Organized Crime in Palermo, Italy, in December 2000, the international community demonstrated the political will to answer a global challenge with a global response. If crime crosses borders, so must law enforcement.”⁵³ Among other things, the U.N. Convention Against Transnational Organized Crime explicitly prohibits participating in, aiding, or abetting organized criminal groups.⁵⁴ Furthermore, it criminalizes the laundering of the profits of these crimes.⁵⁵ The Convention also calls for each state party to adopt legislation and enforcement measures to bring the Convention into effect in their respective countries and to establish prosecution, adjudication, and sanctions to reflect the gravity of the offense.⁵⁶ Finally, it asks for international cooperation in the law enforcement efforts⁵⁷ to help facilitate the extradition of offenders so that they may face justice,⁵⁸ and it tasks each state party to develop, evaluate, and establish the “best practices and policies aimed at the prevention of transnational organized crime.”⁵⁹

B. Pinning Down a Definitive Definition: The Palermo Protocol

The United Nations introduced the Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) as Annex II of the Convention Against Transnational Organized Crime.⁶⁰ The purpose of the Palermo Protocol is “to prevent and combat trafficking, to protect and assist victims, and to promote international cooperation.”⁶¹ It is not a “stand-alone instrument,” however;⁶² article 1 requires that it be read as a supplement to the Convention and applied alongside it.⁶³ Accordingly, in order to become a party to the Palermo Protocol, a country must also be a signatory to the

52. U.N. OFFICE ON DRUGS & CRIME, UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO, at iii (2004), *available at* <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

53. *Id.*

54. G.A. Res. 55/25, annex I, art. 5(b), U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

55. *Id.* annex I, art. 6.

56. *Id.* annex I, arts. 7-9, 11.

57. *Id.* annex I, art. 27.

58. *Id.* annex I, art. 16.

59. *Id.* annex I, art. 31.

60. *Id.* annex II, art. 2.

61. CLAWSON ET AL., *supra* note 32, app. A.

62. *Id.*

63. U.N. Convention Against Transnational Organized Crime, *supra* note 54, annex II, art.

parent Convention.⁶⁴ For the purposes of extradition and other forms of cooperation, offenses as defined in the Palermo Protocol are also considered offenses under the Convention.⁶⁵

In terms of substance, the Palermo Protocol has become the most important modern international agreement in the fight against human trafficking, especially article 3. In this article, the international community has finally developed and agreed to a definition for “trafficking in persons.”⁶⁶ It states:

“Trafficking in persons” shall mean 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 organs⁶⁷

In other words, there are three distinct aspects of the crime that must be analyzed in defining a crime as human trafficking.⁶⁸ One must examine the act of trafficking,⁶⁹ the method used in the trafficking,⁷⁰ and the purpose of the act.⁷¹ At its core, the Palermo Protocol defines trafficking as “actions in which offenders gain control of victims by coercive or deceptive means or by exploiting relationships . . . in which one party has relatively little power or influence and is therefore vulnerable to trafficking.”⁷² It also clearly stipulates that the consent of a trafficked victim is ultimately irrelevant if any means of fraud, coercion, deception, or abuse of a power relationship is involved.⁷³

Under article 5, Criminalization, the Palermo Protocol delineates the duties of the states parties in bringing about justice against

64. CLAWSON ET AL., *supra* note 32, app. A.

65. U.N. Convention Against Transnational Organized Crime, *supra* note 54, annex II, art. 1(3).

66. *See id.* annex II, art. 3.

67. *Id.* annex II, art. 3(a).

68. Rauxloh, *supra* note 12, at 751.

69. Either through recruitment, transportation, transfer, harboring, or receipt of persons. *Id.*

70. Such as “using force or threat of force against the victim or [the victim’s] family, deception, abuse of power position, [or] giving or receiving payments of achieving consent of a person who has control over [the] victim.” *Id.*

71. For example, exploitation. *Id.*

72. CLAWSON ET AL., *supra* note 32, app. A.

73. U.N. Convention Against Transnational Organized Crime, *supra* note 54, annex II, art. 3(a)-(b).

traffickers.⁷⁴ It states, “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 . . . when committed intentionally.”⁷⁵ The Palermo Protocol takes a hard-line approach to criminalizing activity, however. Not only is active trafficking prohibited, but it also stipulates that each party should implement legislative and other measures necessary to establish that acts such as attempting to commit trafficking, participating as an accomplice, and organizing or directing others to commit trafficking are also prohibited.⁷⁶

Article 10 lays out the expectations for states parties’ law enforcement agencies.⁷⁷ It calls for law enforcement, immigration, and other relevant authorities to cooperate and exchange information so that they can better distinguish between trafficking victims and perpetrators, discern the methods organized crime groups use to traffic people (including victim recruitment, transportation, and trade routes), and find possible ways of detecting these activities.⁷⁸ Parties are also required to provide or strengthen training for law enforcement and immigration officials to prevent trafficking, with an emphasis on prosecuting the traffickers and protecting the victims.⁷⁹

With these broad, aspirational goals in mind, the Palermo Protocol largely leaves it up to the discretion of the states parties to implement measures that are in accordance with its provisions. In the twelve years since the international community adopted the Palermo Protocol, there have been varying degrees of compliance and success among the signatories. The rest of this Comment will focus on the divergent efforts of two of these countries, both of which happen to be highly industrialized and westernized “destination” countries: the United Kingdom and Israel.

III. THE UNITED KINGDOM

A. *The Nature of Sex Trafficking in the United Kingdom*

With a substantial demand for trafficked girls and women, the United Kingdom is accurately characterized as a “destination” country.⁸⁰ The United Kingdom’s geographic location at the edge of the European

74. *Id.* annex II, art. 5(1).

75. *Id.*

76. *Id.* annex II, art. 5(2).

77. *Id.* annex II, art. 10.

78. *Id.* annex II, art. 10(1).

79. *Id.* annex II, art. 10(2).

80. Rauxloh, *supra* note 12, at 751.

continent makes it a particularly appealing trade destination.⁸¹ Estimates for the number of women trafficked into the United Kingdom vary greatly. Some data place the number of women brought into the country for sexually exploitative purposes in the range of between 142 and 1420 annually,⁸² while other data estimate the number to be as high as 4000 at any given time.⁸³

Moldova, Romania, Albania, Thailand, Nigeria, and Sierra Leone are the most common “source” countries.⁸⁴ Criminal gangs bring victims into the United Kingdom either “individually or in small, escorted groups” via constantly changing trade routes.⁸⁵ On a much smaller scale, boyfriends or partner figures also traffic their significant others into the United Kingdom.⁸⁶ Upon arrival, these women are overwhelmingly placed into prostitution enterprises.⁸⁷

B. British Legal Responses to Sex Trafficking and the Available Prosecutorial Avenues

Like other EU Member States, the United Kingdom is bound by an additional international agreement: the European Union Council Framework Decision on Combating Trafficking in Human Beings (Framework Decision).⁸⁸ Article 1 of the Framework Decision defines trafficking as:

the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:

- (a) use is made of coercion, force or threat, including abduction, or
- (b) use is made of deceit or fraud, or
- (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
- (d) payments or benefits are given or received to achieve the consent of a person having control over another person . . . for the purpose of the

81. JOINT COMM. ON HUMAN RIGHTS, HUMAN TRAFFICKING REPORT, 2005-6, H.L. 245-I, at 28 (U.K.).

82. Rauxloh, *supra* note 12, at 751.

83. *Quick Guide: UK Human Trafficking*, BBC NEWS (Oct. 2, 2006, 09:33 GMT), http://news.bbc.co.uk/2/hi/uk_news/5343036.stm.

84. Rauxloh, *supra* note 12, at 751.

85. *Quick Guide: UK Human Trafficking*, *supra* note 83.

86. JOINT COMM. ON HUMAN RIGHTS, *supra* note 81, at 33.

87. *Id.*

88. Council Framework Decision on Combating Trafficking in Human Beings, 2002/692/JHA, art. 3, 2002 O.J. (L 203) [hereinafter Council Decision on Trafficking].

exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.⁸⁹

Although this definition is largely based on the Palermo Protocol, it does differ in one important aspect: it expands the notion of coercion to include those situations where the traffickers are taking advantage of, or exercising pressure on, the victims.⁹⁰ Nevertheless, the Framework Decision still leaves it up to the individual nations to develop their own methods to cope with human trafficking in accordance with its strictures.⁹¹

In the United Kingdom, there is no uniform law that specifically addresses human trafficking. Instead, the United Kingdom relies on multiple articles of legislation to address the various aspects of trafficking. In the 2005-2006 Report on Human Trafficking, the Joint Committee on Human Rights (comprised of members from both the House of Lords and the House of Commons) found human trafficking to be “one of the most serious human rights issues in the modern world.”⁹² As such, beginning in 2003, the United Kingdom began a concerted effort to tackle human sex trafficking through more effective legislative methods.

The Parliament passed the Sexual Offences Act 2003,⁹³ which came into force on May 1, 2004.⁹⁴ Section 57 of this Act makes it an arrestable offense for a person to either intentionally arrange or facilitate the immigration of a person *into* the United Kingdom when that person intends to commit any relevant offense as defined in section 60(1).⁹⁵ Under this provision, the Police National Legal Database (PNLD) has articulated several elements of proof required to convict an offender.⁹⁶ These consist of proving (1) the date and location of the offense; (2) that the perpetrator acted intentionally; (3) that the perpetrator arranged or facilitated the trafficking; (4) that the victim arrived within the United Kingdom by another person; (5) that the perpetrator intended to do

89. *Id.* art. 1.

90. Rauxloh, *supra* note 12, at 756.

91. Council Decision on Trafficking, *supra* note 88, art. 10.

92. JOINT COMM. ON HUMAN RIGHTS, *supra* note 81, at 3.

93. Sexual Offences Act, 2003, c. 42 (U.K.).

94. *Introduction, Sexual Offences Act: Legal Guidance*, CROWN PROSECUTION SERVICE, http://www.cps.gov.uk/legal/s_to_u/sexual_offences_act/ (last updated May 4, 2010).

95. Sexual Offences Act, 2003, c. 42, § 57. Relevant offences include rape, assault, sexual activity without consent, abuse of position of trust, and prostitution. *Id.* §§ 1-8, 16-24, 52-54.

96. *Sexual Offences Act 2003*, SERIOUS ORGANISED CRIME AGENCY 1, <http://www.soca.gov.uk/about-soca/about-the-ukhtc/relevant-legislation/sexual-offences-act-2003?format=pdf> (last visited Nov. 2, 2012).

anything to the victim *or* believed that another person would likely do something to the victim; (6) that such an act would occur during or after the journey and in any part of the world; and (7) that if done, the act would have involved the commission of a relevant offense.⁹⁷

Section 58 makes it a crime for a person to intend to commit or facilitate such acts *within* the United Kingdom.⁹⁸ Like in section 57, a trafficker must have committed the relevant offense either during or after the journey to the United Kingdom, but section 58 allows for the offense to take place anywhere in the world.⁹⁹ The elements necessary for conviction, as defined by the PNLD, are the same with the exception of the fourth element, which instead requires the victim to have traveled within the United Kingdom rather than just having to have arrived in the country.¹⁰⁰

Finally, section 59 makes it an arrestable offense for anyone to intentionally arrange or facilitate trafficking of victims *out* of the United Kingdom.¹⁰¹ This provision is specifically designed to address situations in which the victims are in the United Kingdom either because they are ordinary residents of the United Kingdom, or because they have been trafficked there while in transit to their final destinations in other parts of the world.¹⁰²

For all of the violations of trafficking listed in sections 57 through 59 of the Sexual Offences Act 2003, the maximum penalty upon conviction is fourteen years' imprisonment.¹⁰³ As of 2006, this sentencing is longer than most of its European counterparts and extends longer than most other regional and international standards.¹⁰⁴

Parliament also tackled the issue in the Asylum and Immigration Act 2004. Section 4 of the Act stipulates that a person commits the offense of trafficking either into, within, or outside of the United Kingdom if the perpetrator arranges or facilitates a victim's movement, intends to exploit the victim either in the United Kingdom or elsewhere, or believes that another person will likely similarly exploit the victim.¹⁰⁵ The Act defines "exploitation" in a very specific sense for the purposes of sex trafficking. A person is exploited if and only if (1) he or she is the

97. *Id.*

98. Sexual Offences Act, 2003, c. 42, § 58.

99. *Sexual Offences Act 2003*, *supra* note 96, at 1.

100. *Id.* at 2.

101. Sexual Offences Act, 2003, c. 42, § 59.

102. *Sexual Offences Act 2003*, *supra* note 96, at 1-2.

103. JOINT COMM. ON HUMAN RIGHTS, *supra* note 81, at 39.

104. *Id.* at 40.

105. Asylum and Immigration (Treatment of Claimants, etc.) Act, 2004, c. 19, § 4 (U.K.).

victim of behavior that contradicts article 4 of the UDHR¹⁰⁶ or (2) he or she is subjected to force, threats, or deception to induce them into providing any kind of service, or to provide to or enable another to receive “benefits of any kind.”¹⁰⁷ These crimes carry a maximum sentence of fourteen years in prison.¹⁰⁸

The final piece of U.K. legislation¹⁰⁹ that addresses sex trafficking is the Coroners and Justice Act 2009. Section 71 states that a person commits an illegal offense if he or she holds another in slavery or servitude and the offender should know the victim is being held as such.¹¹⁰ The Act also considers it a crime if the accused requires another to perform forced or compulsory labor and the accused knows or should know the victim is being forced to perform such labor.¹¹¹ The coercive element that distinguishes the crime of trafficking from that of smuggling is found through wording such as “compulsory labour,” in section 71.¹¹² With such broad language, it is fairly easy to see how victims of sex trafficking would fit into this offense. Upon a guilty conviction, offenders are again liable to receive a maximum of fourteen years’ imprisonment.¹¹³

IV. ISRAEL

A. *The Nature of Sex Trafficking in the Land of Milk and Honey*

Although the trafficking of women for sexual exploitation has existed in Israel since the early 1990s, the collapse of the former Soviet Union led to a massive influx of trafficked victims.¹¹⁴ Like the United Kingdom, Israel is a “destination” country for women who have been trafficked largely from the former Soviet Union.¹¹⁵ It is estimated that the

106. Either in slavery-like conditions or forced labor. Universal Declaration of Human Rights, *supra* note 45, art. 4.

107. Asylum and Immigration (Treatment of Claimants, etc.) Act § 4(4) (U.K.).

108. *Id.* § 4(5).

109. For the purposes of this Comment, discussion of the relevant Scottish legislation has been omitted in favor of the national legislation of the United Kingdom. *See, e.g.*, Criminal Justice (Scotland) Act, 2003, (A.S.P. 7), § 22; Criminal Justice and Licensing (Scotland) Act, 2010, (A.S.P. 13), § 47.

110. Coroners and Justice Act, 2009, c. 25, § 71 (U.K.).

111. *Id.*

112. *Id.*

113. *Id.* § 71(3)(b).

114. Rita Chaikin, *Fighting Against Trafficking in Women in the North of Israel*, in *TRAFFICKING AND THE GLOBAL SEX INDUSTRY* 201, 202 (Karen Beeks & Delila Amir eds., 2006).

115. *A Human Rights Report on Trafficking in Persons, Especially Women and Children: Israel*, THE PROTECTION PROJECT, JOHNS HOPKINS UNIV., <http://www.protectionproject.org/wp-content/uploads/2010/09/Israel.pdf> (last visited Oct. 18, 2012).

Israeli sex trade is valued at between \$500 million¹¹⁶ and \$2 billion a year.¹¹⁷ One of the most frequently used routes for getting trafficked women into the country is through the Israeli-Egyptian border, a 320 kilometer area in the middle of the Sinai desert that makes it difficult to guard against trafficking.¹¹⁸ Government sources estimate that over 3000 women have been trafficked into the country; however, most nongovernmental organizations (NGOs) provide much higher estimates.¹¹⁹

Unlike the United Kingdom, however, Israel does not criminalize patrons of prostitution.¹²⁰ Additionally, although pimping and maintaining a brothel are both illegal, the law is not widely enforced, and brothels are rarely shut down.¹²¹ Instead, law enforcement “turn[s] a blind eye” to the issue of illegal prostitution in favor of concentrating its efforts on more “important” areas of crime.¹²²

B. The Knesset’s Legislative Answers to Sex Trafficking

On November 14, 2001, Israel officially signed the Palermo Protocol.¹²³ However, the Israeli national parliament, the Knesset, did not ratify it until July 23, 2008.¹²⁴ Before there was any national legislation against sex trafficking, Israel relied on its penal code to address those issues. Sections 199 and 200 of article 10 of the Israeli Penal Code effectively criminalize any form of pimping, whether defined as living on the prostitute’s earnings or as knowingly receiving something a person earned for his or her prostitution services, subject to a maximum of five years’ imprisonment.¹²⁵ Section 201 forbids a person from inducing

116. Marcia G. Yerman, *Sexual Trafficking in Israel*, HUFFPOST IMPACT (Jan. 12, 2011, 12:02 PM), http://www.huffingtonpost.com/marcia-g-yerman/sexual-trafficking-in-isr_b_807751.html.

117. Chaikin, *supra* note 114, at 201.

118. Chaikin, *supra* note 114, at 201.

119. *Trafficking in Israel*, TASK FORCE ON HUMAN TRAFFICKING, <http://tfht.org/resources/white-papers/trafficking-in-israel/> (last visited Sept. 10, 2012).

120. *A Human Rights Report on Trafficking in Persons, Especially Women and Children: Israel*, *supra* note 115.

121. Raffi Berg, *Israel’s Fight Against Sex Trafficking*, BBC NEWS (Nov. 6, 2007, 7:51 AM), http://news.bbc.co.uk/2/hi/middle_east/7070929.stm.

122. NOMI LEVENKRON, HOTLINE FOR MIGRANT WORKERS, THE LEGALIZATION OF PROSTITUTION: MYTH AND REALITY 18 (Ella Keren ed., Shaul Vardi trans., 2007), *available at* http://www.hotline.org.il/english/pdf/The_Legalization_Of_Prostitution_English.pdf.

123. See III MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL, at 255, U.N. Doc. ST/LEG/SER.E/26, U.N. Sales No. E.09.V.3 (2009).

124. *Id.*

125. Penal Law, 5737-1977, SH 864 (Isr.), *translated in* PENAL LAW 5737-1977 §§ 199-200 (6th ed. 2008).

another to perform acts of prostitution, again with a five-year prison term.¹²⁶ Curiously, under section 202, if a person induces another to engage in systematic prostitution rather than simply to perform individual acts of prostitution, he or she is liable to seven years in prison.¹²⁷

Under section 203, the Penal Code distinguishes between two types of aggravating circumstances that could increase the prison term upon conviction. Under subsection (a), if there is any mental exploitation surrounding the commission of an offense under sections 201 or 203,¹²⁸ the offender shall be liable for a ten-year term of imprisonment.¹²⁹ However, under subsection (b), the offender could be liable for sixteen years in prison if circumstances of serious physical or contractual exploitation are found.¹³⁰

After years of mounting international pressure to better address sex trafficking, the Knesset finally unanimously passed a comprehensive antitrafficking law that amended its legislation to include all forms of trafficking.¹³¹ As amended on October 29, 2006, by the Prohibition of Trafficking in Persons (Legislative Amendments) Law 5766-2006, the Israeli law now clearly defines trafficking as “a transaction in a person.”¹³²

The new law addresses each aspect of the human sex trade industry: procuring victims, trafficking victims, and holding those victims under slavery-like conditions via forced prostitution and sexual exploitation.¹³³

126. *Id.* § 201.

127. *Id.* § 202.

128. *Id.* § 203(a). Aggravating circumstances include “exploiting a relationship of authority, dependence, education or supervision, or by exploiting the economic or mental distress of the person who was induced to perform an act of prostitution or to engage in prostitution.” *Id.*

129. *Id.*

130. *Id.* § 203(b). Aggravating circumstances under this section include inducing the victim into prostitution

(1) by use of force or by use of other means of pressure, or by threat of one of these, and it is immaterial whether it was done against the person who was induced to commit an act of prostitution or to engage in prostitution or against some other person; (2) by exploiting a situation that prevents opposition by the person induced to commit an act of prostitution or to engage in prostitution, or by the [sic] exploiting the fact that he is mentally ill or mentally incompetent; (3) by agreement obtained by [sic] deception of the person induced to commit an act of prostitution or to engage in prostitution.

Id.

131. U.N. OFFICE ON DRUGS & CRIME, TOOLKIT TO COMBAT TRAFFICKING IN PERSONS, at 101, U.N. Sales No. E.08.V.14 (2008), available at http://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf.

132. Prohibition of Trafficking in Persons (Legislative Amendments) Law, 5766-2006, 6 LSI 1, § 377A (Isr.).

133. *Id.* §§ 374A, 375A, 377A.

Section 374A is one of the two sections that address the procurement of victims. It states, "One who abducts a person for one of the purposes set forth in section 377A(a) or in order to place the person in one of the dangers set forth in the said section shall be liable to twenty years imprisonment."¹³⁴ Section 376B criminalizes any act a person commits that causes another (the victim) to leave his home state for the purposes of engaging the victim in prostitution or holding him or her in slave-like conditions.¹³⁵ The punishment for this offense is a maximum of either ten or fifteen years in prison, depending on whether it was committed against an adult or a minor, respectively.¹³⁶

The amendments also added an additional article to the Penal Code: article 377A, Trafficking in Persons.¹³⁷ This article states:

Anyone who carries on a transaction in a person for one of the following purposes or in so acting places the person in danger of one of the following, shall be liable to sixteen years imprisonment:

....

- (3) subjecting the person to slavery;
- (4) subjecting the person to forced labor;
- (5) instigating the person to commit an act of prostitution;
- (6) instigating the person to take part in an obscene publication or obscene display;
- (7) committing a sexual offense against the person.¹³⁸

As the law clearly states, the punishment for a violation of this law is a maximum of sixteen years in prison. The punishment is even more severe for those acts committed against a minor, as the maximum term of imprisonment increases to twenty years.¹³⁹ Unlike many other pieces of antitrafficking legislation, the Israeli amendments also include the provision that conviction of a crime under sections 375A or 377A carries a sentence of no less than a quarter of the maximum sentence allowed, unless the court finds a special reason for a particularly lenient sentence.¹⁴⁰

The law also addresses an aspect of the human trafficking trade that has often been overlooked in other countries' legislative attempts: the middleman. Under the Israeli antitrafficking law, a middleman engaged

134. *Id.* § 374A.

135. *Id.* § 376B(a).

136. *Id.* § 376B(a)-(b).

137. *Id.* § 377A.

138. *Id.*

139. *Id.* § 377A(b).

140. *Id.* § 377B.

in any transaction in persons is considered a trafficker and treated exactly the same as those who directly buy and sell humans.¹⁴¹

Finally, under section 375A, Holding a Person Under Conditions of Slavery, the amendments make it an offense for a person to hold another “under conditions of slavery for the purposes of work or services, including sex services.”¹⁴² A person convicted under this provision is liable for a sixteen-year prison term.¹⁴³

V. SO HOW EFFECTIVE ARE THESE MEASURES ANYWAY?: A COMPARATIVE STUDY

A. *Effectiveness of the United Kingdom’s Efforts*

With the various legislative acts in mind, Parliament implemented several measures to bring the intended effect to fruition. In 2000, the government developed a multiagency operational response called Reflex to address the problem of organized immigration crime.¹⁴⁴ The purpose of Reflex was to bring together law enforcement, the intelligence community, and governmental agencies to tackle all aspects of organized crime and to reduce its harmful effects by (1) raising the risks for conducting criminal activity, (2) rendering these illegal business ventures unprofitable, and (3) reducing the opportunities they have to exploit the community.¹⁴⁵ The government has also established the U.K. Human Trafficking Centre to gather all forms of intelligence relating to national and international trafficking in support of police operations to disrupt the trafficking networks.¹⁴⁶

But the government did not leave the implementation of its laws solely to its own agencies. Instead, the law enforcement community took active and very public steps to try to enforce the laws. Beginning in 2006, the police launched two sting operations to combat human trafficking in the United Kingdom.¹⁴⁷ Operation Pentameter One was the first nationwide, antitrafficking operation in the United Kingdom.¹⁴⁸

141. *Id.* § 377A(c).

142. *Id.* § 375A(a).

143. *Id.*

144. William Hughes, *Operational Perspective on Trafficking in Women and Children in the United Kingdom*, in *GLOBAL TRAFFICKING IN WOMEN AND CHILDREN* 195, 201 (Obi N.I. Ebbe & Dilip K. Das eds., 2008).

145. *Id.*

146. Margaret Melrose, *Mercenary Territory: A UK Perspective on Human Trafficking*, in *SEX TRAFFICKING: A GLOBAL PERSPECTIVE* 59, 64-65 (Kimberly A. McCabe & Sabita Manian eds., 2010).

147. McColl, *supra* note 13, at 800.

148. *Id.*

Although Pentameter One helped reveal how organized trafficking groups operated, a second operation beginning in 2007, Operation Pentameter Two, was required before any tangible results could be seen in the form of arrests and convictions.¹⁴⁹ In the six-month duration of Operation Pentameter Two, 167 victims of sexual exploitation were rescued from 822 different locations across the country.¹⁵⁰

The wheels of justice are slow, however. The raids resulted in 528 arrests, although by 2009 only about 80 individuals had been formally charged with any crimes.¹⁵¹ Furthermore, an investigation by *The Guardian* newspaper in 2009 revealed that of the 528 arrests that were announced, 122 had never actually happened; they were wrongly recorded either by honest bureaucratic mistake or by apparent deceit on the part of the police force to increase the number of arrests that were reported.¹⁵² Of the 406 real arrests, 230 were women, and most were never implicated in any type of trafficking at all; 153 were released within weeks, and of that number, 106 were not charged at all, and 47 were cautioned with minor offenses.¹⁵³ Of the remaining 253 arrests, most were either charged with immigration crimes or other nontrafficking offenses.¹⁵⁴

Despite the laudatory language the government used to describe the operations shortly after their culmination, a total of only 96 people were arrested for trafficking and only 67 were ever charged.¹⁵⁵ Of those charged, only 22 people arrested during Operation Pentameter Two were ever prosecuted for trafficking crimes.¹⁵⁶ Seven were acquitted.¹⁵⁷ Thus, in a raid of over 800 brothels and massage parlors across the United Kingdom, a grand total of 15 men and women were convicted of human trafficking.¹⁵⁸

149. *Id.* at 800-01.

150. *Id.* at 801.

151. *Id.*

152. Nick Davies, *Inquiry Fails To Find Single Trafficker Who Forced Anybody into Prostitution*, *GUARDIAN* (Oct. 19, 2009), <http://www.guardian.co.uk/uk/2009/oct/20/government-trafficking-enquiry-fails>.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.* Although the police claimed that Pentameter adopted the international definition of sex trafficking as provided in the Palermo Protocol, which includes use of coercion or deceit to transport an unwilling victim, there were allegations that the operation instead used the definition provided in the United Kingdom's Sexual Offenses Act 2003, which criminalizes the transportation even if the "victim" is a willing sex worker. *Id.*

157. *Id.*

158. *Id.*

Despite having some of the stiffest criminal sentences in Europe for sex trafficking, the number and length of convictions in the United Kingdom have also been abysmally low.¹⁵⁹ Between 2005 and 2009, there were only 267 prosecutions under sections 57-59 of the Sexual Offences Act 2003, resulting in a total of 106 convictions.¹⁶⁰ Of those convictions, the sentences ranged from suspended sentences to fourteen years' imprisonment; however, the average length of the sentences was 4.69 years.¹⁶¹ Even this number is skewed, though, because the average is often inflated due to those convicted who are serving additional time as a result of convictions for related offenses.¹⁶²

This is not to say that the United Kingdom has completely failed to take a harsh stance against trafficking. In January 2011, the longest sex trafficking sentence in U.K. history was handed down, totaling twenty-one years in prison for the mistreatment of six Romanian women trafficked into the United Kingdom.¹⁶³ Although this is an impressive improvement in sentencing term length, it appears to be the exception rather than the rule.

B. Effectiveness of Israeli Prosecution

In addition to the 2006 legal reforms, the Israeli government created several organizations to help address the issues of sex trafficking. The Knesset organized the Subcommittee on Trafficking in Women, which holds public hearings to discuss ways to enhance the government's efforts to fight human trafficking throughout the country.¹⁶⁴ The government also facilitated several interagency investigations and prosecutions for both labor and sex trafficking offenses.¹⁶⁵

During the year 2011, the government prosecuted and convicted seven sex traffickers under the new 2006 amendments.¹⁶⁶ Although the penalties written in the amendments are fairly severe, those cases that were prosecuted and convicted resulted in sentences ranging from 6 months of community service to 8.5 years of imprisonment.¹⁶⁷ Even

159. See Rauxloh, *supra* note 12, at 762.

160. SALLY LIPSCOMBE, HOME AFFAIRS SECTION, HUMAN TRAFFICKING: UK RESPONSES 10 (2012), <http://www.parliament.uk/briefing-papers/SN04324.pdf>.

161. *Id.* at 11.

162. *Id.*

163. U.S. DEP'T OF STATE (2011), *supra* note 1, at 370; see also *Father and Son Sex Traffickers Jailed in Manchester*, BBC NEWS, <http://www.bbc.co.uk/news/uk-england-manchester-12289968> (last updated Jan. 26, 2011, 11:20 AM).

164. U.S. DEP'T OF STATE (2011), *supra* note 1, at 202.

165. *Id.* at 200-02.

166. *Id.* at 201.

167. *Id.*

these numbers are not final, however, as at least one of the convictions is currently being appealed.¹⁶⁸

The government also prosecuted and convicted six sex traffickers under nontrafficking statutes.¹⁶⁹ Although the cases were originally brought and prosecuted under the 2006 amendments, this was later changed during plea negotiations.¹⁷⁰ Nevertheless, the convictions ranged from twenty-four months' imprisonment to 7.5 years' imprisonment.¹⁷¹

In accordance with the legal reforms, the government also tried to increase its training programs. The government hosted classes, workshops, seminars, and programs to train law enforcement officers, judicial officials, labor inspectors, and others.¹⁷² One such program was a seminar hosted by the Institute of Legal Training for Attorneys and Advisors of the Ministry of Justice, which helped to better educate state prosecutors, judges, and lawyers about the Israeli sex trade.¹⁷³

Despite the government's efforts, NGOs continue to be critical of the government's performance. NGOs claim that the government is more focused on prosecuting trafficking-related offenses than on the trafficking offense itself, which results in lighter punishments for the convicted.¹⁷⁴

C. *The Startling Similarities in the Underutilization of Prosecutorial Methods*

Despite receiving different rankings from the U.S. Department of State's Trafficking in Persons Report for 2011,¹⁷⁵ the approaches of the United Kingdom and Israel have not rendered vastly divergent results. The first and most obvious flaw is the rate of prosecution and convictions in trafficking crimes. Again, even at the height of prosecutions under Operations Pentameter One and Two in the United Kingdom, only fifteen men and women were ever prosecuted and convicted of trafficking offenses.¹⁷⁶ Because the odds that a trafficker will be brought to justice for his or her crimes are so low, fear of arrest is not an effective deterrent,

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. The United Kingdom received a tier-one ranking, the highest possible, demonstrating full compliance with international standards; Israel received a tier-two, up from a tier-two Watch List ranking in 2006. *Id.* at 200, 369.

176. Davies, *supra* note 152.

especially when the amount of money that changes hands every year through sex trafficking networks is so high.

The statistics are similar for Israel. The passage of the 2006 amendments should have seen a dramatic increase in trafficking prosecutions because the crimes were clearly defined and greatly broadened in scope from their prior definitions. Logically, the less ambiguous a law is, the easier it should be to prosecute under it. Similarly, the greater breadth a law is given, the more crimes it should encompass. However, little has changed in the six years since the Knesset unanimously passed the trafficking reforms. In 2011, only 7 people were convicted under the amendments, which is uncomfortably low when one considers that an estimated 3000 victims are brought through Israel annually.¹⁷⁷ One must ask: What kind of deterrent effect can such a low probability of being brought to justice have when such a lucrative profit exists for the traffickers' taking?

Beyond the fact that very few traffickers are ever truly brought to justice, the second major flaw for both countries is that the sentences that have been handed down hardly reflect the gravity of their crimes. Although the United Kingdom has a fourteen-year maximum sentence for trafficking crimes, even Parliament admits that this is rarely the sentence imposed.¹⁷⁸ Instead, as previously mentioned, the average sentence handed down is 4.69 years.¹⁷⁹ Some convicted offenders have walked away with as little as a suspended sentence.¹⁸⁰ Thus, despite having some of the strictest maximum sentences on the books in Europe, the United Kingdom has rarely enforced them to their maximum potential, sometimes even allowing traffickers to walk the streets with a simple slap on the wrist.

Likewise, in Israel, the sixteen-year maximum sentence, which was incorporated into the 2006 amendments, is rarely used by the courts. According to the latest data from 2011, no conviction under the 2006 trafficking laws resulted in a sentence greater than 8.5 years.¹⁸¹ In at least one of those cases, the trafficker was given a sentence of six months of community service.¹⁸²

In essence, the courts of the United Kingdom and Israel are sending mixed messages to the traffickers and the international community in

177. See Lehti & Aromaa, *supra* note 20, at 218, tbl.10; U.S. DEP'T OF STATE (2011), *supra* note 1, at 201.

178. LIPSCOMBE, *supra* note 160, at 11.

179. *Id.*

180. *Id.*

181. U.S. DEP'T OF STATE (2011), *supra* note 1, at 201.

182. *Id.*

their prosecution efforts, or lack thereof. On the one hand, both countries have gone on record as sympathizing with the victims of sex trafficking and characterizing the trade as an abhorrent practice in the modern world.¹⁸³ At the same time, however, their courts have failed to enforce legislation against trafficking to its greatest possible extent. The deterrent effect that has been written into legislation has been completely undermined by minimal prosecutions and lax punishments. In a sense, the courts have sent the message that it is permissible to sexually enslave and economically exploit victims, as long as the trafficker is willing to submit to a miniscule chance of being caught and a slap on the wrist or, at most, a few years in prison.

VI. WHAT MORE CAN BE DONE?

Strictly based on the legislation currently in place, the greatest change that could be made would be to actually enforce existing laws to the fullest extent possible. If these countries truly consider sex trafficking, or human trafficking in general, to be one of the worst violations of human rights in the modern world, the governments should set aside significant resources to tackle these issues. Independent law enforcement units should be established and funded appropriately so they can coordinate efforts with the intelligence community to actively pursue investigations and prosecutions. Such efforts would likely provide prosecutors with better evidence of crimes and increase the odds of securing a conviction. Prosecutors should also not hesitate to seek convictions under the sex trafficking laws. By seeking convictions under lesser, related charges, prosecutors undermine the significance and seriousness of trafficking. Offenders should have to face courts on the charges they have actually committed: sex trafficking, not merely assault or inducement to prostitution. Finally, courts have been given the power to impose maximum sentences that at least partially reflect the gravity of the crime. Therefore, the courts should take full advantage of imposing these maximum sentences. The greater the risk to traffickers, the less likely they will engage in the industry.

Although the legislation that has been adopted thus far is moving the United Kingdom and Israel in the right direction, there are several extralegislative steps that should also be adopted for the laws to have

183. Such sentiments are evidenced by the two countries' legislative efforts to address the issues of sex trafficking, their signing of the U.N. Palermo Protocol, or their official government publications, such as the Joint Report in the United Kingdom, which characterized trafficking as "one of the most serious human rights issues in the modern world." JOINT COMM. ON HUMAN RIGHTS, *supra* note 81, at 3.

their full deterrent potential. First, prostitution should be criminalized in Israel. As the experience in the Netherlands has proven, the legalization of prostitution might destigmatize the buyers of the sex, but it does so by increasing the demand for women to provide those services.¹⁸⁴ While demand for commercial sex has increased, the number of women voluntarily entering the officially sanctioned sex industry has not.¹⁸⁵ The buyers also fail to see how the women are delivered into the industry. The forced, defrauded, or coerced entry of the women into the industry and the violent management by pimps are hardly what the legislators envisioned when they chose to legalize the sex industry in the Netherlands.¹⁸⁶ Instead, the legalization of prostitution makes it far easier for traffickers to veil their operations under the guise of two “consenting” adults. Legalization of prostitution forces sex trafficking operations even further underground and makes it that much more difficult for law enforcement to distinguish legitimate prostitution operations from those that involve trafficking. If all prostitution were illegal, it would not matter whether or not the parties consented. Although it might be overly inclusive, such legislation would send a strong message to traffickers that any act involving the exchange of money for sex with their trafficked victims will result in the traffickers losing their investment completely.¹⁸⁷

The other alternative would be to attack the demand aspect of the industry. Although it is a crime in the United Kingdom and many other countries, the prosecution of buyers of commercial sex is greatly underutilized, despite being a strong deterrent for those otherwise potential buyers.¹⁸⁸ Instead, the primary approach taken by governments to combat the commercial sex industry has been largely directed at the

184. Linda Smith & Samantha Healy Vardaman, *The Problem of Demand in Combating Sex Trafficking*, 81 INT'L REV. PENAL L. 607, 612 (2010).

185. *Id.*

186. *Id.*

187. Interestingly enough, in 2012, the Israeli Knesset passed a draft law that criminalizes the act of paying for sex. Ruth Eglash, *Gov't Backs Jail Time for Soliciting Prostitution*, JERUSALEM POST (Feb. 12, 2012), <http://www.jpost.com/NationalNews/Article.aspx?id=257511&R=R2>. As the bill's sponsor MK Orit Zuretz stated, “This law aims to shift the responsibility for the offense to customers, who not only manufacture the demand for prostitution but also fuel the wheels of the sex industry” *Id.* (internal quotation marks omitted). The director and founder of the social action group Atzum, Levi Lauer, was quoted as saying that the passage of the law sends a clear message: “[H]uman bodies are no longer for sale in an enlightened society; trafficking in sexual services and prostitution are no longer legitimate enterprises on our streets; clients who rape sex slaves and make women and children the victims of their perverse power are now criminals.” *Id.* (internal quotation marks omitted). Although prostitution remains “legal” in Israel, it is slowly being chipped away.

188. Smith & Vardaman, *supra* note 184, at 615.

victim instead of the buyer.¹⁸⁹ Either buyers face no penalties or they face inconsequential ones.¹⁹⁰ However, research has shown that when buyers are faced with legal ramifications for being johns, many men will choose not to participate in the industry, and communities will adopt the view that such behavior is intolerable.¹⁹¹

Based on a survey in London, only six percent of men had ever been arrested for soliciting prostitution.¹⁹² However, the men interviewed also stated that threats such as being added to a sex offender registry, imprisonment, or the shame that comes with public exposure would be enough to deter them from soliciting prostitution.¹⁹³ Surveys in Chicago showed a similar outcome.¹⁹⁴ In fact, a vast majority of those men interviewed who do buy sex stated that they would be deterred from doing so if severe penalties existed and were enforced.¹⁹⁵

VII. CONCLUSION

The recent steps both Israel and the United Kingdom have made in the prosecution of sex trafficking are certainly an improvement over those same efforts from a decade ago. However, the distinctions that are often drawn between their legislative and enforcement efforts are largely a farce. The United Kingdom might have been ahead of the curve on passing legislative provisions that addressed sex trafficking, but those laws have failed to have their intended effect. They are inadequately enforced, and when they are enforced, they result in inadequate sentences.

A similar problem exists in Israel, although it took Israel longer to implement anti-sex trafficking legislation. Israel also has the added difficulty of distinguishing between legitimate legal prostitution exchanges and those that involve trafficking victims. The recent developments of this past year are an improvement; however, it remains to be seen whether the new laws against paying for commercial sex will actually be enforced and whether it will have a discernible effect on the victims trafficked into the country.

For all of the praise or criticism that both of these countries receive from the international community, neither is in full compliance with

189. *Id.*

190. *Id.* at 616.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.* at 616-17.

international conventions. Simply having a law on the books is not enough. Enforcement is key, and without it, both countries stand in violation of international treaties that call for affirmative action on the part of signatories to make the treaty goals a reality. For the Palermo Protocol to have its full potential in undermining the sex trafficking industry, perhaps the next step is for both of these countries to increase prosecutions on a different aspect of the trade: demand. Without demand, there would be no market. As Dr. Mohamed Mattar, Director of The Protection Project of Johns Hopkins University, has said, it is not enough for the law to simply criminalize the behavior of the buyers of sexual services.¹⁹⁶ “[T]he functional equivalent of the law must also recognize such behavior as unacceptable. . . . The legal systems that ‘tolerate’ or ‘accommodate’ or ‘normalize’ the behavior of the customer must reconsider its policies, change the law, and enforce the law accordingly.”¹⁹⁷

196. *Id.* at 608.

197. *Id.*