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The Southeast Asian Story and its Forgotten "Prisoners of Conscience": Some Proposed Measures to Combat Human Trafficking[1]

Wendy N. Duong[2]

I. INTRODUCTION: ASSUMPTION OR REALITY? THE CASE STUDIES

The twenty-first century's globalization is supposedly an époque of advanced technology that promotes better lives. Yet, in certain aspects, the human race has moved backward. One such step backward is the growth of human trafficking, now a global ill. My heart has been burdened by the fact that human trafficking victims from Southeast Asia have become the public highlights of this global problem, thanks to the work of international investigative journalists.

A. Dialogues with Students

In 2008, I conducted a seminar for law students of Franklin Pierce Law Center ("Franklin Pierce") at the invitation of my colleague Keith Harrison, a criminal law professor. My seminar presentation took place in Washington, DC, as part of a Franklin Pierce student field trip organized by Professor Harrison. This article is based on the speech paper that I presented for Franklin Pierce.

The Franklin Pierce seminar presented some of my proposed legal and nonlegal measures to combat human trafficking. Students were invited to give comments, suggestions, and assessments of my proposed measures. Overall, it was understandable that student comments centered more on real-world pictures and the role of nongovernmental organizations (NGOs) than complex legal proposals, because students were learning the law. In

fact, one student told me that she saw, in the presentation, the spirit of an NGO activist and not just a law professor.

This article is based on my seminar lecture, which consolidated and summarized my work on the "anti-human trafficking initiative" project. That body of work began in 2005 as a one-woman project assisted by a few law student volunteers at the University of Denver College of Law, where I taught full-time for 10 years. The *Seattle Journal for Social Justice* becomes the unique forum for me to combine two very different approaches toward legal writing: the advocacy speech of an NGO activist and the more structured analysis of an international legal scholar.

For lack of a better alternative, in this article, it has been assumed that readers already know basic terminologies of international law such as industrialized nations, developed nations, developing nations, customary public international law, conventions, treaties, bilateralism vs. multilateralism, international (or domestic) nongovernmental organizations (INGOs/NGOs), prescriptive jurisdiction, national law versus regional or international law, etc. It is also assumed that readers have acquired some basic understanding of the geopolitical and historical background concerning the region of Southeast Asia from the popular culture. For example, the Vietnam War and the Cambodian "Killing Fields" have been the subjects of not only a myriad of books but also several Hollywood movies, with Vietnam accounting for the larger number. Student comments generated at the seminar have been deleted from this article for the ease and thrift of publication.

B. Case Studies and Reports Regarding Pedophilia in Cambodia

To put the legal issues in real-life context, I will begin the article with case studies prepared by a former University of Denver law student, Ms. Kelly Cotter. Following the beginning of my project in 2005, I agreed to supervise an independent research paper done by Ms. Cotter, who later became my research assistant. At that time, I asked Ms. Cotter to focus on

human trafficking in Southeast Asia as a case study (thus creating the "Southeast Asian Story"), using recent news reports and former Secretary of State Collin Powell's responsive public statements as a focus and launching point. Ms. Cotter, who is now a practicing attorney and has since published her paper, reported the following stories of pedophilia in Southeast Asia.[3]

1. Jerry Albom

As an NBC Dateline reporter toured Cambodia for a sex tourism story, he casually interviewed American doctor Jerry Albom on the street of Phnom Penh in 2003. Albom came to Southeast Asia for its "remarkable architectural finds," such as the temples of Angkor Wat.[4] But the legendary temples were not the only thing that drew Dr. Albom to Cambodia.[5] When Dateline moved its story to Svay Pak, a smaller town seventeen miles from Phnom Penh known for its specialty of child prostitutes, they observed Dr. Albom at a local bar.[6]

When an undercover investigator posing as another "tourist" asked Dr. Albom about his purposes in Cambodia, he bragged about his exploits.[7] "Usually I buy out three girls for fifty bucks, take them for the whole night," he told the undercover investigator.[8] To give the posing tourist more "tips," Dr. Albom described his covert plan for pedophilia abroad—he told his American friends he was traveling to Bangkok. Instead, he crossed the border to Svay Pak.[9]

At the time, not much could be done to penalize Dr. Albom. Dr. Albom knew this, which was what drew him to a country like Cambodia where there is little enforcement of its own anti-trafficking and antislavery laws, in addition to police complicity.[10] Although an undercover tape revealed Albom *talking* about buying girls, that was all Dateline had against Albom.[11]

Prosecuting Albom was also difficult for another reason. His actions occurred prior to the US PROTECT Act of 2003.[12] Before the PROTECT Act, a US citizen could only be prosecuted for sex tourism if he/she traveled

abroad with the specific *intent* for sex tourism. In the Dateline evidence, Albom told the undercover reporter: "[Y]ou don't get in trouble unless they can prove that you traveled with the intent of having underage sex… If you did it by accident, it's okay… It'd be hard to prosecute you. You'd get the papers, but they'll hardly get a conviction."[13]

Although no Cambodian or transnational legal actions were taken against Dr. Alborn, a few months later the Dateline producers decided to follow-up with Albom to see what he had to say about his actions in Cambodia.[14] Journalist Chris Hansen found Albom in Guam and confronted him about his trips to Cambodia.[15] This time, Albom responded that he had been to Cambodia many times but had not interacted with underage girls.[16] When Hansen showed Albom the video statements, Albom denied any actual participation, repeating his "intent" defense: "I don't go down there with the intent of trafficking or participating in sex with underaged [*sic*] girls."[17]

Later in 2003, Albom's "intent" defense became irrelevant when President Bush signed the PROTECT Act, which changes the criteria for prosecution. Now all the US government has to prove is that a traveler had sex with someone younger than eighteen.[18] However, the extraterritorial jurisdiction permitted under the PROTECT Act may cause constitutional concerns.[19]

2. Donald Bakker

During December 2003, Vancouver police received a call about a naked woman crying, screaming, and running through a park.[20] When the officers arrived, the woman said that Donald Bakker had been following her, and she described that he had videotaped an assault on her.[21] The police arrested Bakker, a forty-year-old hotel worker with a wife and young child, and found videotapes in his bag and car.[22] The footage showed hours of violent sexual assaults and more than sixty images.[23]

An officer saw the Dateline show and found similarities between the stories depicted on the show and the Bakker case.[24] He contacted

International Justice Mission ("IJM"), whose investigation had been featured on Dateline. With the use of the evidence, IJM gathered information about specific victims they had rescued, who had also appeared on Bakker's tape. Along with the provisions in Canada's anti-human trafficking laws that allowed prosecutions of sex tourists on foreign soil, Canadian police charged Bakker on multiple counts of sexual assaults on children.[25]

Bakker was the first person to face trial under Canada's newly amended Criminal Code, which strengthened its antisex tourism laws against acts committed in a foreign jurisdiction regardless of that country's own laws.[26] Bakker pleaded guilty in a Vancouver court on June 1, 2005, to ten counts of sexual assaults, seven of which related to sex crimes committed against children in Cambodia.[27] The chief constable of the Vancouver Police Department, Jamie Graham, commented that "this conviction was obtained through the combined efforts of our dedicated investigators and IJM's team."[28] Sharon Cohn, IJM senior vice president, remarked: "This case states it plainly . . . The miles you travel from your home to commit these crimes will not insulate you from justice."[29] Bakker began serving a ten-year sentence on June 2, 2005.

3. Terry Smith

There were warrants in the United States for the arrest of Oregon resident Terry Smith for child abuse and sexual assaults. To avoid arrest and continue his patterns of abuse, fifty-four-year-old Smith fled to the Philippines and then to Cambodia. In Sihanoukville, Cambodia, a destination known for international sex tourism, Smith set up "Tramp's Palace," a place where he videotaped his sexual assaults on young Vietnamese girls and prepared these children to be sold to other foreigners.[30] The girls were estimated to be between the ages of eleven and fourteen.[31]

Smith was finally detained thanks to an undercover investigation by a US anti-trafficking NGO.[32] Smith's arrest required the international coordination of US state laws, US federal laws, Oregon state police, Virginia state police, Cambodia laws, Cambodian courts, Cambodian police, the US Embassy in Cambodia, the US Marshals Service in Portland, and the US NGO. The NGO investigators recorded an undercover video,[33] and based on this evidence, Cambodian police, led by the police chief of Sihanoukville's Anti-Human Trafficking and Juvenile Protection Bureau, arrested Smith on July 31, 2006.[34] On August 3, Cambodian police charged Smith with debauchery.[35] Smith's Cambodian girlfriend was also charged with debauchery for allegedly procuring and facilitating Smith's abuse of children at his establishment.[36]

The US NGO's chief investigator had status as deputy sheriff in Virginia and, with that status, called the Oregon police to search Smith's records. The crimes that Smith was accused of in Cambodia had a familiar ring to Oregon authorities. On August 5, 2006, Oregon officials reported that Smith had active warrants for a total of thirteen charges of child sexual abuse in Oregon.[37] (After serving fifteen months in prison and obtaining his release, he failed to register as a sex offender and fled to the Philippines, as mentioned earlier.[38]) The fugitive task force in Oregon then secured jurisdiction and obtained a federal warrant to detain Smith.[39]

Oregon was too late. Unexpectedly, on August 31, Sihanaukville's court director quietly released Smith from his pretrial detention based on a letter from a neurologist at a Phnom Penh hospital. The doctor claimed Smith suffered from a head injury sustained when he was a marine in the late 1970s, which was causing him headaches.[40] Cambodian papers reported abundantly on Smith's disappearance,[41] but many anti-trafficking NGOs on the case assumed the release was a result of bribery.[42]

In a maelstrom of finger-pointing, Cambodia's minister of justice, the court director, and the hospital all denied responsibility.[43] The neurologist maintained he had no idea why the court's director released the suspect

from prison.[44] The court director said she had "no choice but to release [Smith] and his girlfriend . . . If we kept him, it would have been dangerous to him and would even have been dangerous to me," she said without further explanation.[45] She added that if Smith were to flee Cambodia, it would be the failure of the country's border police for letting him escape.[46] Yet the chief of Sihanoukville's Anti-Human Trafficking and Juvenile Protection Bureau stated that the police were not looking for Smith, because it was up to the court.[47] Cambodia's minister of justice emphasized that the case no longer concerned its ministry, but only the police.[48] Cambodia's former minister of women's affairs finally stepped up to say that everyone involved was responsible for Smith's disappearance.[49]

On September 20, 2006, Smith appeared at the US Embassy in Phnom Penh hoping to replace his passport that the Cambodian police had confiscated in July.[50] The US State Department, aware that Smith might show up, summoned Cambodian police who arrested Smith outside.[51] Smith was flown back to Oregon in handcuffs to face his charges.[52]

In spite of the Cambodian governmental finger-pointing around Smith's case, the Cambodia Daily reported that Smith was at least the ninth foreign man arrested on charges of child sex abuse that year.[53] The United States also celebrated the global efforts involved in this arrest. Bob Mosier, chief investigator of IJM, stated that "cooperative global law enforcement community efforts drove this arrest . . . Smith believed that . . . the Cambodian authorities would allow his activities. But he was very wrong."[54]

In other Cambodian news, during August 2006, evidence emerged strongly suggesting that Cambodia had granted citizenship to Thomas Frank White, a US multimillionaire who is currently in a Mexican prison on charges of child abuse. White received Cambodian citizenship without meeting any of the official criteria required of foreigners wishing to hold a Cambodian passport.[55] Even with the nine arrests of pedophiles in 2006, "Cambodia in many ways remains a pedophile's playground," reported The

Cambodia Daily.[56] Cambodian authorities worry that pedophiles will still go to the tourist towns of Siem Reap and Koh Kong and Poipet on the Thai border. The executive director of the Cambodian Women's Crisis Center fears that foreign pedophiles will still find ways to enter Cambodia for purposes of sex tourism involving children.[57]

These three cases show how the national laws of the developed nations can be used in conjunction with internationally coordinated law enforcement and NGO activities to eradicate child prostitution. But success cases are very few, having been brought to light by zealous television journalists and NGOs, not by any established international legal system that facilitates immediate intergovernmental actions.

What America saw was limited to those few shocking news stories. Skeptics can raise their brows in horror: Were these infrequent incidents that occurred only in societies of poverty? A few brothels or many? How many, precisely? Is this happening on such a pervasive scope, with people from all over the world participating, or are we just assuming that these stories happened so pervasively because of the age-old human needs for sex and cheap labor?

Sadly, global human trafficking is a reality, and its growth should not be accepted as "nothing new." The eyewitness stories told here confirm the reality, but only as a fragment of that reality.

II. SUMMARY OF THESIS AND PROPOSED MEASURES

Overall, the legal measures proposed in this article aim to maximize the enforcement of anti-human trafficking laws and eliminate inconsistencies and inequity caused by national borders. I propose that multilateralism is necessary in the combat against global human trafficking, and the old (yet still viable) international law doctrine of state responsibility is the right legal means to reach the right humanitarian result. Under this doctrine, when governments contribute to global human trafficking—directly or indirectly—and when their persistent reckless inaction reaches the level of a

nonintervention de facto policy, systematic global human trafficking should be considered a crime against humanity and no longer a socioeconomic problem to be shouldered by "do-gooders." A government that consistently fails to act becomes an accomplice in the crime. Then, "situs" nations[58] become legally accountable, and the community of civilized nations must speak and act via the process of multilateralism, including the rigorous enactment and enforcement of national laws that reach extraterritorially to deter and eradicate this global ill. For example, governments' violation of the state responsibility doctrine is a violation of international law and can form the basis for private causes of action brought by or on behalf of victims under the domestic legislation of developed nations, such as the US Alien Tort Claims Act (ATCA).

My prescriptive solutions, however, go beyond the application of the state responsibility doctrine. In order to stop human trafficking, there needs to be a carefully structured and well-coordinated international effort, which should include *both* the implementation of legal measures at all levels (local, regional, and international) *and* the strengthening, expanding, and therefore, restructuring of the role, service, and scope of the NGO/INGO communities.

Specifically, my legal measures include the following:

- Using the laws and logistics of the developed nations to prosecute consumers of human trafficking by giving these laws extraterritorial effect. This is enforcement at the demand side.
- Using the nongovernment sector and the international legal community to put pressure upon the developing nations to enact, strengthen, and enforce their anti-human trafficking laws. This is enforcement at the supply side.
- Advocating for the recognition of human trafficking as a crime against humanity and expanding the state responsibility doctrine in public international law to provide the legal bases for the following:

- A new multilateral system with the transnational power to prosecute perpetrators at both the demand and supply sides under a uniform set of laws, standards, and logistics. This can be accomplished by nation-states' consent to implement a regional or international special criminal tribunal that is fully dedicated to the prevention and eradication of human trafficking as an international law violation.
- Private causes of action prosecuted in developed jurisdictions for damages against governments and officials that can be held accountable for human trafficking under the state responsibility doctrine—the concept of "international torts."[59]

My nonlegal measures include the creation of an umbrella INGO, modeled after Amnesty International, which acts as an international coalition of NGO/INGOs and specializes in treating human trafficking victims as "prisoners of conscience" who must be freed. This INGO represents the modern world's "call of conscience," putting emphasis on both advocacy and the mission of victim rescues, relief, and aftercare.

III. LEGAL BACKGROUND

At the First World Congress in Stockholm in 1996 (and five years later at the Second World Congress held in Yokohama, Japan), participants representing governments, NGOs, UN agencies, and other stakeholders, committed themselves to a global partnership against the commercial exploitation of children (the "Stockholm Agenda for Action").[60]

Several international conventions mandate the protection of children from commercial sexual exploitation. Nation-states that ratify these conventions are legally bound to comply with their provisions. One such convention is the UN Convention on the Rights of the Child (CRC), which

has been adopted and ratified by almost every country in the world since September 1990.[61] However, despite ratification, the CRC eventually has fallen under the large rubric of "soft" public international law, demonstrating perhaps an honorable good faith intention but lacking in specific enforcement teeth.

Since then, the term "human trafficking" has been given a legal definition in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children (the Anti-Human Trafficking Protocol), adopted by the United Nations in Palermo, Italy, in 2000.[62] The Anti-Human Trafficking Protocol is one of the three supplements that set guidelines to the UN Convention against Transnational Organized Crime (the "Organized Crime Convention"). Today, child prostitution used in tourism also has an international legal definition. The United Nations defines "child sex tourism" as "tourism organized with the primary purpose of facilitating the effecting of a commercial-sexual relationship with a child."[63]

Even though the international community has spoken by ratifying these conventions, human trafficking remains widespread today. Again, enforcement is often a problem with public international law, which generally depends on the goodwill of the nation-states. In many developing nations, goodwill can be just lip service because of deeply rooted structural and political problems in those societies.

The global ill of human trafficking is often seen in cases involving migrant workers, mail-order brides, sex tourism, and child prostitution. My work highlights the most vulnerable victims, children used in the sex trade, in the region that I know best, Southeast Asia. But this global ill is by no means limited to any particular part of the world. Because human trafficking is more rampant and prevalent in lesser-developed economies, the Southeast Asian story is used here for demonstrative analysis. As told in Ms. Cotter's case studies, the trafficking of children for the sex trade in Southeast Asia was first exposed to the United States by NBC. Very young

Vietnamese boys and girls were shown at a Cambodian brothel, indicating that these children had been transported across the Vietnam-Cambodia border. As seen on television, the illegal trade did not victimize the beautiful or feature beautiful places. Undernourished, diseased, physically wrecked, emotionally traumatized, sad, and lost children were made to perform sex acts in ghastly rooms. Adults, many of whom were non-Asians, paid Cambodian profiteers a cheap price to use these poor and captive children in various sexual activities.

This Southeast Asian story should not serve as a reason to overlook the imminence of other conditions, such as the abuse of migrant workers and mail-order brides. For purposes of analysis, it is accepted that the supply of victims for human trafficking is associated with the developing world, although the problem does not just belong exclusively to the developing world.

IV. MORE RECENT EYEWITNESS ACCOUNTS: THE CHALLENGES OF VICTIM RECOVERY AND AFTERCARE

Since the NBC news stories, relief workers have exposed more and more Southeast Asian cases.

A. Story of the Swan

One recent story was told in the following interview conducted by Radio Free Asia (RFA) reporter Gwen Ha (a.k.a. Thanh Truc). Broadcast in Vietnamese, the interview has been shortened and translated into English below.[64]

> Swan was the nickname given by Father Martino Thong Nguyen to a Vietnamese girl sold into a Cambodian brothel at the age of nine. In this interview, Father "Martino" recounted to the RFA reporter how he rendered aid to the girl during his charitable mission and the story she told him. The priest also reported that the girl spoke some English, indicating that during her years in the

brothel, she served an English-speaking clientele frequently enough to acquire some language skills . . .

She did not remember her place of birth or where she was raised. She only remembered vaguely that it was the countryside with rice fields. She remembered that when she was nine, a cousin took her to Cambodia. That was in 1996. That was all she remembered. Life was horrific since then. The pimps and the madams passed her around and took turns showing her how to be a sex slave. When she turned seventeen, they kicked her out of the brothel because she was too old. They only housed the under-aged. She then tried to apply for jobs in cafes and restaurants but couldn't find any. She had to go back to the trade, by herself. She asked for food only and no cash . . .

She said that when she was in the brothel, young Vietnamese slaves were divided into two types. The very young, below eleven or twelve years of age, performed oral sex. The older ones, especially those girls who had had menstrual cycles, engaged in other forms. On the average, each of the children served from ten to fifteen customers per day. The "pay" given to them was typically a bag of dry noodles or a piece of cake so that they were fed just enough to serve the next client.

She said that many children died of HIV. Many of them were hired by groups of five to seven men who abused them while taking drugs. Many children were forced to use drugs. . . . She said that these druggie groups were the worst. . . . This happened to her a few times and those were the nightmares. She couldn't recover for months . . .

She said that she understood if she spoke too much, she could be killed . . .

The NBC show resulted in the rescue of thirty-seven children, the majority of whom were Vietnamese. According to the Cambodian minister, there were 30,000 children rescued. So does that mean thirty-seven children have saved another 30,000?

B. Sina Vann: Real-Victim-Turned NGO Worker/Activist

The next eyewitness story further demonstrates the complex tragedy of child prostitution in Southeast Asia and the challenge of victim aftercare. Below are a summary and a translated excerpt from RFA interviews of Sina Vann, the pseudonym of a Vietnamese girl sold to a Cambodian brothel and later rescued by the founder of Somaly Mam Foundation in Cambodia. The victim eventually became an NGO worker and anti-human trafficking activist. In 2009, Sina Vann received the Frederick Douglass Award[65] from the United States for her efforts to help herself and others like her.

1. Summary of Interview (Broadcasted and Posted on RFA in Vietnamese by RFA Reporter Gwen Ha, a.k.a. Thanh Truc)

Sina Vann's real name is Nguyen Thi Bich, and she is from Can Tho, Vietnam. At the age of thirteen, Nguyen Thi Bich was defrauded by a neighbor, who took her to Cambodia and sold her to a brothel. In that very dark web, she stayed for approximately two and a half years, and was shifted between two brothels: one for foreigners and one for "others." She was beaten daily and made to perform sexual acts for dozens of tourists a day, seven days a week. Many of these tourists were from foreign countries. They came to Cambodia specifically for child prostitution.

Sina Vann was rescued by two NGOs and subsequently became a zealous worker cooperating with NGO workers to rescue children from the brothels, including many Vietnamese children born in Cambodia or transported from Vietnam. In very simple language, Sina Vann told RFA listeners how she had overcome her nightmare and had made the transition to become a thoughtful young woman who knew how to fight child prostitution by showing sympathy and understanding for the victimized children that she helped rescue.

In October 2009, Sina Vann arrived in the United States to receive the Frederick Douglass Award for her efforts to rehabilitate herself and to fight human trafficking.[66] In her interviews with RFA, Sina Vann told listeners

very candidly what happened in the brothels and emphasized the need for society to help these young boys and girls not only to escape the sex trade, but also to rebuild their lives and learn to trust people. She pointed out that unless these children are rescued, they will eventually die either from beatings and abuse or from AIDS.

As shown in the excerpt below, in Sina Vann's simple language, governments must be held to certain standards of behavior because of their actual or constructive knowledge of the ills—they are responsible for knowing what happens in their countries. Likewise, parents must take first-line responsibility over their children. Both governments and parents are accountable in roles that lawyers know as *in loco parentis*.

2. Excerpt From Sina Vann's Interview

Statements made by Sina Vann are now all over the internet in the form of stories reported in English. Here, in the excerpt below, Sina Vann spoke directly to her Vietnamese compatriots in her native tongue for a broadcast that was meant to reach her homeland. She spoke of the root causes as well as the manifested phenomenon—the seemingly incomprehensible erosion of traditional Vietnamese family values manifested by the sale of children in a Cambodian village of ethnic Vietnamese called Svay Pak. The simplicity or lack of articulation that Sina Vann exhibited during the interview is perhaps the most moving part of her story.[67] Her statements touched upon some of the most complex and unsolved aspects of this global ill in our modern world: the vicious cycle of demand and supply, the loss of human dignity and values in the parent-child relationship, and the tremendous difficulty of victim aftercare.

> **RFA:** [Continuing coverage of] child prostitution: sold from Vietnam to Kampuchia, parents in Kampuchia selling their children to Thailand. Sina, do you think that this will decrease, or will it continue the same?[68]

Sina Vann: I don't know if it will decrease or not. Decrease, or increase, it's their country that knows. All I know is that everyday, there is selling and buying like that.

RFA: In order to keep these children from going back to that hellish life, what do you think [should be done]?

Sina Vann: I know that she (the child prostitute) is young, she needs parents, [so] the first thing is to tell parents how to raise their children. To have her go to school only for her to go back to her parents. We can't send her elsewhere, because we told her, she agreed to go to school, once she grows up, she will return to her parents. Have to tell the parents that having children does not mean selling them. If selling, then be faced by the law. The mother goes to jail. Must know that to have children means to raise them, not to have the right to sell them.

RFA: Vietnamese parents in Kampuchia having [given birth to] small girls in order to sell them, are there a lot of [these cases]?

Sina Vann: So many. 2006, 2007, 2008 [cases], in Svay Pak, have you heard of it? All Vietnamese…

RFA: That's the red light district, brothels?

Sina Vann: It's all Vietnamese. You know what parents do? Betting, gambling, smoking, café, nails, body work…The children? Boys and girls. Not just girls, mind you…Six, seven, eight, nine years old. The parents take coffee and gamble and the children, six or seven…get money for their parents. That's Svay Pak. When I work Svay Pak, I am very sad. To see children, I cry. How much pity can one feel, since I used to be there, travelling the same road . . . all forced, all beating, and then I saw parents who let their children do this, can you think . . . . For a girl in the brothel, either they kill her, or SIDA [AIDs] kills her. There are only two ways to go. And the boys…

RFA: We have talked about the six-, seven-, eight-, nine-year-old girls. You have seen boys in this trade?

Sina Vann: In Svay Pak, people sell not only girls but also boys…We saved both boys and girls… About a dozen, [each] sixteen or seventeen years old.[69]

… In Vietnam, children love their parents a lot. They'll do everything to give their parents money. To go to Kampuchia to see how poor Vietnamese are.

RFA: Selling one's children because of poverty?

Sina Vann: No, can't just blame poverty. We are all poor; no one was born rich. Can't say because I am so poor I'll sell my child. To say it like that, then everyone will sell their children in this world. There are so many poor people, why don't they all sell their children? If there are buyers, there are sellers; no sellers then no buyers, true? I just think of one thing: parents do not know what their children are to themselves or what they are to their children. We must be the forerunner for our children. I have seen a lot of poor Vietnamese; they don't sell their children. Instead they do this, do that to raise them. The people who sell their children bet, gamble, players. Those are the sellers. The poor people, they have six or seven children, all raised well. They work for hire, they sell used jars, used containers, for a living. We come to a foreign land; we must work. Can't sell our children. That's not good.

…If there is no buyer, then there is no seller, if there is no seller, then there is no buyer, isn't that true?

RFA: The sold children, including the older ones, died of SIDA [AIDs]…

Sina Vann: The girls in the house, either they kill her, or she dies of SIDA. Only two ways to go. If we don't save her in time, she will die. If they had not saved me in time, I would have died, if not from SIDA then from beating. Everyday I tried to eat a lot of hot peppers or tried to be electrocuted so that I would die. That's all you need to know.

RFA: That's Sina Vann Nguyen Thi Bich with the Frederick Douglas award. She has turned the entire award money to the NGO Somaly Mam in Kampuchia where she currently works. The country of Angkor Wat, with worldly heritage admired by all, is also the place where one can find banners in English and in Cambodian, [stating] "Don't let go those who seek child

> prostitution, let's face them . . ." This is Thanh Truc, saying goodbye to her Vietnamese listeners, and see you next Thursday. [70]

V. LEGAL AND REALITY CONCERNS: ANALYSIS OF THE SOUTHEAST ASIAN STORY

These case studies confirm a number of concerns outlined below. As the stories demonstrate, sporadic and uncoordinated efforts by the media, NGOs, and various governments—however dedicated—still leave these concerns in place.

A. Concern #1

Human trafficking may be part of organized crime, the international drug trade, or serious and pervasive government corruption, thereby presenting safety issues for victims, whistle-blowers, relief workers, and activists.

B. Concern #2

Currently, there is no specialized regional or international criminal tribunal with the necessary transnational power to prosecute and punish perpetrators under one uniform system of law.

C. Concern #3

Even when governments take law enforcement actions, children have already been harmed. For example, even after viewing the NBC stories, the public does not know what has happened to the children found in these brothels. Ad hoc relief, if any, is often left to the local government and social service agencies, but such relief cannot fully compensate the children for what they have lost.

D. Concern #4

Despite various international conventions calling for the protection of women and children,[71] the enactment and enforcement of anti-human trafficking laws, to date, depends entirely on the nation-states. Legal

protection and/or enforcement efforts, therefore, are neither consistent nor coordinated or made uniform. For example, although human trafficking may clearly be a crime, what are its legal elements and how is it enforced? What are the loopholes? Because of differences in national laws, the answers may vary from country to country. More importantly, as explained below, the enforcement of law is not mandatory.[72]

E. Concern #5

Network reports and victim testimonials have evoked public outrage all around the world, which has helped awareness campaigns. Yet, human trafficking is still a sensitive and highly politicized issue in the home countries of consumers, importers, exporters, and brokers—no country wants to be criticized as the "host" for any of these activities. The problem can also point to other serious structural and moral issues within a society. Accordingly, finger-pointing or denial often occurs within the government sector.

F. Concern #6

Victims of human trafficking are often from remote areas of extreme poverty or from families that have been uprooted by economic transitions. As will be explained below, these families are most likely drawn into the type of economic competition and exploitation that typifies developing or transitional economies. Yet, in those economies, laws may be window-dressing, and enforcement may be weak. Southeast Asia serves as a prime example of these geopolitical obstacles.

For example, an important contributor to child sex tourism in Southeast Asia is the fact that the police or the judiciary may look the other way or even be an accomplice in the brothel industry. When government corruption shields traffickers and blocks prosecution, relief workers and activists may have to work against governments instead of receiving governmental cooperation or assistance. Poorly paid officials may even count on bribes as

part of the benefit of their office. The US State Department's Report on Human Rights Practices in 2006 noted that in Cambodia, "[i]t was widely believed that some law enforcement and other governmental officials received bribes that facilitated the sex trade,"[73] and that "Cambodia is a source, destination, and transit country for men, women, and children trafficked for the purposes of sexual exploitation."[74]

Sex trafficking is also rampant in other countries of Southeast Asia such as Thailand, Vietnam, Laos, and Burma.[75] Undeniably, each of these Southeast Asian countries has young children who travel across its borders as supplies for the sex industry. While many Southeast Asian countries have shown improvement through increased arrests and prosecutions since the NBC stories (and the US State Department's initiatives in response thereto[76]), in those places, human trafficking and corruption may have been tacitly accepted as the hard facts of life, no more and no less than typhoons, monsoon tides, tsunami, or other natural disasters.

Advocacy in those countries, therefore, can become merely rhetorical. Almost all developing countries claim that they have anti-trafficking laws or that they have signed on to the UN human rights conventions that protect women and children.[77] Government officials often vocally express abhorrence toward the global ill. Yet, the trade continues within these countries' borders. Without good rehabilitative infrastructures supported by governments, victims can be "recycled" back into the trade. If the brothel industry is closely interrelated with the segment of power within a country, then the problem simply cannot be eradicated or remedied via law enforcement.

G. Concern #7

The problem might not lie just in poverty or government corruption. Other cultural conditions may have normalized the transport of humans across borders, with governments acting as facilitators or granters of visas and permits for immigration and migrant work. Since human trafficking

involves both unwilling victims (i.e., kidnapped or pawned children/women) and willing victims (i.e., mail-order brides and migrant workers), border crossing may occur under the auspices of government-sponsored programs or private programs tacitly approved by governments. These programs, which may seem legitimate to the victims, may ask poor or needy parents to pay a participation or service fee to brokerage agencies that arrange for worker transports, adoption, or interracial marriages. If and when the ill is exposed later, it may be very difficult to decipher who exactly has received the payment or who has initiated the request or mandated the payment.

Additionally, the children themselves may feel a pious duty to volunteer for these arrangements in order to help their parents. In certain cultures this is psychologically encouraged. For example, in Vietnam, the literary tragic heroine was a sixteen-year-old girl who sold herself to secure the release of her imprisoned father.[78] This literary heroine typifies the self-sacrifice virtue of Asian and Southeast Asian cultures as well as the role of the family in these cultures.

H. Concern #8

The problem may also lie in traumatic sociopolitical changes, a follow-up point for the analysis raised in Concern #6 above. Political scientists and economists have surmised that Southeast Asia's radical transitions and political upheavals also account for the growth of human trafficking—during seismic societal changes, the powerless suffer the most.[79] For example, in David Batstone's book, *Not For Sale*, the author, a well-known activist, attributed the surge of the sex trade in Southeast Asia to four factors that together widen the gap between the rich and the poor: (1) devastating poverty; (2) armed conflicts; (3) rapid industrialization/changes in economic policies; and (4) exploding population growth.[80] The competitive pressure to take part in societal changes increases the supply and demand for forced or exploited labor and exposes certain vulnerable

sectors of the population to brutal economic exploitation. In the twentieth century, modernization and political changes in Southeast Asia contributed to the immense wealth of the few ruling elites, contrasted against the impoverished lower echelons of society, i.e., the mass public. These drastic changes destroyed traditions and shattered agricultural or artisan families, subjecting them to exploitation.

For instance, Vietnam and Cambodia underwent drastic political changes, whereupon a relatively modern society was stripped of its technological and free-enterprise infrastructures and found itself pushed back into primitive, austere, hard labor under communism. The loss of land, property, familiar social structures and logistics—all combined with drastic government oppression—bankrupted millions of people and lured or forced them into slavery. These people included households of those who had been killed in genocide (in the case of Cambodia) or imprisoned in labor camps due to political retaliation (in the case of the Vietnamese "gulag").

While governmental economic reforms might have created the about-face of affluence for major cities, those economic reforms have not restored (or simply cannot restore) the rupture of traditions or family values, especially in urban alleys and the countryside.[81] The rebuilding and modernization of Southeast Asia also brought about a new pressure for consumer goods and wealth with little regard for the human life because of overpopulation. The remnant of a past feudal autocracy, class struggle, and history of warfare also added to the cultural belittlement of human lives, especially when those lives were poor or fungible in the new economic competition.

I. Concern #9

The problem of human trafficking can also be traced back to deeply ingrained cultural attitudes. Southeast Asian societies often hold sexist views, thereby tolerating and even fostering the mistreatment of young girls. Writer Kevin Bale reported that in Thailand or Vietnam, during the time of economic and political about-face, it was not unheard of for poor

farmers and laborers to sell their daughters to redeem debts on their rice fields or to feed the younger siblings.[82] In these traumatized cultures, daughters and wives were fungible laborers as much as they were family members.[83] When values fell apart in economic transitions, cultural belittlement of girls and women normalized the sale of a daughter just to buy a new television set. Bale reported a survey in the northern provinces of Thailand, showing that two-thirds of those families who sold their daughters could afford not to do so, but they "preferred to buy color televisions and video equipment."[84]

Other cultural attitudes have also worsened the problem. For example, the "save face" cultural value allows governments and families to deny their faults and hide the real stories, thereby allowing more children and more families to fall naively under false hopes for overseas work, international adoption, or interracial marriages. Bale concluded that the Southeast Asian "self sacrifice" and "save face" cultural values, the very structure of Southeast Asian political governance, and the role of the family in those societies render the difficult problem of human trafficking even more complex.

J. Concern #10

The ease of travel, wealth, and comfort in developed nations also accounts for the type of consumerism that contributes to the mushrooming of the human trafficking industry. The Western hemisphere has easily become a consumer base for the developing nations' inexpensive "meat market." Americans have accounted for a large group of foreign "tourists" in Asia.[85] Data gathered from 1991 to 1996 showed that out of the 240 tourists who sexually abused and exploited children in Asia and who were arrested, imprisoned, or deported, approximately one-fourth were Americans.[86] The consumer base for Southeast Asian "commodities" has also included the newly industrialized nations such as South Korea and

Taiwan, with Japan and China joining the consumer base as the supplying countries' East Asian neighbors.[87]

K. Concern #11

Based on the case studies recounted here, one may wonder why there were so many Vietnamese children found in Cambodian brothels. Naturally, there were Cambodian children as well, but news stories have revealed an extraordinarily large number of Vietnamese boys and girls. When Sina Van spoke of Svay Pak, she referred to the area as a known supply source of Vietnamese children in Cambodia.

How can such a phenomenon be explained? Root causes may be traced back to the historical racial animosity between Cambodians and Vietnamese, which intensifies existing law enforcement problems in Cambodia. Such racial tension and prejudices might have caused Cambodian officials to treat Vietnamese victims as a low priority in terms of victim rescue and legal protection. The following description provides a historical summary of these racial divides.

Racial tension and ethnic differentiation have long existed in Southeast Asia or former French Indochina, often due to ethnocentrism and historical border disputes. By the fifteenth century, Vietnam had successfully expanded its southern border to include the former Kingdom of Champa, a Hindu culture that allegedly could have been the original builder of the Angkor Wat.[88] Later, the empire of Vietnam also took over the small nation of Chan Lap, which once lay between Vietnam and Cambodia. Today, both Champa and Chan Lap no longer exist on the world map. Vietnam's aggressive southern annexing must have threatened its southern neighbor, the Khmer culture, and contributed to the Khmer-Vietnamese racial conflicts.

During the era of colonialism, French Indochina included the three countries of Vietnam, Laos, and Cambodia. The "divide in order to rule"

French colonial policy could have also intensified existing ethnic conflicts among the three countries.

This deeply rooted clash between the two cultures—Vietnamese and Khmer—continued throughout the Vietnam War era. Massacres occurred, resulting in the ethnic genocide of tens of thousands of Vietnamese in Cambodia in the 1970s.[89] After the fall of Saigon, Vietnam invaded Cambodia in the late 1970s. This action ended the reign of the Khmer Rouge and signaled Hanoi's political break from Beijing, which supported the Khmer Rouge.[90]

With age-old racial tension and a history of warfare as the backdrop of the Khmer-Vietnamese relations, certain Vietnamese might believe that the Vietnamese culture is superior to that of Laos and Cambodia, while certain Cambodians might regard Vietnamese as exploiters and aggressors—objects of hatred. Accordingly, it might just feel natural to Cambodian brothel owners to abuse and mistreat Vietnamese children. Long-felt racial animosity might give the Cambodian actors a sense of entitlement to inflict cruelty and to treat Vietnamese subjects as nonhumans.

Thus, exiled Vietnamese in Cambodia may be living in a culture infused with the type of racial tension that dates back to ancient history worsened by more recent border wars and political conflicts. It becomes more understandable how those Vietnamese who live at the fringe of Cambodian society, such as the Svay Pak inhabitants described by the eyewitness Sina Vann, could be morally stranded or uprooted. This historical and sociological background might explain the loss of value and dignity in Svay Pak, manifested by the phenomenon of Vietnamese parents offering their children for sale in order to finance the parents' doomed lifestyle and habits. The same phenomenon may exist in Vietnam or other lesser-developed countries as well during periods of tumultuous economic transitions or the remnants thereof.

L. Concern #12

Although these problems also exist outside Cambodia, Cambodia has curiously emerged as the notorious site for child prostitution and human trafficking. In fact, the savagery committed by human traffickers, brothel owners, and the former Pol Pot regime have remained an intellectual puzzle to many Southeast Asian specialists and cultural anthropologists, because this cruelty contradicts the peace-loving and compassionate nature of Buddhist Cambodian society. The answer to this puzzle may lie in the political and economic uprooting that Cambodia has endured for many decades as a nation and a culture. I strongly believe that the social-geopolitical connections among Cambodia's bloody history, its past "Killing Fields," and its present reputation as a pedophile's tourist attraction should continue to be examined seriously by concerned cultural anthropologists. Furthermore, this side of the hemisphere—typically labeled the "West"—must become better educated about Cambodia, as well as the role and place of a developing Southeast Asia, both on the world's map and in the total human experience. In this regard, the following facts about Cambodia are noteworthy.

During the Vietnam War era, both Cambodia and Laos turned into strategic locations for both sides of the war: the American-backed South Vietnam against the Russian- and Chinese-backed Communist North Vietnam, which supported the Vietcong[91] (the North's protégé insurgency movement in the South). The war, as well as the international heroin and opium trades that intertwined with it, actually took place in all three countries of former French Indochina, although, Laos and Cambodia were not at the center of the armed conflicts.

Cambodia not only survived genocide and disbanded the brutal iron hand of Pol Pot's communism but it also, ultimately, restored the country's constitutional monarchy complemented by a democratically elected parliament. The downside has been that the country had to fill the political void and face the pressing need for drastic economic and political reforms.

To meet the challenge, in the 1990s, the country began calling upon Cambodian expatriates to return and serve in the political apparatus. American citizens and residents who are ethnically Cambodians have actually returned to work in the country's cabinet—a phenomenon that makes Cambodian politics unusual. In other words, Cambodian policymakers and advisors have included Cambodian Americans who might be more familiar with California than their own ravaged country at the time of their homecoming. The immediate shift from dictatorship to democracy can also create the kind of cultural trauma that, according to writers such as Bales and Batstone,[92] constitutes the deeper cause for the growth of human trafficking and child prostitution, as well as other decadent manifestations associated with a culture in shock. At the same time, although the Cambodian government might have tried to engage in save-face denial by "closing the lid" on bad news in its new democracy, the channel of information can no longer be shut down the same way as under a totalitarian rule or dictatorship (compared to its neighbors like communist Vietnam or militia-run Myanmar).

These factors may explain how Cambodia has gained its notorious reputation as a "pedophiles' heaven" and has become the focus of attention more than any other developing nation with the same human trafficking problems. This does not mean that human trafficking has mushroomed only in Cambodia.

M. Concern #13

All factors considered, the ultimate legal and moral responsibility should rest with nation-states and their social or political institutions, both at the demand and supply sides. A nation-state contributes to the mushrooming of human trafficking when it allows the unlawful movement of people across borders, whether this is due to governmental incompetence, neglect, corruption, lack of effective border control, or lack of an effective criminal or immigration law system to identify and punish human traffickers. In

many instances, government agencies have refused to rescue victims or accorded low priority to rescue efforts because the victims are typically aliens or ethnic minorities—the "second-class humans." In other cases, governments do not prosecute perpetrators. Meanwhile, the developed nations provide consumers across the globe. At the very least, nation-states create or condone the social, economic, and political environments that foster the rapid growth of human trafficking.

In sum, despite recent improvements, the current legal protection is still inadequate. The international community cannot, and should not, wait for reporters and NGO investigators to bring them stories while local authorities gear up to respond to the negative publicity in order to "save face." Media publicity is too inconsistent. The media will emphasize certain stories for immediate attention, but the attention quickly dies down. As explained below, a more effective and permanently installed international legal regime must be developed, bringing policymakers and social institutions on board from all levels across the globe.

VI. EXPLANATION OF PROPOSED MEASURES

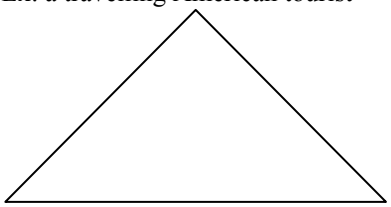
A. The Foundation-Building Legal Analysis: Elements of the Human Trafficking Triangle

For this heinous crime to take place across borders, there must be an exporter and an importer, a consumer and a supplier. Consequently, there is always an exporting country and an importing country. In many instances, there is also a consuming country that may be different from the exporting or importing country, as in the NBC stories. Thus, at least three countries can be identified, thereby forming the "Human Trafficking Triangle" diagrammed below ("Triangle"). (There may be a fourth country that serves as the point of transit, or where a "broker" is found to have facilitated the transfer. Such brokering country may also be the same as the importing or

exporting country.) Nations, therefore, become "constituting elements" or "points of action" in the Triangle.

HUMAN TRAFFICKING TRIANGLE, USING SOUTHEAST ASIA AS AN EXAMPLE

Consuming Countries
Consumer
Ex: a travelling American tourist



Exporting Countries
Supplier
Vietnam (Cambodia is also the supplier, as in the case of a Vietnamese child found in a Cambodian brothel)

Importing Countries
Importer/Broker
Any Third Country; ex: (1) Cambodia, the situs of the brothel, in case of child prostitution; and/or (2) Taiwan, where a Southeast Asian mail-order bride has been admitted by fraud.[93]

The Triangle shows how nation-states should bear first line legal responsibility as "points of action," and hence, will be used as the conceptual framework for the legal analysis.

In the example above, there exists an economic relationship between the American consumer and the Asian supplier, which makes the Asian country an exporter, supplier, or broker. In the case of child prostitution, the nationality of the child (Vietnamese) also identifies the "supplying" or "exporting" country. The children could not have left their home and passed

the border into Cambodia without the tacit approval or neglect of the Vietnamese and Cambodian governments. Likewise, the brothel cannot operate on Cambodian soil without the knowledge of or failure of prosecution by Cambodian authorities. Under public international law, as situs for supplies, consumption, and services, the nation states provide the territorial nexus that connects them to the illegal activities.[94]

This points-of-action Triangle is conceptually important because—as will be explained below—under public international law, inherent in a nation-state's prescriptive jurisdictional power over its territory and inhabitants is its responsibility to act. As will be explained in Legal Proposal #5, in the case of systematic human trafficking, governmental facilitation or inaction can amount to a de facto policy, which can be the legal basis for liability supporting a civil cause of action for damages.[95]

My proposed legal solution thus seeks to hold governments as primary points of action bearing legal accountability, with the nongovernmental sector by acting as a de facto enforcement agent, advocate, service provider, and watchdog of governmental behaviors via a channel of information provided directly to an international public. This information channel becomes the point of public opinion pressure that helps monitor government actors by instilling their voluntary compliance with international law. This is akin to the concept of using shareholder and consumer advocacy to apply pressure upon public corporations in order to instill voluntary changes in corporate behaviors.[96]

But public opinion pressure alone is not enough. Clearly, in any transnational legal regime, cooperative action and legal mandates must be taken at all four levels: globally, regionally, nationally, and locally.[97] Commitments of all governments, therefore, should clearly go beyond just "saving face" or "diplomatic notes," and must reach the normative level of law with a formalized transnational enforcement team and legal system in place.

B. Proposed Legal Solutions and Supporting Legal Theories

I have often advocated in the public domain that as a social science, law usually trails behind other social institutions in terms of initiating reforms, and, sadly, law can also be reduced to a belated formalistic tool serving the elites, especially in the developing economies.[98] In developed nations, quite often, what is given by the law initially on paper can subsequently be thwarted in practice due to the ensuing fierce competition among special interest groups and economic forces. Only when law becomes the institutionalized spirit of a national identity held by a borderless middle class can law take on real meanings in peoples' daily lives.

For example, as seen in the US civil rights movement of the 1950s and 1960s, conflicts and activism took place first, and then the judiciary and legislative branches responded next: first, with the 1954 decision of *Brown v. Board of Education*,[99] and then eventually the 1964 Civil Rights Act, which advanced a new set of American ideals in response to the cry for societal changes. The same phenomenon is perhaps being observed in the fight for same-sex marriages in the last few decades, representing a significant, yet gradual, change in the American "moral code" tapestry. In contrast, despite the ongoing debates regarding the boundaries of individual civil rights in the United States after 9/11, freedom of speech and institutionalized individualism in America have always remained the guiding lights for the collective American identity. Individual freedom has become the well-ingrained collective spirit of America, regardless of what happens in the legal or moral debates in the US or elsewhere.

Against this backdrop of the ongoing "give- and-take" negotiation between law as an institution and the larger society, which constantly reflects the fluctuation of culture, today human trafficking is a readily acknowledged universal concern that can transcend differences in cultural values. The global society intuitively recognizes that the day of slavery is over, and that the forced sale of a human being is no longer acceptable in

any culture's moral code, although cultural boundaries still exist in what constitutes such a punishable "sale."

Although effective legal measures are long overdue, it will still take time to achieve the legal goals I set forth below. For example, the drafting and ratification of an international convention by the community of nations can take decades to accomplish. Thus, human trafficking is just another example of how the development of law trails behind the reality of life.

Within the thrift of publication, my legal proposals stated below are meant to categorize groups of ideas as skeletons, rather than to act as fully developed proposals. My focus here is on the general direction, rationale, justification, and underlying legal theories for these proposed solutions, rather than the details of implementation that must be presented in each proposal. In fact, because this article evolved from a classroom seminar, I believe that in the ideal formula for contemporary legal education, each proposal should be handed to law students or teams of law students to be developed into publishable student papers at the conclusion of the seminar. Each student or each team will then have the opportunity, *inter alia*, to explore, draft, and develop the text of international convention and local legislation, to make concrete and refine my legal proposals, and/or to conform them to the existing framework of public international law or, where applicable, the constitutional boundaries of the United States.

In the larger context of legal academia and the legal profession, I would hope that these groups of ideas will then be further developed into a series of independent law reviews or lobbying proposals, if not by myself, then by my former students and colleagues. More specifically, in the era of cyberspace and the internet, my legal proposals should become part of a law school blog so law students can write in, comment, debate, and help develop these proposals further. In the meantime, a unique specialty journal like Seattle University's *Seattle Journal for Social Justice* serves as the only publication forum for the comprehensive presentation of these ideas, *all in*

one place, even if the description below may not yet be the final form for implementing these proposed legal measures.

1. Legal Proposal #1: Stronger and More Expansive Extraterritorial Application of Anti-human Trafficking Laws in Developed Nations Identified as "Consuming Countries"

According to Donna Hughes, a prominent scholar on the trafficking of children, holding sex consumers personally accountable for their behaviors should curtail demand and ultimately stop the illegal sex trade.[100] This model offers the advantage that the laws of the "superpowers" can become the driving force for the eradication of human trafficking. In this Legal Proposal #1, what helps give teeth to the anti-human trafficking enforcement should be the extraterritorial ("ET") effect of the domestic laws of developed nations, for example, countries that are members of the Organisation for Economic Co-Operation and Development ("OECD") i.e., North America, the EU, and the developed Asia). The sophisticated press corps and well-monitored police forces in these nations will act as the de facto "shaming" and "enforcing" agents, independent from the problematic geopolitical issues of the developing world.

The reach of ET laws, however, is subject to an international legal test, one that limits ET jurisdiction based on reasonableness.[101] International law traditionally views the ET effect of a nation-state's domestic law with skepticism, because such the ET effect of law asserted by a nation-state will undermine the sovereignty of another nation-state. Thus, under international law, national laws can reach acts committed abroad only if there is at least one of the following four nexuses between that act and the sanctioning state: (1) the nationality/citizenship of the actor (the "nationality" nexus); (2) the effect that the act produces upon the sanctioning state (the "effect" nexus); (3) the situs of where the act was committed, i.e., whether the act was deemed committed on the territory of the sanctioning state (the

"territory" nexus); and/or (4) comity or the consent of the foreign state in which the act undisputedly occurred (the "sovereign consent" nexus).

Anti-human trafficking should be one arena where the most expansive ET effect can be tolerated as a matter of collective conscience, such that only the minimum nexus is necessary to establish a nation-state's prescriptive jurisdiction over conduct abroad. For example, in the Triangle charted above, the United States as a consumer base can and should exercise its extraterritorial prescriptive jurisdiction over the consumer who travels to Asia for pedophilic activities. Indeed, the United States has taken the driver seat in the global fight against human trafficking and child prostitution—former Secretary of State Collin Powell was known as the champion of this effort.[102]

In the application of prescriptive jurisdiction under international law, in order to pass the nexus test described above, US anti-human trafficking laws with ET effect must clearly contain at least one of the following elements:

1. The *nationality* of the consumer subjects him/her to the United States' criminal jurisdiction. In the Triangle diagrammed above, this nexus is undisputed: the consumer is American.

2. The illegal activities abroad arguably produce a *substantial effect* upon the United States, because of the United States' commitment to (a) basic human rights, and (b) child protection, a universal value evidenced by UN conventions.[103] These commitments should be construed as part of the United States' national interest: the United States has a vested interest in its image and its standing in the global community as a superpower and leader of freedom and liberty. This effect nexus should be interpreted liberally to maximize the transnational reach of the United States as the sanctioning state.

3. Theoretically, the United States can also exercise its ET prescriptive jurisdiction over foreigners (such as the Asian profiteers) and not

> just its own citizens or nationals, provided that the nexus text required by international law is met. For example, those foreigners' travels, property, or financial arrangements may be traced to America (the expanded territory nexus). Or, their illegal transactions with American citizens are deemed to produce a substantial effect upon the United States' national interest described above (the effect nexus).

Under the "effect" test, the United States' national interest in the combat against human trafficking is seen even more vividly because anti-American sentiments are developing in Southeast Asia. For example, within the region, the Philippines and Indonesia have already been identified as containing terrorist cells.[104] It does not take a psychologist to confirm that despairing victims of human trafficking are likely suicidal. Sina Vann told the public that as a teenager living in the brothel, she wished to die daily: she tried to swallow what she believed to be toxic and to electrocute herself.[105] According to Sina Vann, a child prostitute grew up knowing that he or she would die either from AIDS or from beating and abuse.[106] One could not blame the victim for hating society or the West with its prosperous consumer base. These despairing human beings could easily turn into suicide bombers if they were recruited and indoctrinated because they knew they would die in any event. They could easily choose to die sooner if they believed that a different type of death would bring them salvation.

As already mentioned, the United States has taken the lead in the anti-human trafficking campaign, including the enactment and enforcement of its anti-human trafficking laws. I propose that such efforts not be left ad hoc to each developed nation that may have been identified as a consumer base for human trafficking or child prostitution. Rather, the strengthening and broadening of the ET effect of the developed nations' domestic laws should become a coordinated international commitment that is legally binding upon

all industrialized nations. In my Human Trafficking Triangle, the developed nations are also points of action and must take the legal responsibilities as "consuming countries." Their laws and enforcement efforts must be coordinated as an international legal commitment, and not just an ad hoc gesture of public relations or charity spoken via the rhetoric of diplomacy. What is needed, therefore, is the formulation and widespread ratification of a UN or OECD convention that (1) imposes minimum enactment and enforcement responsibilities upon the signatory states, and (2) provides the harmonization, standardization, and broadening of the ET effects of member-states' domestic laws.

Appendix A at the end of this article is a summary of the principal anti-human trafficking laws of the United States. Where applicable, the maximum nexuses for extraterritorial application should be incorporated in these existing laws.

In sum, in the Human Trafficking Triangle, any person or entity whose activities are connected or otherwise traceable to America (e.g., travels, residences, bank accounts, jobs, or other forms of interests) should fall under the United States' ET sovereign power for the purposes of enforcing US anti-human trafficking laws. Such ET application of US laws can become an effective weapon against human trafficking. The United States should continue to review, upgrade, and model its criminal statutes as an example for other developed nations, thereby spearheading the "lawmaking" mission among the developed nations, just as the United States has done successfully by modeling its Foreign Corrupt Practices Act.[107] (There, the OECD eventually formulated an anti-bribery convention.)

In other words, the ET effect of a consuming country's prescriptive jurisdiction as a goal should not be limited to just the United States. ET application can be part of an effective solution only if the sanctioning country already has a strong and effective system of domestic laws directed specifically at human trafficking and child prostitution. The developed

nation-states should coordinate and reconcile differences among their ET laws in order to achieve uniformity in their global application.

The developing nations must also upgrade and enforce their own anti-human trafficking laws. Sufficient international pressure, including trade and foreign aid sanctions, should persuade these governments to change behaviors and to reexamine the root causes of human trafficking issues and enforcement problems in their own societies. The ultimate result should be the creation of a new, specialized, multilateral system to be discussed in Legal Proposal #4 below.

2. Legal Proposal #2: Enacting Comprehensive Anti-Human Trafficking Domestic Laws and Strengthening Application at the Local Level

At least in the developed nations and subject to differences in legal systems, human trafficking offenses should be punished as severely as first- or second-degree felonies. Further, to ensure maximum enforcement, domestic anti-human trafficking statutes should contain workable yet sufficiently flexible definitions of key words such as "trafficking," "supplies," "consumption," "aiding and abetting," and "conspiracy." "Knowing failure to report a crime" should constitute an independent offense.

In a country with a federal system, both federal and state legislations should exist complementarily (rather than allowing for the preemption doctrine to apply to weaken the uniformity of enforcement efforts). Broadly speaking, various defenses or legal doctrines that impede prosecution such as preemption, sovereign immunity, or the law of privileges should be minimized to the fullest extent possible without violating individual rights. For example, in child prostitution cases, domestic statutory law should provide that common law privileges (such as husband-wife or other familial relations) cannot be asserted to suppress evidence. The more compelling

state interest in child protection should outweigh any interests supporting these privileges.

In addition, anti-trafficking laws must be coordinated with other domestic laws such as racketeering, mail fraud, internet fraud, laws governing offshore banking transactions, currencies, money laundering, and extradition. All of these relevant areas of legislation should be reviewed and conformed to the main anti-human trafficking statute, and ET jurisdiction should be added to each piece of legislation. Finally, asset forfeiture laws and other special banking laws must also be created and/or strengthened to allow the tracing, freezing, and even seizure of property of traffickers under proper constitutional safeguards, where applicable. Those laws should also provide ex parte relief, temporary and permanent injunctive relief, in conformity with US federal common law governing restraining orders and injunctions.

At the local level, prosecution and law enforcement capacity should be strengthened and specialized. For example, in the United States, special anti-human trafficking task forces should be established in local district attorneys' and US attorneys' offices, as well in agencies responsible for border control and the eradication of international organized crimes. These task forces should be well equipped to enforce anti-human trafficking laws with an ET effect. The costs of these special task forces may raise budgetary concerns and, hence, should be presented to taxpayers as part of lawmakers' agendas to gain popular support. The media can help encourage political candidates to address human trafficking issues during their election campaigns. The universally abhorrent nature of the crime itself should make it easier for advocate-lobbyists to push for this level of integration and coordination and justify additional governmental budgetary expenditures.

Using the Southeast Asian story as an example, in the United States, these newly created anti-human trafficking special task forces may be more feasible in locales heavily populated with Asians. The costs of special "Asian affairs" prosecutorial units in those locales can be spread and

shouldered by Asian ethnic communities, both by way of taxes, special donations, or specific cooperation from the citizenry. (Again, in these ethnic communities, the Asian values that reward noncommunication and "saving face" may hinder Asian witness cooperation, the volunteering of information, or the rendering of community assistance from the local Asian community. Law enforcement agents and prosecutors, therefore, must be given cultural training in order to deal with these ethnic communities, in addition to victim-care training in child prostitution cases.) Certain special ethnic units may already exist in the local district attorneys' or US attorneys' offices as a result of an area's demographics. These existing units can be expanded, reinforced, and enhanced with more specific goals and concentration in anti-human trafficking laws.

More specifically, at the local level, the role of the police officer is crucial, requiring special training not only in law enforcement but also in victim relief.[108] As an NGO representative has emphasized, "[t]he healing process for children begins the moment that they first come into contact with a trusted adult: typically this will be a police officer."[109] An active NGO, the IJM, has been known to hold specific ethics and anti-sex tourism training classes for Cambodian police.[110] In societies where this global ill requires more structural changes, prosecution at the local level and training for police officers will have to be a long-term project.

The ultimate goal is to bind the nation-states to the establishment of a transnational intergovernmental apparatus staffed with expert law enforcement agents who can complement and rectify the problems of local enforcement, as will be discussed in Legal Proposal #4 below. The above-mentioned desirable features of domestic anti-human trafficking laws and enforcement mechanisms should be standardized to become part of an anti-human trafficking international convention—one that mandates the enactment of domestic laws by the nation-state signatories. In other words, signatory nation-states should not be left to devise and enforce local anti-human trafficking laws as a matter of goodwill, but instead, there must be

an internationally imposed template of action and, at minimum, a model anti-human trafficking law to be adopted and refined at the local level. What is feasible as the "minimum" that must be part of the model template must be carefully developed and achieved via multilateralism.

In sum, all nations should review and upgrade their current anti-human trafficking laws, specifically adding ET effect features and targeting offenses such as consumption, supplies, trafficking, aiding and abetting, and failure to report. Enactment and review of local legislation can ultimately lead to a global movement for the formulation of a specialized anti-human trafficking convention, aiming for uniformity. Currently, the Anti-Human Trafficking Protocol is part of the Organized Crime Convention and does not contain sufficient details to achieve complete and efficient legal protection and enforcement.

To achieve immediate binding effect, this convention should be self-executing (i.e., the convention will immediately become part of these signatory nations' domestic laws).[111] Although sovereign consent cannot be forced and no nation-state can be made to join such a convention, sufficient international and public pressure, together with specific short-term trade and foreign aid sanctions, may serve as the right incentive. In other words, there must be accountability, enforceability, and some basic uniformity as an international commitment by the community of nations. By necessity, such international commitment should also include a transnational mechanism for measuring a nation-state's performance and verifiable results to which the nation-state must succumb. This is part of the multilateral system to be discussed in my Legal Proposal #4 below.

3. Legal Proposal #3: Enactment of a New Domestic Law with Broad ET Effect, the "Passport Sticker" Law and Proposed Broader "Checkpoints of Conscience" Implementation, Under Penalty of Perjury

As part of activist Donna Hughes's model that specifically regulates consumers' behaviors, I propose that the United States showcase the enactment of a new law that takes into account two aspects of the current criminal justice system: (1) the right of a government to collect truthful information from individuals and entities subject to its territorial jurisdiction, and (2) the penalty of perjury. This Legal Proposal #3 allows US border authorities to become part of the solution against child sex tourism abroad. Although this proposed law appears to apply initially to consumers' behaviors, in its farthest reach as a "border checkpoint of conscience," the law can also deter traffickers and suppliers. The proposed law is explained below.

Currently, entry documents filled out by returning US citizens already contain screening devices in the national interest of the United States. For example, travelers cannot bring plants and fruits into the United States, and screening questions are asked to that effect on entry documents. Sadly, travelers from Asia, in particular, are more likely to be screened at airports primarily because of their cultural habit of bringing into the United States tropical fruits and vegetables that, although "normal" for their culinary delight, may be viewed as harmful to the United States' goal of protecting public health and safety.[112]

Since the United States has firmly undertaken long-term humanitarian, legal, and foreign policy commitments against human trafficking, similar screening questions can also be asked of travelers and returning US citizens: whether they have violated US anti-human trafficking laws during their stays abroad. For example, in simple and direct terms, the traveler will be asked whether he or she has engaged in, known of, caused, or contributed to a third party's engaging in sexual activities with a child (as these terms are

defined by law). The definition of trafficking under US federal law must be printed on the entry document. All travelers will be subject to this question upon entry to America. To the guilty consumer, the question may first produce a psychological effect. This question will also give third parties who are aware of any possible violations a chance to think, go forward with information and evidence, and cooperate with law enforcement agencies.

But the effectiveness of this passport-sticker legal measure does not lie in producing a psychological impact on the guilty or enlisting help from travelers who want to serve as witnesses or informants. Later on in a substantive human trafficking prosecution, these entry documents can then be traced. If there is proof that a defendant has lied on his or her entry documents, he or she may have committed an independent offense. The answer to the screening question thus secures another level of deterrence. Every prosecution for human trafficking potentially may contain two additional counts: (1) perjury and/or (2) falsifying information supplied to the government. These two counts may be hard to prove beyond a reasonable doubt before a jury, but they are not impossible to prove, and hence can be used effectively during plea bargaining and can add many years to sentencing.

Realistically, this "passport sticker" proposal must contain well-drafted safeguards against potential abuse committed for personal gains. For example, a scorned girlfriend decides to report an old boyfriend out of ill will or personal vendetta, and likewise, a scorned boyfriend may also decide to report that he has seen his former girlfriend patronize a child prostitution brothel in Cambodia! Here, in this girlfriend-boyfriend example that I occasionally use only to add humor to my law classroom, the same deterrence against falsifying information provided to the US government should deter against any such ill motive.

Last but not least, the proposed "passport sticker" law must also survive invasion-of-privacy challenges and other constitutional objections and, hence, will require careful drafting and research.

4. Legal Proposal #4: Multilateral Actions, Specialized Anti-Human Trafficking Criminal Tribunal, and Human Trafficking as a Crime Against Humanity

Under international law, "comity" or "state consent" provides another nexus that enables ET application of national laws. For example, the United States can exercise its ET jurisdiction over the Asian individuals or entities involved in the Human Trafficking Triangle. Ideally, if the United States and the Asian state have entered into a bilateral anti-human trafficking treaty giving the United States jurisdiction, then the United States may be able to arrest and prosecute Asian profiteers under US laws in US courts. Such a treaty will survive international law challenges only if it encompasses and establishes one of the other three jurisdictional nexuses: nationality, territory, and effect. Or, the treaty can be enforceable simply because of the two nations' mutual consent.

It is, however, unrealistic to envision such a bilateral treaty, because it may encroach upon the sovereignty of the Asian state and may constitute an embarrassment to nationalism. By signing on to such a treaty, the Asian state has not only admitted to its inability to police its own citizens in human trafficking rings, but it has also acceded to the "superpower" of the United States: The Asian has given up its sovereign power to adjudicate its own subjects and instead, allowed the United States to officially "call the shots." Further, such a treaty may not be practical. Who would pay for the cost of dragging the Asian profiteer across the ocean into a US court in every potential criminal prosecution under US laws?

Accordingly, any such state consent, comity, or sovereign cooperation is better envisioned as part of a multilateral system consisting of: (1) the creation of a comprehensive anti-human trafficking multilateral treaty or convention (or at least putting more teeth in the existing Anti-Human Trafficking Protocol as part of the Organized Crime Convention), and (2) the establishment of a transnational criminal tribunal to administer and

apply such a convention or treaty. As explained below, these two possibilities are more legally sensible than a bilateral treaty.

a) The Multilateral System

Prosecution remains the most immediate, direct, and effective deterrent. Therefore, I believe that the best solution is to remove national and local behaviors (together with associated societal problems) from the prosecutorial and adjudicatory processes. This can only be accomplished by creating a body of supranational authority, either regional or international. In the case of Asia, the nation-states that consent to the system can still "save face" culturally because the supranational authority is an independent body representing all consenting nation-states, and no state is singled out to bear any humiliation alone. By agreement, the signatory nation-states subject their nationals and all acts that occur within their territory to the jurisdiction of the supranational authority. In other words, the anti-human trafficking multilateral system is a transnational regime that allows consensual states to submit themselves to one single regional or international anti-human trafficking law and to subject their nationals to the jurisdiction of one single transnational criminal tribunal.

To be effective, such a multilateral system should also contain the following two complementary elements:

1. On the lawmaking side, the multilateral system should include an intergovernmental body that can draft uniform legal measures, mandate the promulgation of regulations by all signatory countries, and enforce conformity to certain minimum standards. (If the result of transnational lawmaking is a self-executing convention, the signatory nations may be bound without further domestic legislative acts.) As to Southeast Asia, the Association of Southeast Asian Nations (ASEAN), in particular, should spearhead initiatives toward this goal. ASEAN has already begun to do so, but its efforts must go beyond diplomatic gestures and lip service. For example, as part of

the Nuremberg Declaration on an EU-ASEAN Enhanced Partnership, in April 2007, the EU and ASEAN foreign ministers announced a pledge to cooperate on combating terrorism, human trafficking, and organized crime.[113] Whether this pledge will result in any concrete anti-human trafficking implementation remains to be seen.

2. On the law enforcement side, the multilateral system should create and staff a transnational task force of law enforcement authorities to oversee enforcement of the treaty/convention or implementing protocols, without succumbing to local politics. (Here, one must assume that the presence of Interpol is inadequate; if it has been adequate, then why has human trafficking grown in recent decades?). Who should bear the financial obligations for the funding of this transnational enforcement team? Considering the billions of dollars that have been poured into the developing nations in the form of infrastructure loans and public interest aids the funding of the anti-human trafficking enforcement team should not be allowed to become an obstacle to the global anti-human trafficking goals. If the multilateral system is to take place, the following messages must be made clear to developing nations (with the same commitment and determination as former US Secretary of State Colin Powell has declared to the world and his American constituents).[114]

   (i) A developing nation must take the legal and financial responsibility for the protection of its subjects and those found in its territory against human trafficking (the legal theory for this assertion is explained later in Legal Proposal #5 below).

(ii) A developing nation must therefore make room in its treasury for the funding of the anti-human trafficking multilateral system — no more and no less than the funding of its police force or secret service. This is part of what a nation must do to implement its legal responsibility owed to its citizens as a matter of international law. (This is the basis for my Legal Proposal #5 below.) The developing nation must also report budgetary items, expenses, and funding disbursements to an oversight body within the multilateral system in order to demonstrate how it has discharged its legal responsibility. In fact, funding commitment from the treasury may eventually help curtail, minimize, or alleviate bribery and corruption (the direct or indirect unlawful transfer of public funds into private hands is an abuse of governmental power; funding commitment may enable transparency and hence avoid illegal transfer of funds that are not specifically earmarked).

(iii) A developing nation must cooperate and give deference to the authority of the multilateral system if it wants to be part of the global community. International organizations can offer assistance, as well as oversight, as they have done since the end of World War II via the Bretton Woods institutions.[115] (These institutions have been responsible for the post-World War II establishment of a new world order.)

In sum, commitment to the multilateral system should come from the developing nations that have formed the Human Trafficking Triangle. (Currently, the US State Department's country tier-ranking system is a good indication of these countries.[116]) As to Southeast Asia, again, ASEAN should step up to support the creation of a multilateral system. The newly industrialized nations and the developing Asia (South Korea, Taiwan, China, and Japan), which have notably become consuming or importing

countries, should be pressured to examine behavioral patterns within their own borders and bring about changes. One measure to instigate a nation-state's consent is trade sanctions applied by its trading partners. Both the World Trade Organization and superpowers like the United States have those trade measures at hand to inspire incentives for the developing world. These trade measures can be result-oriented, short-term, and a lesser means than the more drastic "all-or-nothing" embargo.

b) International Tribunal or Court

There is historical support for the creation of an international or regional adjudicatory tribunal dedicated to the eradication of human trafficking. My colleague Jenny Martinez, a Stanford law professor, might support this proposal. In her article, *Antislavery Courts and the Dawn of International Human Rights Law*, ,[117] Professor Martinez advocated for the increasing number of international tribunals operating without supervening sovereign authority. She reviewed the history and development of specialized "antislavery courts" that helped end the transatlantic slave trade. According to Professor Martinez, in March of 1807, the United States and Great Britain passed landmark legislation prohibiting the slave trade. From 1817 to 1871, bilateral treaties between Great Britain and several other countries (eventually including the United States) led to the establishment of international courts for the suppression of slavery. Professor Martinez stated:

> Great Britain, the main instigator of the antislavery treaties, no doubt would not have campaigned so strongly for abolition if it had been truly devastating to its economic and political interests. Yet, substantial evidence shows that Britain's abolition policy was motivated by genuine humanitarian concerns and that the policy inflicted significant economic costs on its empire. *Of equal significance, Britain used international law as one important tool for persuading other countries to abandon a widespread and profitable practice* [emphasis added]. Britain was the [nineteeth] century's greatest naval power, and its initial efforts to suppress

> the slave trade were military and unilateral, involving seizures of slave vessels by the British Navy and condemnation of those ships in British courts. Over time, however, Britain found [that] it could not rely on its military power alone, but instead had to utilize that power in conjunction with cooperative legal action to achieve its goals. Over several decades, Britain convinced one country after another to ratify increasingly powerful treaties against the slave trade.[118]

According to Professor Martinez, the international antislavery courts were established as a result of Britain's and other countries' "awakening"; yet, these courts "have received scant attention from historians, and legal scholars have almost completely ignored them."[119]

To combat global human trafficking today, the United States' national interest requires that it assume the role similar to Britain when Britain was trying to stop the slave trade more than a century ago. My proposal here is nothing but the reassertion and confirmation of what former Secretary Powell declared in 2003.[120] Victims of human trafficking, especially children, are likely to become suicidal adults who resent America as the image of the consumer-abusers. This hatred increases the possibility that the "importing," "exporting," and "brokering" countries in my Human Trafficking Triangle will turn into terrorist cells because of anti-American propaganda spread among a suffering and antagonistic population. Then, Southeast Asia will more likely become like a fuming anti-American Middle East.

If antislavery international courts once existed, there is no reason why an anti-human trafficking international tribunal or court should not exist today. But this notion requires that the international legal and diplomatic community unanimously see human trafficking as the kind of slavery outlawed during the nineteenth century.

c) Internationalization of Prosecution: Systematic Human Trafficking as a Crime Against Humanity

Better still, systematic global human trafficking should be treated as a crime against humanity that readily justifies the establishment of the multilateral system described above. The recognition of systematic global human trafficking as such a crime will intensify the publicity and "shaming effect" upon those developing nations that tolerate the crime, thus giving more substantive teeth to the international legal combat.

During the twentieth century, regional or international criminal tribunals were created to prosecute crimes against humanity. The United Nations has primarily been responsible for the prosecution of these crimes since it was chartered in 1948.[121] It has delegated several cases to the International Criminal Court (ICC) organized under the Rome Statute.[122]

As demonstrated below, the definition of a "crime against humanity" for ICC proceedings has significantly broadened.[123] For example, while the classic crime against humanity has been genocide under jurisdiction of the ICC, past cases also showed that crimes against humanity were classified based on their horrific and systematic nature—not just because they occurred in wars. The following is an abbreviated description of some typical tribunals which have handled crimes against humanity.

- **Nuremberg**. After World War II, the London Charter of the International Military Tribunal set down the laws and procedures by which the post-World War II Nuremberg trials were to be conducted.[124] Article 6 of the Charter included not only traditional war crimes and crimes against peace but also "crimes against humanity," defined in paragraph 6.c, as "murder, extermination, *enslavement*, deportation, and other *inhumane acts* committed against any civilian population, before or during the war…" (emphasis added), whether or not in violation of the domestic law of the country where the crime was perpetrated.[125]

- **Tokyo.** The International Military Tribunal for the Far East was convened to try the leaders of the Empire of Japan for three types of

crimes committed during World War II: Class A (crimes against peace), Class B (war crimes), and Class C (crimes against humanity). The first referred to Japan's joint conspiracy to start and wage the war. The latter two referred to atrocities such as the Nanking Massacre, which included forced sexual slavery.[126]

- **Apartheid.** The systematic persecution of one racial group by another, as in the South African apartheid government practice, was recognized as a crime against humanity by the UN General Assembly in 1976.[127]

Other ad hoc international criminal tribunals, such as Yugoslavia and Rwanda, have also handled crimes against humanity.

In sum, the conceptual history of criminal tribunals, as summarized above, supports recognition of systematic, global human trafficking as a crime against humanity despite different circumstances. To begin with, international law and scholarly literatures already regard human trafficking as a form of slavery long outlawed under modern international law. For example, writer Kevin Bales called human trafficking the "new global slavery,"[128] which victimizes "the glut of impoverished people created by rapid economic changes in a morally declining society that grabs opportunities."[129]

Further, Article 7 of the Rome Statute defines crimes against humanity as one of the following acts: "enslavement," "imprisonment," "rape, sexual slavery, enforced prostitution… or any other form of sexual violence of comparable gravity," when "any of [such] acts [were] committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." The "catchall" category of the definition includes all "[o]ther inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health."[130]

Finally, the Rome Statute's Explanatory Memorandum specifically requires that

> [crimes against humanity] constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings. *They are not isolated or sporadic events, but are part either of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government or a de facto authority* [emphasis added]… Isolated inhumane acts…may constitute grave infringements of human rights, or depending on the circumstances, war crimes, but may fall short of meriting the stigma attaching to the category of crimes [against humanity]… [T]o determine whether the necessary threshold is met, one should use the following test: one ought to look at these atrocities or acts in their context and verify whether they may be regarded as part of an overall policy or a consistent pattern of an inhumanity, or whether they instead constitute isolated or sporadic acts of cruelty and wickedness.[131]

What actually constitutes systematic global human trafficking—as seen in international sex tourism and child prostitution— requires definition and standards to be established as part of the lawmaking and convention-drafting functions of the multilateral system proposed here. Legal drafters must address the following issues and observe the following guidance: in the language of the Rome Statute and its Explanatory Memorandum, the crime must be "widespread," "systematic," "directed against any civilian population (and not just one person)," constituting a "serious attack upon human dignity," and part of a "wide practice… condoned by a government" or "a government policy."

But, what nation would readily admit to the world that it has a policy—or otherwise has condoned the widespread trafficking of people—leading to a systematic, forced sexual practice upon the vulnerable and the oppressed? Which among governments will readily acknowledge that it is legally responsible for the sale of human beings within its borders? In fact, many

governments have already performed lip service by voicing their abhorrence toward the crime, notwithstanding the ugly reality to the contrary.

Thus, in order for global human trafficking to qualify as a crime against humanity, an international law theory is needed to equate pervasive government inaction to a de facto policy, even if the government does not admit it. In other words, activists must find an existing legal theory to establish a de facto government policy, based on that government's persistent territorial or nationality nexus to any of the activities shown in my Human Trafficking Triangle. Such a theory will enable legal activists to equate the persistent, systematic, widespread, or pervasive nature of the illegal activities that occur within a country to a violation of international law. (As will be explained separately in my Legal Proposal #6 below, such a violation should also become the basis for civil lawsuits seeking to hold responsible government officials liable for damages.)

That needed legal theory is the state responsibility doctrine, which has always existed in international law. This is an old, firmly established yet quite often overlooked doctrine that should be applied anew as an effective anti-human trafficking measure. This doctrine should be invoked, revisited, and expanded to satisfy the "government policy" element of the Rome Statute's definitional test.[132] Although this theory has its place in this Legal Proposal #4 to strengthen the argument that systematic human trafficking should qualify as a crime against humanity, the doctrine is discussed as a separate topic under Legal Proposal #5 below, because invoking and reinterpreting this doctrine can occur immediately, whether or not the multilateral system is eventually established.

5. Legal Proposal #5: Reinterpreting the "Doctrine of State Responsibility" and Building Infrastructure for its Application to Combat Global Human Trafficking

a) Definition and Analysis of the State Responsibility Doctrine

This doctrine lies at the core of international law as the bedrock of nation-building and the establishment of statehood. Under customary international law, statehood—the source of sovereign power—consists of three elements: (1) territory, (2) people, and (3) government.[133] Without all three elements, there is no nation-state. From this notion of sovereignty-statehood comes state responsibility: a government is responsible for protecting and serving its citizens. Reciprocally, citizens are subject to governmental prescriptive jurisdiction (i.e., the government's ability to enact law, proscribe citizens' conduct, and impose upon them criminal sanctions for violating the laws of the state).[134] The doctrine thus establishes reciprocal responsibilities between a government and its citizens.

As a result, under this doctrine, citizens can petition their government to protect and advance their interests before other nations. For example, where investor properties are nationalized and taken by foreign nations, the state of citizenship will make good their citizens' claims of loss by seizing assets of the foreign state, because it is the state of citizenship's duty to protect the property interests of its subjects.[135] Enforcing this doctrine presupposes certain political goodwill upon a government. The state must want to protect its own citizens against the illegal action of foreign governments.

In its farthest reach, the doctrine imposes upon a sovereign the duty to provide a better society, via a national legal system, in order to protect citizens as well as those who are brought into its territory, over whom the sovereign has prescriptive jurisdiction. A good government fulfills its state responsibility, while a bad government violates it. Such violation can occur in two scenarios: (1) a bad government fails to act to protect its people; or (2) a bad government actively takes action to harm and oppress its people, or commits violations of international human rights law against its people.

The second scenario is where the principle of reciprocation becomes complex: when a government acts badly toward its own citizens, for example, in the case of a dictatorship, an oppressive totalitarian state, or a grossly incompetent government, who really enforces this legal doctrine for

the protection of the citizens? It is unrealistic to expect such an abusive government to enforce the state responsibility doctrine upon itself. Thus, in less than democratic societies, the doctrine can be reduced to rhetoric and lip service—difficulty in enforcement is always a problem for all "soft" public international laws.

Realistically, what can be done under international law to enforce the state responsibility doctrine when government officials torture citizens or confiscate citizens' property without just compensation, thereby misusing the power of government? Only two possibilities exist:

1. In a democratic society, citizens' recourse is to change their government via the electoral process.

2. If citizens of a nation-state cannot enforce the state responsibility doctrine upon their own government, the "community of civilized nations"[136] should come to the rescue of the oppressed. There are two ways to achieve this goal.

    a. Other nations can enact laws giving their domestic courts jurisdiction over the following private causes of action: (1) suits by aliens against their government officials for violation of international law; or (2) suits directly brought by the host country's citizens or residents against foreign governments for expropriation of property. (This type of lawsuit is in effect based on acts of the foreign government that may qualify as a waiver of sovereign immunity.) The United States has both types of statutory remedies: the Alien Tort Claims Act[137] and the Foreign Sovereign Immunities Act.[138]

    b. The community of nations can also step in, via the use of force, to stop a particular government's violation of international law. This is the most drastic means, and its

> propriety is constantly debated. Realistically, only the most egregious violations of international law—such as genocide or crimes against humanity—will present a situation for use of force, because this "use of force" alternative means that other countries—representing the community of civilized nations—can intervene in the domestic affairs of a particular country based on a unilateral interpretation of the state responsibility doctrine.

Today's climate is ripe for the application and expansion of the state responsibility doctrine. For example, in the past decade, efforts to revisit this antiquated doctrine have already taken shape. In August 2001, the International Law Commission (ILC) adopted its "Draft Articles on the Responsibility of States for Internationally Wrongful Acts."[139] The ILC addressed several important fundamental questions such as when a state can be held responsible for acts (or omissions) of non-state actors or another state, and which states have standing to complain. Likewise, in a report by the UN's Special Rapporteur on Violence Against Women, the Rapporteur recognized:

> As a consequence, the State is obligated not merely to protect against violence, but rather to eliminate its "causes"—that is, gender discrimination at structural, ideological and operational levels—as well as to bear the responsibility for addressing its consequences. This marks a radical departure from the traditional notions of State responsibility towards addressing VAW.[140]

b) Applying the State Responsibility Doctrine to Anti-Human Trafficking Goals: The Proposed Legal Regime

Human trafficking offends fundamental human rights, especially when the trafficked individuals are small children who, under most national law systems, are wards of the sovereign state. Hence, in this area, the state

responsibility doctrine must be most liberally construed for the protection of the citizenry. Under the broadest interpretation of state responsibility, a government violates the doctrine by (1) not policing and prosecuting human trafficking, (2) condoning corruption or government complacency that furthers these illegal activities, or (3) failing to render aid or rescue victims.

Human rights activists have also advocated for the transnational application of this doctrine.[141] Under this expanded theory, in the Human Trafficking Triangle, those exporting, importing, brokering, and consuming countries that have failed their state responsibility step into the shoes of traffickers and indirectly participate in these illegal activities by way of the government's failure to act. Internationalists have spoken of "the emerging norms and the responsibility of each individual state to provide protection [against human rights violations]."

These emerging norms call upon the international community to assume responsibility to protect and to support the United Nations in its human rights mandates and warnings.[142] In particular, International Law professor Ved Nanda spoke of a "Responsibility to Protect" principle applicable when a government is unwilling or unable to provide protection to its own people. This principle enables the international community to assume that responsibility. What is needed is not only operational capacity, but also political will and commitment. Professor Nanda went on to state:

> Each state has the responsibility to protect its populations from violations of the specified human rights. To accept sovereignty as responsibility represents a major shift from the traditional notion of sovereignty as connoting complete control. Thus, no longer can a government hide behind the shield of sovereignty, claiming nonintervention by other states in its internal affairs, if it fails to protect the people under its jurisdiction from massive violations of human rights.[143]

Even without the rubric of emerging norms in international law, the tenet of my proposal is quite simple and should not be too unfamiliar to Asian cultures. It is precisely the thrust of what the victim-turned-NGO activist

Sina Vann stated to RFA: she holds parents morally responsible for the protection of their children, and countries should know what goes on in their territories.[144] In ancient China, predating the building of the Great Wall, the virtuous monarch was held to an *in loco parentis* position toward the citizenry—back then, in ancient East Asian political philosophy, the virtuous monarch as Son of Heaven should take care of the people like his own children. In today's international law, analogous to parents who are held responsible for the well-being of their children, governments should be held to their state responsibility. This includes the protection of their nationals, residents, and those found in their territory regardless of legal status. When this concept is applied transnationally to prevent a global ring of human trafficking that crosses national borders, all situs governments should be held responsible, no longer as a gesture of good will, but as a matter of law.

c) Applicability to Exporting Countries

Thus, under this legal doctrine, the first line of responsibility should lie with exporting countries. They must take full measures, including all diplomatic and law enforcement channels, to eradicate human trafficking, especially child prostitution as it is the most shocking offense against human conscience. The argument is much stronger where the victims have been legally exported pursuant to government-sponsored programs, government-issued visas or permits, or private export programs that are allowed but not monitored by governments. In these cases, a government has actively furthered the scheme of human trafficking and not just failed to offer protection to victims.

Many of the cases involving willing victims arose as a result of fraud, duress, or false promises of employment, education, or marriage. The doctrine of state responsibility imposes upon governments an affirmative duty to monitor and police labor or marriage brokerage services in order to stop illegal traffickers from transporting children, women, and migrant

workers across borders for purposes of slavery. This means that specific domestic laws must be enacted and enforced in order to ban unconscionable brokerage services or debt bondage. At a minimum, governments must closely scrutinize these activities under rigid legal requirements. Further, these exporting governments must continuously render all possible assistance to relief workers and activists and cannot block the international community's access to information simply to "save face."

d) Applicability to Importing Countries

The responsibility of the international community should not end with just the exporting countries. The importing countries equally bear the responsibility to stop trafficking and should intervene in the abuses of aliens brought into their territory. Yet, strictly construed, the doctrine of state responsibility does not call for governments to be responsible for other countries' citizens. To serve justice, the doctrine must be extended to protect aliens found in a nation regardless of citizenship because of the territory nexus. Thus, when it comes to human trafficking, no victim is stateless, and responsibility should rest upon the country of territory. Under the transnational application of the state responsibility doctrine, a country cannot sit idly and watch human rights violations occurring on its territory. Anti-human trafficking laws must be enacted to apply to all inhabitants of the nation's territory, independent of alien status or citizenship.

e) Applicability to Consuming Countries

The consuming country equally bears its own legal responsibility under the state responsibility doctrine. It is an established fact that industrialized nations supply a major source of the sex industry's clientele. Because developed nations' laws can have ET effect, the responsibility of a sovereign power to police its citizens does not end at the borders. Rather, in the case of a consuming country, state responsibility goes with citizenship and is not just dependent on territory. In other words, transnational

application is based on both territory and nationality nexuses, alternatively invoked.

It should be noted that the state responsibility doctrine could not be applied without crossing into another problematic and unresolved arena of public international law. It can be argued that if economic deprivation, transition or instability is accepted as one of the root causes of human trafficking, then this global ill is just part of a larger reality, i.e., the disparity in the living and working conditions of people from one corner of the world to another). Opponents of my proposal would see the application of the state responsibility doctrine to human trafficking as having the undesirable effect of imposing upon all governments the duty of securing minimum economic well-being for their citizenries and beyond. Should the right to live encompass the right to live well under certain minimum standards of economic security? Should this right to live minimally well become a universal right for the universal human? Otherwise, human rights protection and certain minimum conditions of living may truly depend on passports. UN organs such as the International Labor Organization ("ILO") have long tried to correct this economic inequity in our world. Yet, ILO measures have long been perceived as lacking real teeth. The community of nations has not been able to agree on this perplexing question, as demonstrated by the lack of universal ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR).[145]

Assuming that the root cause of human trafficking can be universally accepted as economic in nature, I submit that this global ill represents the space where the ICESCR's tenets and basic liberty converge. In this problem, the lack of economic security leads concretely to immediate deprivation of liberty. Human trafficking may be the result of an economic rights problem, but the solution must lie in the protection of life and liberty —the basic human rights embedded in the Universal Declaration of Human Rights,[146] independent of the ICESCR debate. In fact, the economic root

cause becomes irrelevant at the end of the day, because life and liberty are now immediately at stake and all situs governments must act.

In sum, transnational human trafficking is the twenty-first century's slavery, a violation of human rights regardless of the root cause. For example, for human trafficking to reach the classification of a crime against humanity, persistent governmental inaction, facilitation, or participation should qualify as de facto policy. The state responsibility doctrine can be used to supply evidence for this government-policy element in the Rome Statute's legal analysis. The doctrine can justifiably be used to hold all situs governments in my Human Trafficking Triangle legally accountable as points of action. As already mentioned, contemporary legal writers have argued that when other nations allow an offending nation to commit human rights, they step into the shoes of the offending state and are equally responsible for the human rights violations under the "transnational" theory of state responsibility.[147] From a theory standpoint, the transnational application of state responsibility is the backbone of my thesis. All other legal proposals presented here can be viewed as various ways to implement this doctrine.

6. Legal Proposal #6: Domestic Legislation Creating International Torts for Human Rights Violations

Legal Proposal #6 presents one particular way—perhaps the most tantalizing way—in which the state responsibility doctrine can be enforced. This proposal is presented separately as an independent measure, because it creates an opportunity to apply the state responsibility doctrine immediately and outside the framework of a newly created multilateral system. The existence of a multilateral system that recognizes human trafficking as a crime against humanity would make the success of this Legal Proposal #6 much easier, but the two concepts—the multilateral system versus the international tort cause of action under a developed country's domestic law—do not have to be codependent.

At the onset, it should be noted that the state responsibility doctrine is distinguishable from the common law "act of state" doctrine, which immunizes governmental actions from private liability when a suit is brought against a government by citizens of a foreign state in a foreign court.[148] However, in its remedial application, the state responsibility doctrine also amounts to a waiver or nonapplicability of sovereign immunity in the following manners: (1) a government should not be able to claim sovereignty immunity for its own human rights violation or for its infliction of crimes against humanity upon its own nationals or those brought into its territory; and (2) any of the jurisdictional nexuses (territory, nationality, or effect) that link a government to the Human Trafficking Triangle should be deemed a waiver of sovereign immunity by virtue of either systematic governmental action or pervasive inaction.

In this Legal Proposal #6, the domestic legislation of developed nations again can be used to redress violations of international law. Governments who fail the state responsibility doctrine violate international law and cannot claim sovereign or diplomatic immunity. Hence, individual government actors should be sued and held liable to human trafficking victims in civil actions for damages. This deterrent impact upon government officials should incentivize governments of the developing nations to engage in their best behavior.

Various developed countries may already have this kind of legislation. The United States provides this type of statutory remedy, with its antique yet still effective Alien Tort Claims Act (ATCA) (and the more recent amendment, the Torture Victims Protection Act).[149] Initially, this law was enacted to address the relationship between early American settlers and the British Empire. There is no good reason why the ATCA should not apply to newer situations—the founders' original intent can and should be reinterpreted to reflect the needs and concerns of contemporary society.

In the United States, if the federal courts find that foreign government officials have failed their state responsibility—especially if human

trafficking qualifies as a crime against humanity or a condition of slavery offensive to basic human rights—then there has been a violation of international law that qualifies for remedies under the ATCA. In those situations, trafficking victims should be able to maintain a private cause of action under the ATCA in US district courts against foreign government officials who can be held responsible for the Human Trafficking Triangle, provided that the court can assume personal jurisdiction over the individual actors. (These officials may find themselves in the United States on diplomatic missions and hence can be served with service of process.) Diplomatic immunity does not shield them from liability for violation of customary public international law, which has been incorporated into US laws by the US Supreme Court.

Who are these potential ATCA defendant-officials under the state responsibility doctrine? Since the ATCA was not initially drafted for the present purpose, further implementing legislation may be necessary to specify legal criteria to prevent vagueness or abuse of process. In the absence of implementing guidelines, activist lawyers will have to do their job of advocacy. Potentially, the defendants can be those government officials who may have accepted bribes, those who intentionally failed to render aid to the victims or recklessly disregarded victims' rights to freedom and safety, and all those officials in the "importing," "exporting," "brokering," or "consuming" countries who can be identified as having contributed, directly or indirectly, to the Human Trafficking Triangle by the use, misuse, or nonuse of their government power.

Better still, the necessary substantive and evidentiary elements that constitute a violation of the state responsibility doctrine should be codified in a multilateral treaty or convention, as part of the multilateral system already discussed in my Legal Proposal #4. Again, the United States can champion the reinterpretation of its ATCA framework as an anti-human trafficking model for other developed nations to follow with similar statutes. The realistic difficulty lies in the challenge of getting US

legislators and federal judges to support and approve of this interpretation in a national climate where the courts have very narrowly construed the ATCA, such that ATCA lawsuits typically have not been successful in the last few decades.[150]

7. Legal Proposal #7: Role of the Private Sector and the Foreign Investment Contract

In my published writings, I have analogized the foreign investment contract in a developing nation to a silent partnership between the government and corporate actors from industrialized nations.[151] Such a contract typically contains "social program clauses," which represent the corporate investor's goodwill promise to contribute to the betterment of the host society in exchange for governmental approval of the investment contract. The goodwill contribution is part of the quid pro quo consideration paid to the host government in exchange for the investor's chance to extract resources and/or to make profit in that foreign country. These social program clauses can become an avenue for the private sector to take part positively in the global anti-human trafficking campaign.

The confidential contractual relationship between the foreign investor and the host government is complex and sensitive. Of significance is the fact that these confidentially negotiated contracts can become the norms for modern *lex mercatoria* by way of "laws of the contract*" (lex contractus).*[152] As part of the social program clause, the investing corporation may have the choice to negotiate for a joint project with the government to finance an anti-human trafficking campaign in the country, to pay for the training of the police force, to assist NGO/INGOs, or to fund service programs that render aid to the victims, all as the quid pro quo for the foreign investment. (The problem with corporate behaviors in ATCA suits that have been filed against US corporations in the past was the allegation that these corporate actors have partnered with the developing nation's police force, which violated the people's human rights – the corporations became the faciliators

and partners of human right violators, i.e., the sovereign actors that have failed their state responsibility).[153]

This "social program clause" is a tantalizing prospect that can help incorporate human rights into the formation of contemporary *lex mercatoria* and the *lex contractus* of international economic development—from a green environment that lessens the risk of global warming to a world free of human trafficking. The investing corporation may even find that such a project will please its shareholders back home, thereby contributing to new norms of corporate social responsibility[154] in its home jurisdiction. The challenge is to provide sufficient incentives for the corporate sector to embark upon this kind of mission. The incentive must lie in the vision that these social programs will eventually produce long-term returns in the form of shareholder satisfaction, increased profit, or rising stock price.

8. Legal Proposal #8: Role of the International Financial Institutions ("IFI") and the World Trade Organization ("WTO")—Conditions for Multilateral Assistance and WTO Membership

Eligibility, reporting, and accountability requirements for loans, financial guarantees, grants, and/or technical assistance made by the IFI's[155] can become both the incentive and the monitoring mechanism to hold governments of developing nations accountable for their involvement in the Human Trafficking Triangle. The premier IFIs such as the World Bank group, the International Monetary Fund ("IMF"), the regional development banks, and the bilateral credit agencies such as the Export-Import Bank of the United States ("EXIM") and the Overseas Private Investment Corporation ("OPIC")[156] can showcase the effectiveness of conditioning economic benefits upon a nation-state's compliance with the doctrine of state responsibility. The premise is simple: if nation-states cannot demonstrate their performance or record of success in their own anti-human trafficking initiatives, they will not receive financial and/or technical assistance from these institutions. This is a classic reward-penalty system

similar to the foreign aid withdrawal incentive established under the Trafficking Victims Protection Act ("TVPA").[157] This incentive can also help apply pressure upon the developing nations that are actors in the Human Trafficking Triangle, the same way the US State Department's country performance tier ranking system has served as a "shaming agent"—a major part in the United States' anti-human trafficking laws. The IFIs can also help educate government officials and the public in those developing countries identified in the Human Trafficking Triangle.

Likewise, similar social clause conditions can also be made part of the WTO's criteria for membership. If these social clauses are coordinated and inserted into the current IFI/multilateral financial and trade systems as a matter of norm, they can help bring about more concrete manifestation of state responsibility, not just governmental lip service. These new norms and multilateral behaviors, when sufficiently institutionalized, can also work their way into the formation of modern international economic development law,[158] thereby correlating them to human rights solutions.

The IFI's performance conditions imposed upon developing nations can also stimulate participation by, and encourage support from, the private sector. This is because the presence and actions of multilateral institutions often lead to private sector participation in international economic development projects. For example, IMF funding can generate participation from private banking syndicates.[159] Further, in infrastructure funding—the domain of the World Bank group and regional development banks (and the private sector that specializes in infrastructure construction and services)—partner with governments in projects funded by both IFIs and private bankers.[160] If IFIs uniformly insert social program clauses as a way to hold developing nations accountable for the eradication of human trafficking in their own societies, the private sector may likely choose to follow the initiative and develop the same contractual provisions in project documents that serve as the legal framework for infrastructure-building and nation reconstruction and development projects.

At a minimum, these social program funding requirements, benchmarks for membership, and contractual obligations may help advance the goals and services of anti-human trafficking NGO/INGOs, which currently are quite diverse, if not to say, fragmented. For example, there is no umbrella INGO that advocates for and serves human trafficking victims worldwide —the type of INGO that can help develop and consistently apply the international publicity necessary to bring about governmental behavioral changes. This is the essence of my next proposal: the creation of an umbrella INGO that can bond all other INGOs into one lobbying and advocacy group, whose ultimate objective and primary function is to identify, represent, and rescue human trafficking victims globally.

C. Nonlegal Proposal: Envisioning an Umbrella INGO—the Global Anti-human Trafficking "Amnesty International" Model for the Forgotten "Prisoners of Conscience"

Although my proposal seeks to hold governments accountable, the nongovernment sector must play an important role in the solution. This nonlegal proposal seeks to establish an umbrella INGO modeled after Amnesty International, which can pressure governments to act (hereinafter the "Amnesty Model"). The creation of an umbrella INGO is also a way to strengthen the NGO/INGO community by creating a network for shared resources, voices, and support.

Among the tasks of this umbrella INGO is to lobby for the acceptance of the following two principal legal theories that I have advanced herein:

1. Recognition of systematic, global human trafficking as a crime against humanity or, at a minimum, a form of slavery and a human rights violation.

2. Expansion of the state responsibility doctrine to hold governments liable as violators of international law if they persistently fail their state responsibility to eradicate human trafficking.

If these theories are accepted, human trafficking victims (primarily poor men, women, and children) should be accorded the same recognition as "prisoners of conscience" whose political human rights are violated—the clientele of Amnesty International.[161] Yet, currently, there is no global Amnesty International equivalent to advocate for the release of human trafficking victims. These victims, forgotten and not presently looked at as "prisoners of conscience," are equally worthy of global attention and resources. They, too, need to be freed.

1. The Need

Currently, services are divided among local NGO/INGOs without one single transnational umbrella organization to undertake the global agenda as a coordinated effort on behalf of all other NGO/INGOs (many of which receive US Department of State funding). Services are also provided piecemeal by volunteers, activists, church organizations, and other traditional social service agencies. My former research assistant Kelly Cotter reported on three anti-child prostitution NGO/INGOs that have gained good recognition in Southeast Asia: International Justice Mission ("IJM"), ECPAT International, and Action Pour Les Enfants ("APLE").[162] These three NGO/INGOs described by Ms. Cotter come as close as possible to the concept of a global umbrella INGO in terms of their stature, scope of service, and global exposure. However, they do not bring together the community of NGOs that are currently working on the anti-human trafficking campaign in various parts of the world. This "joining hands" among the do-gooder community is necessary because of the following reality: if the work of an NGO/INGO makes a country look bad, the NGO/INGO may have a hard time operating in that country to service the victims. The Amnesty Model will bring this issue to a more international level so that local NGOs can be better protected.

The work of local NGO/INGOs, as well as the creation of an umbrella entity acting at the global level, is critical because of the need for victim

aftercare, together with the global publicity that this essential service should receive. Using child prostitution as an example, a legitimate question should be raised: In problematic countries, do we get these children out of one brothel simply for them to enter another one, or simply to work them to death in child-labor sweatshops?

Activists and NGO workers should not be merely crisis intervention workers, responding to the cries of victims ad hoc while gestures of concerns typically occur elsewhere at fashionable fundraising banquets. Playing political correctness, speaking the right terms, raising a dollar here and there, or helping a victim here and there—all may be just band-aids and temporary relief. The nongovernment sector ends up providing the band-aid, but not the cure. Hence, I envision a global umbrella INGO that can contribute to the cure at the root-cause level. The present stark reality of "providing the band-aid" is also placing a terrible psychological burden upon relief workers and activists working for NGO/INGOs in the field. They do their job while knowing that there may be no end. Well-coordinated awareness campaigns and nonlegal measures to stop human trafficking should therefore be delegated to the expert that can provide hope toward a cure at the root-cause level. The Amnesty Model should provide this expertise, resource, motivation, and publicity.

Accordingly, I believe that all of the in-country humanitarian and social service organizations should join forces and share resources to prepare for a higher level of service and advocacy, away from the local structures that may impede their missions. The Amnesty Model provides the integrated, global platform for all NGO/INGOs to stand as a group in order to maximize their strength and effectiveness before governments. This collective Amnesty Model acts as the global nongovernmental "voice of conscience"—the worldwide public-opinion that can monitor the conduct and policies of governments. The Amnesty Model can serve the combined roles of lobbyist, advocate, publicist, investigator, and relief worker. It can

also investigate and service the more difficult, high-profile cases recommended and referred by local NGO/INGOs.

2. The Tasks and Action-Item Agenda

Specifically, the Amnesty Model can:

- Advocate for governments to bring about the release of victims, both as a generic group and in particular cases that have been brought to the Amnesty Model's attention, under set criteria to be developed by a task force of NGO/INGOs that have helped spearhead and implement this "Amnesty" concept;
- Advocate and provide for victim aftercare to avoid recurrence—the most difficult and sensitive aspect of victim relief;
- Assist with transnational investigations and send specially trained investigators and social service workers to work on specific cases at the request of the local NGO that may need more intervention and resources;
- Run global awareness campaigns to bring about changed behaviors, especially in the corporate sector and the tourist industry, and to support local NGOs that must work the ground;
- Lobby for a workable multilateral legal mechanism in order to consider and implement solutions, among which hopefully are the legal proposals I have set forth herein;
- Draft and implement a code of conduct and ethics for NGO/INGO workers in this area of service;
- Serve as the ultimate resource and advocacy organization for all existing NGO/INGOs that are working on the ground and in-country. As a resource and advocacy organization, the umbrella Amnesty Model can join together and represent other NGO/INGOs

> by way of voluntary membership. (Thus, the Amnesty Model can perform the same role and services as what the American Bar Association provides for US lawyers.)[163]

In sum, my proposal aims to turn all NGO/INGOs into lobbyists, de facto enforcement agents, representatives of victims, and partners as well as watchdogs of governments. The Amnesty Model combines and strengthens their voices by bringing the local perspectives to a global dimension in the interest of victims.

My proposed agenda for the Amnesty Model and/or its local members or affiliates can be categorized into two areas of emphasis: (a) the "awareness" campaign and (b) the "partnership" campaign, discussed below.

a) The Awareness Campaign

The tasks of NGO/INGOs must start with a well-organized and aggressive awareness campaign. Here, the Amnesty Model can afford to be bold and creative. Website reports have shown that strategic advertising and public relations programs to deter sex tourism can be very effective in winning public opinions, and can produce measurable results.[164] The only limits on strategies and innovation are ethics, good taste, truthfulness, confidentiality, and respect for the privacy and safety of the victims.

I have previously spoken of the "channel of information provided directly to the public."[165] The Amnesty Model should provide this channel of information as a part of its ongoing awareness campaign. This can be accomplished via press releases, books, pamphlets, airport and highway posters and billboards, banners, feature articles, newsletters, websites/blogs, forums, town meetings, conferences and seminars, various forms of public service ads utilizing the print media, radio/television, and the Internet, and other similar means. Further, the Amnesty Model should also participate in the creation and facilitation of special public interest groups that may share or support its goals. These special interest groups can be dynamic public

service spokespersons for the awareness campaign. For example, the Amnesty Model can work with area universities to help conduct classes and/or campus recruitments of volunteers and public interest workers. It can also offer internships, and fellowships that can supply human resources and spokespersons to local NGO/INGOs, as well as other forms of public gatherings and information dissemination.

The Amnesty Model can also work with industries to help formulate industry declarations and to bring about industry commitment to the anti-human trafficking goals. For example, partnerships with airlines and tourist agencies can lead to the creation of in-flight videos as part of ongoing education campaigns and training programs for the tourism industry.

One important part of the NGO/INGO service is to tie the awareness campaign directly to victim rescue and relief. This can be accomplished by setting up focal points for reporting instances of abuse and suspicious incidents. NGO/INGOs can use community volunteers and employees of entities who have contributed to the campaign to manage and handle hotlines and public service websites. The number of these focal points should also be increased across the globe, especially in regions where a problem has been identified.[166]

Another popular and effective publicity endeavor is to partner with the entertainment industry and the artistic community to produce documentaries, initiate public service advertising, and engage in fundraising. Concerts, exhibitions, performances, fashion and variety shows, balls, banquets, and like programs have always helped create exposure and solicit donations. Other educational and publicity endeavors can include network interviews, endorsements by celebrities and public officials, and other similar programs. The goal is to supply a continuing stream of information to the public to create awareness, thus obtaining global exposure and support for the anti-human trafficking mission.

As an example of the type of creative output or artistic means that can go beyond traditional fundraising in society circles. I have used artwork posters

not only for sale at fundraising events, but also as hallway display to raise awareness at business conferences for professional groups in various hotels around the United States. I worked out an agreement with the conference organizers or tried to get corporate sponsorship where a corporation is a conference participant. Those most likely to accept this concept are public-minded organizations, such as the American Bar Association, the Association of American Law Schools, and similar professional or public interest groups that must hold annual professional conferences for their members. Artwork is a more effective means of sending messages than photographs, because many hotel guests find photographs to be too shocking to their taste and do not want to confront these harsh realities when they are at a conference for business or at a resort for pleasure. I use this example simply to demonstrate and advance a critical theme in the global anti-human trafficking campaign: the solution cannot be just legal or theoretical, but it should also involve all possible aspects of resources and communication channels, including various nonlegal means to create and heighten public awareness at every possible opportunity.[167]

Better awareness and more direct impact can be built if NGO/INGOs aim specifically at the tourist industry and travelers. In particular, I propose mobile public service ads by way of a "Wear your T-shirt" campaign. All tourists, college students, housewives, retail store workers, union members, corporate employees, airport contractors, and especially those individuals who travel to developing nations for whatever reason, should be sold or provided with a T-shirt that has the NGO/INGO's name, and/or a slogan or motto of some sort. The slogan can be as simple and straightforward as "Jail human traffickers!" or "Humans/children are not for sale!" Other possibilities for a slogan can include the following:

- *"Beware of human trafficking! You can help by reporting what you see!"*
- *"Marrying your way out of poverty may not be the solution . . ."*

- *"Watch out for our children!!!"*

My former research assistant, Ms. Cotter, has also gathered the following mottos, which, according to her, were actually seen in Cambodia next to airport posters warning foreign visitors of the maximum twenty-year prison sentence for pedophilia.[168]

- *"Turn a sex tourist into an ex-tourist."*
- *"Abuse a child in this country, go to jail in yours."*[169]

In this T-shirt campaign, every public-minded tourist or traveler can turn him/herself into a walking or traveling public service ad, if the tourist agrees or volunteers to wear an "anti-human trafficking" T-shirt during his/her travel, displaying a slogan on the front or the back. If there are tourists looking for consumption, there must also be tourists who may want to wear the anti-human trafficking T-shirt. Each willing person can become a mobile poster sent all over the world to all vacation or business conference sites. The appeal and resources may even increase if the Amnesty Model associates itself with a celebrity or with a UNICEF representative, such that the motto printed on the T-shirt can be part of a quote spoken by the celebrity or an endorsement by UNICEF.

Naturally, the sales of these T-shirts can also help raise funds for NGO/INGO activities. The "Wear a T-shirt" campaign can even become a Christmas gift for business offices and corporations as part of NGO/INGO fundraising—a corporation can demonstrate its goodwill commitment to a better world by buying these T-shirts and providing them to its employees as Christmas presents. The key for a publicity campaign is to find willing individuals and entities and create a chain reaction, utilizing the willingness of one participant in order to attract the participation of others. By using these examples and exploring these ideas, I only want to stress the multiplying and chain-reaction impact of mass communication messages and their importance in the nonlegal solutions.

b) The "Partnership" Campaign

In discussing and exploring these mass communication ideas, I have already mentioned the importance of partnership with various sectors of the larger community. Successful NGO/INGOS operate like efficient businesses that understand the logistics and need for building partnerships with other strata of society. For example, with respect to the Southeast Asian Story, civic, cultural, or professional organizations such as the Asia House, the Asia Society, various museums showing Asian arts, the Asian Pacific Bar Association, the Conference of Asian Pacific Law Professors, and the World Affairs Council all have their presence in various US cities. They should each be recruited to become part of the Amnesty Model's information channel and awareness campaign. There are also other professional and civic groups consisting of the new generation of decision makers in international businesses, and companies that either have, or plan to have, Southeast Asia as their business environment. They, too, should become partners of local NGO/INGOs in the Amnesty Model's awareness campaign. Finally, the global campaign should call upon and continue cultivating the NGO/INGO-international media partnership—it was *Dateline* that performed the public service duty of bringing the Southeast Asian story to the public light.

Going one step further, Fortune 500 corporations in the United States and multinational corporations should be at the forefront of conscience as long-term partners of NGO/INGOs, because these public corporations need to build goodwill and maintain global shareholder satisfaction. In the later part of the twentieth century, corporate legal officers have been forced to change their agendas of risk management, having experienced the surge of ATCA suits brought against their multinational employers who were alleged to be the de facto partners of governments that violated human rights.[170] Although these suits might not have been successful on the merits, at a minimum, they became a risk management item on the general counsel's agenda, thereby bringing human rights issues to the public domain as

priority items for corporate decision makers. A number of these lawsuits became budgetary items, as the corporations had to prepare their defense and/or chose to settle to avoid further litigation and negative publicity. These settlements provided their own long-term impact within the inner workings of the multinational community.[171]

In the international business arena, however, the tension among various players is evident, and this is the challenge that NGO/INGOs and their Amnesty Model must meet. Many times, international businesses and multinationals must be partners and/or licensees of their host governments. Getting involved in human rights issues that may make host governments look bad may not be a sound business strategy for many corporate decision-makers, despite the gradual tipping point in corporate behaviors. However, if the NGO/INGO larger campaign is successful, public outrage against global human trafficking may be substantial enough to instigate more significant changes in corporate behaviors, even if these changes are slow or can be brought about only in marginal increments. The Amnesty Model's goal should be to get corporate America involved not only by way of funding NGO/INGOs ad hoc, but also by supplying volunteers, spokespersons, endorsement, or declarations of policy statements. Therefore, the Amnesty Model's business partnership campaign should include shareholder and stakeholder campaigns aimed at owners and employees of corporations doing business in the countries that constitute the Human Trafficking Triangle.

Last but not least, a partnership must also be built among NGO/INGOs themselves in order for them to share information, expertise, resources, and strength. The establishment of the umbrella Amnesty Model would further this goal.

In summary, the happy news for the NGO/INGO community is the fact that human trafficking, especially in the case of poor children from the developing world, can invoke an outcry leading to overwhelming support from a sympathetic international public. The cause can easily generate unity

in voices and universality in acceptance. NGO/INGOs also have the attention, collaboration, and backup of the powerful international media and superpowers like the United States. The landscape is ripe for an integrated umbrella of NGO/INGOs that can function as the Amnesty International-equivalent to advocate and rescue this new, yet forgotten, and most vulnerable type of "prisoner of conscience."

But the happy news can also turn unhappy. NGO/INGOs turn into political organizations driven by their own politics. The real mission becomes nuanced by the politics of the "do-gooders." The administrative and overhead costs of maintaining these political structures eat into the resources that should be spent on victim rescue and relief. So much of the cause can be so lost in rhetoric that the trio of advocate, relief worker, and victim may all become elements of the rhetoric itself. Words may begin to speak louder than actions, and inner conflicts and internal competition may develop within the "do-gooder" community, thereby making integration and collectivism difficult. This can lead to a more demoralizing scenario for the individual relief workers who must work in the field, taking care of bruised, crying victims who cling on to these NGO workers as their only light of hope. This remains the ongoing challenge of the NGO/INGO community. After all, although the global campaign sends important messages to places far away from the lesser developed world, it is the relief workers and investigators on the ground who make the difference and deliver results in that world, not the rhetoric of publicity oceans away.

VII. REVIEW, SUMMARY, AND CONCLUSION

My expansive view of the doctrine of state responsibility can sound radical or drastic to the legal scholarly community, because it imposes affirmative legal duties upon governments and ultimately holds them legally responsible for the socioeconomic problems of their countries. Decades of a lack of universal support for the ICESCR and centuries of ingrained sovereignty have demonstrated the nation-states' reluctance, skepticism,

and even abhorrence toward the concept. In particular, my interpretation of the state responsibility doctrine may even appear threatening to local jurisdictions where government officials partner with traffickers in corrupt nations.

Yet, the necessary premises are evident. When governments contribute to global human trafficking, directly or indirectly, and when their persistent or reckless inaction reaches the level of a de facto policy, systematic global human trafficking should be considered a crime against humanity and no longer a socioeconomic problem to be shouldered by "do-gooders." Then, situs nations in the Human Trafficking Triangle must become legally accountable, and the community of civilized nations must speak and act via the process of multilateralism. Otherwise, a century of progress in the eradication of slavery will have regressed.[172] Those nations who turn their head away from proposals of this sort are potentially the violators of their state responsibility—actors who want to hide their "dirty laundry." Antiquated as it is, the doctrine of state responsibility is still alive, because from the beginning of the community of nations, it was this doctrine that formed the basis for the establishment of statehood, sovereignty, and nation-building.

My proposal to structure the multilateral system is based on the following theses:

1. A government that consistently fails to act becomes an accomplice of the crime. The state responsibility doctrine is simply the right legal means to reach the right humanitarian result. Governments' violations of the state responsibility doctrine are violations of international law and can form the basis for private causes of action brought by, or on behalf, of victims under domestic legislation such as the ATCA. Test cases must therefore be brought where this theory can be applied, via efforts of the NGO/INGO community and lawyers/activists.

2. An effective anti-human trafficking multilateral legal regime that can divorce itself from national/local sociopolitics must serve the following goals:

    a. Impose upon the community of nations the responsibility to enact stern and comprehensive anti-human trafficking national laws that have an ET effect;

    b. Create a long-needed transnational criminal tribunal dedicated to the eradication of global human trafficking;

    c. Create an intergovernmental apparatus consisting of law enforcement and other experts to handle prosecution, as well as the social services needed to aid the victims.

My nonlegal solution includes the creation of an Amnesty International-type of umbrella INGO to handle the global anti-human trafficking campaign and to represent the coalition of local NGOs at the global level. One primary goal of this umbrella organization is to bring the community of NGO/INGOs together as the joint global voice of conscience for the rescue of victims.

Among the tasks of this umbrella Amnesty organization are to stimulate the involvement of multinational corporations and IFIs (whose social clauses and funding mandates can help combat human trafficking in the developing nations), and to nurture and develop the necessary partnerships between media, prosecutors, law enforcement officers, and NGO/INGO workers.

The battle against human trafficking must occur both globally and locally. At the global level, nations must join hands and partner with corporate and nongovernmental actors. At the local level, a new political will must be achieved through intense international pressure imposed upon those developing countries that have been identified as having a disturbing sex tourism record. Trading nations and IFIs must not hesitate to supply the

needed pressure in the form of short-term economic sanctions coupled with negative publicity. For example, the TVPA authorizes the United States to suspend foreign aid to countries that lag behind in their anti-human trafficking state responsibility. In addition, the United States' tier ranking system based on its assessment of countries' performances also produces the "shaming effect."[173]

My proposals are built on an assumption of optimal conditions. The proposals also presume goodwill and budgetary commitments from those developed nations that take upon themselves the task of championing the anti-human trafficking objective as the universal value of civilized societies (as expressed by former US Secretary of State Colin Powell.) Accordingly, the ideas discussed here may sound highly idealistic to the pragmatist. If all of these ideas fail, at least one truth should hit home: the intended purpose of any effective anti-human trafficking initiative and public campaign is to create a transnational information channel, ultimately leading to the establishment of a supranational prescriptive authority that can break the Human Trafficking Triangle. As Professor Martinez of Stanford Law School told us, history shows that in the nineteenth century, when ships were still crossing the Atlantic to transport slaves from the colonized countries, the antislavery international courts were envisioned and finally put to work. In the end, slavery was outlawed.

The challenge for all concerned is whether these proposals can be realistically implemented, at what costs, and to what extent. Who will ultimately bear the commitment to save the unfortunate in this imperfect world, as well as the attendant economic costs? The mission of ending global human trafficking is practically as arduous as the never-ending mission to end poverty and to curtail the misuse of government power by bringing about prosperity, equality, and justice for all.

In taking action to end slavery in the United States, Abraham Lincoln spoke of a "new birth of freedom."[174] In the time that led to the United States' civil rights legislation, Martin Luther King said, "I have a dream."[175]

In order to better an imperfect world, there is no easy or perfect solution, but there is always a beginning. It is hoped that the seminar I delivered and this article have contributed to such a beginning.

APPENDIX A
Anti-Human Trafficking Laws in the United States

1. TVPA and TIP Report. In 2000, the 106th Congress passed the Trafficking Victims Protection Act (TVPA).[176] The Act allows the United States to impose sanctions and withhold nonessential foreign aid for those countries that fail to show "good effort" to eliminate trafficking in their countries. The Act requires the State Department to issue an annual Trafficking in Persons (TIP) Report, which rates countries in tiers, based on their efforts to combat trafficking.

Tier 1 countries fully comply with the Act's minimum standards for the elimination of trafficking.

Tier 2 countries do not fully comply with the minimum standards but are making significant efforts to bring themselves into compliance.

Tier 3 countries neither satisfy the minimum standards nor demonstrate a significant effort to come into compliance.[177]

In TVPA § 101(b)(2), "sex tourism" is part of the definition of "trafficking." TVPA § 108(a)(3) "minimum standards" provisions require that countries prescribe "measures to reduce the demand for commercial sex acts and for participation in international sex tourism by nationals of the country," and mandates measures to ensure that nationals who are deployed abroad do not engage in or exploit victims of trafficking. TVPA § 105(d)(5) states that the Interagency Task Force must "[e]xamine the role of the international 'sex tourism' industry in the trafficking of persons."

In 2003 and 2005, the Act was amended and strengthened. For instance, the law now includes a "Tier 2 Watch List" for countries requiring special scrutiny because of a high or significantly increasing number of victims or a failure to provide evidence of increasing efforts to combat trafficking in persons.[178]

2. PROTECT Act. In 2003, the United States Congress enacted the Prosecutorial Remedies and Other Tools to End the Exploitation of

Children Today (PROTECT) Act. The PROTECT Act increases penalties to a maximum of thirty years in prison for engaging in child sex tourism.[179]

3. State laws. Twenty-nine states have anti-sex-trafficking criminal provisions, nineteen states have laws establishing a statewide task force on trafficking, ten states have laws establishing trafficking research commissions, and three states have law enforcement training on trafficking.[180] For example, Colorado has anti-trafficking criminal provisions, a task force, and victim protection laws.[181] Virginia's April 2007 legislature created an anti-trafficking commission. Those states with no existing law or pending legislation on human trafficking include Alabama, Delaware, North Dakota, South Dakota, Utah, Vermont, West Virginia, Wisconsin, and Wyoming.[182] The District of Columbia also does not have an existing or pending human trafficking law.[183]

APPENDIX B
Summary of Anti-Human Trafficking National and International Non-Governmental Organizations

The following NGOs are well known and provide enforcement resources as well as rescue and care for children who are victims of sex trafficking.

a. International Justice Mission

Featured by *Dateline,* International Justice Mission ("IJM") rescues victims of violence, sexual exploitation, slavery, and oppression. It is a global organization of lawyers and investigators who work with local authorities to stop sex trafficking and forced labor slavery. Based on referrals of abuse received from other relief and development organizations, IJM conducts professional investigations and mobilizes intervention on behalf of the victims. IJM has fourteen world offices—including offices in Cambodia, Thailand, and Philippines—and has rescued children trapped in sex tourism in all of these Southeast Asian countries. In 2003, IJM worked with Cambodian authorities to rescue thirty-seven girls from several brothels, the youngest of whom was five years old. This raid was covered by *Dateline*, which received two Emmy awards for the coverage.

b. ECPAT International

ECPAT International (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) is a global network of organizations and individuals who advocate on behalf of children around the world against all forms of exploitation. ECPAT provides helpful educational materials about child sex tourism, including its well known *Questions and Answers about the Commercial Sexual Exploitation of Children* handout.[1]

c. Action Pour Les Enfants

Action Pour Les Enfants (APLE) is an international NGO operating in Cambodia (Phnom Penh, Sihanoukville, and Siem Reap). APLE focuses on

protecting Cambodian children from sex offenders and preventing street-based child sexual exploitation. APLE's objectives include intervention and aftercare, legal protection, "breaking the cycle" by preventing recurring victims, and improving legal accountability in Cambodia by working with local and international law enforcement officials.[1]

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[1] This article is an expansion of a lecture delivered by University of Denver law professor Wendy Duong in Summer 2008, in Washington, D.C., at a seminar for law students of the Franklin Pierce Law Center. The author and the staff of the *Seattle Journal for Social Justice* have supplied endnote materials where necessary.

[2] JD University of Houston; LLM, Harvard. Ms. Duong spent eighteen years practicing law in major US law firms, including her international practice with Baker & McKenzie and a senior advisor position with Mobil Corporation-Asia Pacific. She has also devoted ten years to full-time law teaching at the University of Denver. Professor Duong immigrated to the United States after the end of the Vietnam War in 1975 and has many friends, relatives, and acquaintances who are survivors of the Vietnam War, the Vietnamese "boat people" experience, and the Cambodian "Killing Fields" genocide. She is among the few Vietnamese American law professors in the United States who can discuss Southeast Asia not only as a legal or cultural expertise but also as her personal and professional experience. She is fluent in Vietnamese sufficiently to analyze the type of historical and legal documents necessary for the practice of law in Vietnam. During her "anti-human trafficking initiative" project conducted at the University of Denver, Professor Duong gathered reports and interviewed a number of relief workers and church volunteers who spoke on behalf of victims. Their identities were sealed for safety and confidentiality reasons.

[3] The accounts have been edited for brevity. They were taken from an independent research paper written by Ms. Kelly Cotter under Professor Duong's supervision. *See* Kelly M. Cotter, *Combating Child Sex Tourism in Southeast Asia,* 37 DEN. J OF INT'L L. & POL'Y 493 (2009).

[4] DAVID BATSTONE, NOT FOR SALE: THE RETURN OF THE GLOBAL SLAVE TRADE AND HOW WE CAN FIGHT IT (2007).

[5] Cotter, *supra* note 3, at 498.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at 498–99.

[11] *Id.* at 499.

[12] Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, 117 Stat. 650 (2003) (codified as amended in scattered sections of 18, 21, 28 and 42 U.S.C.).

[13] Cotter, *supra* note 3, at 499.
[14] *Id*.
[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] *Id*. at 499–500.
[20] Daniel Girard, *First Conviction in Sex Tourism Case*, THE TORONTO STAR, June 2, 2005, at A01.
[21] *Id*. *See also, e.g.,* Wendy N. Duong, *Gender Equality and Women's Issues in Vietnam: The Vietnamese Woman—Warrior and Poet*, 10 PAC. RIM L & POL'Y J. 191, 222 n.123 (2001).
[22] Girard, *supra* note 20.
[23] Canadian Press, *Sex-Assault Suspect's B.C. Home Searched,* THE TORONTO STAR, Jan. 20, 2004, at A07.
[24] Press Release, International Justice Mission, *International Cooperation Results In Guilty Plea By Canadian Tourist Who Sexually Abused Children* (June 2, 2005) *available at*, http://www.ijm.org/releases/2005/6.2.05_Bakker_Plea_Release.pdf [hereinafter International Cooperation I].
[25] *Id*. During the same era, border wars also erupted between Vietnam and China. Both sides claimed victory. In reality, the Vietnamese border town of Lao Cay was almost leveled out by Chinese artilleries (as described to me by inhabitants of Lao Cay during my international travels as a business lawyer). In the subsequent decades, Hanoi acceded de facto to Beijing's territorial claims to Vietnam's northern land-border zones, and opened these zones to free travels and trade between the two countries, thereby increasing the influx of Chinese goods into Vietnam. *See* Wendy N. Duong, *Following the Path of Oil: The Law of the Sea or Realpolitik – What Good Does Law Do in the South China Sea Territorial Conflicts?*, 30 FORDHAM INT'L L.J. 1098, 1158–59 and accompanying footnotes (2007).
[26] Jennifer Wells, *Canada's Offshore Child Sex Law Faces Its First Test*, THE TORONTO STAR, Aug. 29, 2004, at A02.
[27] Press Release, Vancouver Police Department, *Donald Bakker Update & IJM Press Release,* (Jul. 10, 2006) *available at*, http://vpdreleases.icontext.com/2006/07/10/donald-bakker-update-ijm-press-release/.
[28] *Id*.
[29] International Cooperation I, *supra* note 24.
[30] James Welsh & Prak Chan Thul, *Suspected Pedophile Disappears*, THE CAMBODIA DAILY, Sept. 12, 2006.
[31] Press Release, International Justice Mission, *International Collaboration Brings Down American Pedophile* (Sept. 20, 2006) (on file with author) [hereinafter International Collaboration II].
[32] International Justice Mission.
[33] Welsh & Thul, *supra* note 30.
[34] *Id*.
[35] International Collaboration II, *supra* note 31.

[36] Welsh & Thul, *supra* note 30.
[37] Bryan Denson, *Asian Bust Nets Oregon Fugitive*, THE OREGONIAN, Sept. 21, 2006; International Collaboration II, *supra* note 31.
[38] Denson, *supra* note 37.
[39] International Collaboration II, *supra* note 31; Denson, *supra* note 37.
[40] Welsh & Thul, *supra* note 30.
[41] James Welsh, *Pedophile Missing; Ministry, Police Shed Blame*, THE CAMBODIA DAILY, Sept. 14, 2006.
[42] Denson, *supra* note 37.
[43] Welsh, *supra* note 41.
[44] Prak Chan Thul & James Welsh, *Pedophile Suspect Hurt Head: Doctor,* THE CAMBODIA DAILY, Sept. 13, 2006.
[45] *Id*.
[46] *Id*.
[47] *Id*.; Welsh, *supra* note 41.
[48] Welsh, *supra* note 41.
[49] *Id*.
[50] Denson, *supra* note 37.
[51] *Id*.
[52] *Id*.
[53] Prak Chan Thul & Adam Pire, *Arrests of Suspected Pedophiles Reflect New Will*, THE CAMBODIA DAILY, Sept. 13, 2006.
[54] International Collaboration II, *supra* note 31.
[55] *Id*.
[56] *Id*.
[57] Kevin Doyle, *Cambodia's Child Sex Crackdown*, TIME (WORLD), Oct. 5, 2006.
[58] For the meaning of "situs" nations, see the "Human Trafficking Triangle" discussed *infra* Section VI(A).
[59] Alien Tort Claims Act, 28 U.S.C. § 1350 (2006); Torture Victim Protection Act, Pub. L. No.102–256, 106 Stat. 73 (1992) (codified as amended at 28 U.S.C. § 1350 (2006)). *Accord,* Wendy N. Duong, *Partnership with Monarchs: Two Case Studies, Case One*, 25 U. PA. J. INT'L ECON. L. 1171, n.69 (2004) (citing representative "international torts" cases filed in US District Courts against foreign government officials for violation of international law).
[60] ECPAT, *Questions & Answers About the Commercial Sexual Exploitation of Children*, 30 (2006) *available at*, http://www.ecpat.net/ei/Publications/About_CSEC/FAQ_ENG_2008.pdf.
[61] *Id*.
[62] The Anti-Human Trafficking Protocol went into force on December 25, 2003. By June 2010, the Trafficking Protocol had been signed by 117 countries and 137 parties.

Human trafficking is defined as:

> The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of

> the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. The consent of a victim… to the intended exploitation set forth [above] shall be irrelevant where any of the means set forth [above] have been used.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also referred to as the Trafficking Protocol), *opened for signature* Nov. 15, 2000, 2237 U.N.T.S. 319 (entered into force Dec. 25, 2003 with 117 signatories).

[63] R. Barri Flowers, *The Sex Trade Industry's Worldwide Exploitation of Children*, 575 ANNALS AM. ACAD. POL. & SOC. SCI. 147, 151 (May 2001) (documenting the growth in sex-trafficking); U.N. Econ. & Soc. Council [ECOSOC], Comm'n On Human Rights, *Rights of the Child: Report of Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*, ¶ 56, U.N. Doc. E/CN.4/1996/100 (Jan. 17, 1996).

[64] Thanh Truc, *Interview of Father Martino Thong Nguyen* (unpublished manuscript, translated by Ms. Duong) (on file with the author).

[65] *Sina Vann: Fredrick Douglass Award Winner,* FREE THE SLAVES FREEDOM AWARDS, (last visited on Apr. 18, 2011), http://www.freetheslaves.net/Page.aspx?pid=504.

[66] Thanh Truc, *From a Victim, To a Person Helping Child Prostitutes*, Jan. 28, 2010, RADIO FREE ASIA, http://www.rfa.org/vietnamese/programs/OverseasVietnamese/Young-Sex-Slave-Become-Child-Trafficking-Rescuer-ThTruc%20-01282010202712.html.

[67] The translator has deliberately attempted to retain the eyewitness's original speech pattern. At times her speech is not syntactically clear, and some minor editing of punctuation and grammar has been necessary to improve clarity, in context.

[68] Truc, *supra* note 67.

[69] Follow the link below to view story images http://www.rfa.org/vietnamese/programs/OverseasVietnamese/Young-Sex-Slave-Become-Child-Trafficking-Rescuer-ThTruc%20-01282010202712.html/somaly-250.jpg (featuring Ms. Somaly Mam, founder of Somaly Mam Foundation).

[70] Follow the link below to view story images http://www.rfa.org/vietnamese/programs/OverseasVietnamese/Young-Sex-Slave-Become-Child-Trafficking-Rescuer-ThTruc%20-01282010202712.html/sas_medical250.jpg (showing doctors examining the girls just rescued by Somaly Mam Foundation).

[71] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Dec. 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, 1249 U.N.T.S. 12 (entered into force Sept. 3, 1981); United Nations Convention on the Rights of the Child (CRC) art. 32, adopted Nov. 20, 1989, 1577 U.N.T.S. 3. Cambodia acceded to the CEDAW on Oct. 15, 1992, and Vietnam ratified the CEDAW on Feb. 17, 1982. *Status of CEDAW*, UNITED NATIONS, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited May 22, 2011). Cambodia acceded to the CRC on

Oct. 15, 1992, and Vietnam ratified the CRC on Feb. 28, 1990. *Status of CRC*, UNITED NATIONS, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

[72] Worse, law enforcement or army personnel may be partners, protectors, or extortionists of brothel proprietorship. For example, under a famous photograph of Svay Pak posted on the internet, the photographer noted that "A lieutenant in the Royal Cambodian Armed Forces is one brothel owner. He claims to enslave the girls because he cannot make enough money in his job in the Armed Forces." Ngy Thanh, *Cambodia Prostitution Datasheet*, Trek Earth, http://www.trekearth.com/gallery/Asia/Cambodia/West/Phnum_Penh/Svay_Pak/photo682864.htm.

[73] U.S. DEP'T OF STATE, CAMBODIA COUNTRY REPORT FOR 2006 ON HUMAN RIGHTS PRACTICES (Mar. 6, 2007), *available at* http://www.state.gov/g/drl/rls/hrrpt/2006/78769.htm (last visited Apr. 17, 2011).

[74] *Id.*; BATSTONE, *supra* note 4.

[75] June JH Lee, *Human Trafficking in East Asia: Current Trends, Data Collection, and Knowledge Gaps*, 43 INT'L MIGRATION 165 (2005); *see also* Chris Beyrer & Julie Stachowiak, *Health Consequences of Trafficking of Women and Girls in Southeast Asia,* 10 BROWN J. OF WORLD AFFAIRS 105 (2003), *available at* http://www.watsoninstitute.org/bjwa/archive/10.1/SexTrafficking/Beyrer.pdf.

[76] The Office to Monitor and Combat Trafficking in Persons' International Programs Section administers a grant program that provides funding to NGOs specializing in anti-trafficking programs. *International Grant Programs*, US DEPT. OF STATE: OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, http://www.state.gov/g/tip/intprog/index.htm; *see also Research*, US DEPT. OF STATE: OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, http://www.state.gov/g/tip/response/research/index.htm (click on "chart" link toward the bottom of the page for a listing of the currently funded research projects).

[77] *See* information *supra* note 72 regarding Vietnam's ratification of both the CEDAW and the CRC.

[78] DU NGUYEN, SANH THONG HUYNH & HUYNH SANH THONG (TRANS.), THE TALE OF KIEU: A BILINGUAL EDITION OF NGUYEN DU'S TRUYEN KIEU (1983); *see also* Duong, *supra* note 21, at 302–05 (describing the tale of Lady Kieu).

[79] BATSTONE, *supra* note 4, at 21.

[80] *Id*.

[81] Eyewitnesses' accounts, survivors' tales, and social work experts' reports involving Vietnamese boat people and Cambodian "killing fields" victims have filled the "Vietnam" and "Cambodian" esoteric genre of literatures from the U.S. and other host nations, which include not only published works but also unpublished Ph.D. and Masters' theses. *See, e.g.,* Duong, *supra* note 21, at 221 n.119, 312, 313 ns.612, 614, 619.

[82] KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY (1999). During her travels as an international business lawyer in the 1990s, Professor Duong was told by eyewitnesses that in Vietnam, during the late 1970s and 1980s, right after the Communist takeover, people sold their blood in order for their families to have food.

[83] *Id*. at 40.
[84] *Id*.; *Caught in Modern Slavery: Tourism and Child Prostitution in Thailand,* Country Report Summary prepared by Sudarat Sereewat-Srisang for the Ecumenical Consultation held in Chiang Mai, May 1-5, 1990.
[85] Flowers, *supra* note 63, at 150 (quoting ECPAT Newsletter, 1996).
[86] *Id*.
[87] Lee, *supra* note 75.
[88] DAVID STANFORD, ANGKOR 16–18 (2009) (stating that the Angkor Wat temple was built by King Suryavarman II during the early twelfth century to serve as his state temple and was heavily influenced by Indian architecture).
[89] Michael P. Scharf, *Tainted Provenance: When, If Ever, Should Torture Evidence Be Admissible*, WASH. & LEE L. REV. 129, 136–37 (2009) ("The Khmer Rouge then [around 1975] persecuted and murdered many of the deported townspeople (referred to as "the new people"), who tended to be more educated than the peasantry. The Khmer Rouge also expelled 150,000 Vietnamese residents from Cambodia, killed all 10,000 who remained and carried out a larger, if less systematic, genocidal campaign against the country's Chinese and Muslim minorities.").
[90] PRISCILLA MARY ROBERTS, ED., BEHIND THE BAMBOO CURTAIN: CHINA, VIETNAM, AND THE WORLD BEYOND ASIA 424 (2006) ("China, infuriated by Vietnam's invasion of Cambodia, decided to 'teach Vietnam a lesson' by launching a cross-border invasion in February 1979."); STEPHEN J. MORRIS, WHY VIETNAM INVADED CAMBODIA: POLITICAL CULTURE AND THE CAUSES OF WAR 196 (1999) (describing, in a chapter titled *The Collapse of Vietnamese-Chinese Relations,* the dissolving relationship between Vietnam and China prior to Vietnam's invasion of Cambodia, "[t]his behavior [by the Vietnamese] indicates that Hanoi assumed that Beijing would be upset with its foreign policy and would react in a hostile manner, using all the resources at its disposal.")
[91] Vietcong is a pseudonym for "Vietnamese Communism," a term used and popularized by the American and South Vietnamese presses during the Vietnam War.
[92] BALES, *supra* note 83; BATSTONE, *supra* note 4.
[93] Although not the main focus of this article, the mail-order-bride example demonstrates that human trafficking consists of other imminent problems and not just child prostitution. Mail-order brides can be the camouflage for another form of human trafficking, rendered legitimate by government visas and brokered interracial marriages. For example, many eyewitness accounts related by relief workers confirm frequent cases of severe abuses, and even deaths, of Vietnamese mail-order brides recruited from Vietnam and brought into Taiwan. Explicit marriage brokerage services have also been shown on YouTube regarding the export of young and willing Vietnamese brides to Singapore. *See, eg., Vietnamese Mail Order Bride #2 (Singapore)*, YOUTUBE (Apr. 27, 2008), http://www.youtube.com/watch?v=FScBxMqC9cI&feature=related; *see also Vietnamese Brides for Export*, YOUTUBE (Jan. 29, 2009), http://www.youtube.com/watch?v=FScBxMqC9cI&feature=related.
[94] RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 402-404 (1987) (codifying the phrase "jurisdiction to prescribe" and stating that a government can use national interest to justify its gate keeping of particular industries); *see also* Duong, *supra* note 59, at 1266 n.228.

[95] *See infra* Section VI(B)(5).
[96] Wendy N. Duong, *Partnerships with Monarchs in the Development of Energy Resources—Case Two: Dissecting an Independent Power Project and Re-evaluating the Role of Multilateral and Project Financing in the International Energy Sector,* 26 U. PA. J. INT'L ECON. L. 69, 131 (2005).
[97] *See* ECPAT, *supra* note 60.
[98] *See, e.g.,* Duong, *supra* note 21.
[99] Brown v. Board of Ed. of Topeka, Shawnee County, Kan., 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873, 38 A.L.R.2d 1180 (1954), supplemented, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083, 71 Ohio L. Abs. 584 (1955).
[100] DONNA HUGHES, BEST PRACTICES TO ADDRESS THE DEMAND SIDE OF SEX TRAFFICKING 2 (Aug. 2004) [hereinafter HUGHES, BEST PRACTICES].
[101] Duong, *supra* note 59, at 1266 n.228.
[102] Nicholas D. Kristof, *How to Help End Sex Slavery*, INT'L HERALD TRIB., Feb. 3, 2003; Harry Dunphy, *U.S. Determined to End Trafficking in Humans*, HOUS. CHRON., Jun. 6, 2002. Also, in December 2003, Chris Hansen of Dateline held an interview with then-Secretary of State Colin Powell to discuss human trafficking. Mr. Powell described the sexual exploitation of children as "the worst kind of human exploitation imaginable" and a "sin against humanity." *Powell Responds to Cambodia Investigation: Interview of Secretary of State Colin L. Powell,* MSNBC, Dec. 11, 2003, *available at,* http://www.msnbc.msn.com/id/4039270/ns/dateline_nbc/t/powell-responds-cambodia-investigation/.
[103] RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 402-404 (1987).
[104] Bruce Vaugh, et al., *Terrorism in Southeast Asia*: *CRS Report for Congress*, Oct. 16, 2009, CONGRESSIONAL RES. SERV., http://www.fas.org/sgp/crs/terror/RL34194.pdf ("Since September 2001, the United States has increased focus on radical Islamist and terrorist groups in Southeast Asia, particularly those in the Philippines, Indonesia, Malaysia, Thailand, and Singapore.").
[105] *Sina Vann: Fredrick Douglass Award Winner,* FREE THE SLAVES FREEDOM AWARDS, (last visited on Apr. 18, 2011), http://www.freetheslaves.net/Page.aspx?pid=504.
[106] *Id.*; *see also* Nicholas D. Kristof, *The Evil Behind the Smiles*, NYTimes, Dec. 31, 2008, http://www.nytimes.com/2009/01/01/opinion/01kristof.html.
[107] The FCPA led to the OCED Convention. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 18, 1997, 37 I.L.M. 1.; Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (codified as amended in scattered sections of 15 U.S.C.); *see also* Duong, *supra* note 59, at 1246–47 (providing a brief history of how the US has used the FCPA to spearhead the OECD anti-bribery Convention).
[108] ECPAT, *supra* note 60, at 31.
[109] *Id*.
[110] Samantha Power, *The Enforcer*, The New Yorker, Jan. 19, 2009, *available at* http://www.newyorker.com/reporting/2009/01/19/090119fa_fact_power ("established a permanent presence five years ago, and since then it has offered anti-trafficking training to two hundred and fifty Cambodian police officers").

[111] Self-executing treaties or conventions are often found in the commercial realm, but not in human rights. For example, the Convention for the International Sales of Goods is a self-executing convention. It is part of US domestic law, without any need for further domestic action. Anti-human trafficking is the area of human rights laws where conventions should justifiably be self-executing, in order to maximize results.

[112] Prior to 9/11, as an Asian woman, I had been stopped to be screened for fruits and vegetables during my international travels and returns to the U.S. The screening seemed to coincide with occasions when I was dressed more casually for travel, and not in formal business attires. The U.S. Customs' screening did not surprise me, since during those same occasions, I was also stopped by United Airline attendants when I attempted to enter the first class cabin to find my seat (as a business lawyer whose travel expenses were paid for by my multinational employer).

[113] *EU and ASEAN Join Hands to Fight Trafficking*, Apr. 4, 2007, HUMANTRAFFICKING.ORG, http://www.humantrafficking.org/updates/551.

[114] *See supra* sources and information in note 102.

[115] Duong, *supra* note 97, at 94 n.347.

[116] Country narratives are located within the Annual Trafficking in Persons Report, prepared by the Department of State's Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 10th Ed.,* U.S. DEPT. OF STATE, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, June 2010, *available at*, http://www.state.gov/g/tip/rls/tiprpt/2010/index.htm.

[117] Jenny S. Martinez, *Antislavery Courts and the Dawn of International Human Rights Law*, 117 YALE L.J. 550 (2008)

[118] *Id.*

[119] *Id.*

[120] *See supra* sources and information in note 102.

[121] *About the International Criminal Court*, ICC, (last visited Apr. 18, 2011), http://www.icc-cpi.int/Menus/ICC/About+the+Court/.

[122] Staff. Q&A: International Criminal Court BBC, 20 March 2006; ROBERT CRYER, HAKAN FRIMAN, DARRYL ROBINSON, ELIZABETH WILMSHURST, AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE 188 (Cambridge University Press 2007). The most recent 2005 UN referral to the ICC of Darfur resulted in an indictment of Sudanese President Omar al-Bashir for genocide, crimes against humanity and war crimes in 2008. *UN condemns 'war crimes' in Gaza*, *BBC News*, Sept. 16, 2009, *available at* http://news.bbc.co.uk/2/hi/8257301.stm.

[123] Cherif Bassiouni. *Crimes Against Humanity*, CRIMES OF WAR: A-Z GUIDE (last visited Apr. 18, 2011), http://www.crimesofwar.org/thebook/crimes-against-humanity.html. Retrieved 2006-07-23.

[124] Yale Law School, The Avalon Project, *Judgement: The Law Relating to War Crimes and Crimes Against Humanity* (last visited Apr. 18, 2011), http://avalon.law.yale.edu/imt/judlawre.asp.

[125] Nuremberg Charter, Charter of the Int'l Military Trib. of 1945, art. 6(c), August 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279; Nuremberg Trial Proceedings Vol. 1 Charter of the International Military Tribunal contained in the Avalon Project archive at Yale Law School.

[126] Tokyo Charter, Charter of the Int'l Military Trib. for the Far East, art. 5(a)-(c), Jan. 19, 1946, T.I.A.S. 1589, 4 Bevans 20

[127] International Convention on the Suppression and Punishment of the Crime of Apartheid adopted and opened for signature, ratification by General Assembly resolution 3068 (XXVIII) of Nov. 30, 1973, entered into force July 18, 1976, in accordance with article X (10). 1015 U.N.T.S. 244.

[128] BALES, *supra* note 83. Anti-human trafficking experts have also documented the practice of family sexual servitude in certain cultures, where foreign-born women and children (typically from the lesser-developed economies) serve as wives, concubines, or servants – they are both domestic laborers and sexual commodities (against their will and typically under debt bondage). These practices typically occur in the private sphere and, hence, are extremely difficult to regulate. This type of human rights abuse is most akin to ancient slavery, where slaves were owned by families.

[129] *Id.* at 12-13.

[130] Rome Statute of the International Criminal Court, U.N. Doc. A/ CONF.183/9 (1998).

[131] UN General Assembly, *Rome Statute of the International Criminal Court (last amended January 2002)*, 17 July 1998. A/CONF. 183/9. Online. UNHCR Refworld, *available at* http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf. *See also Crimes Against Humanity*, 23 BRITISH YEARBOOK INT'L L. 181 (1946). The drawback of the ICC's limited jurisdiction (i.e., requiring UN referrals) was further explained when ICC President reported to the UN regarding its progress in handling crimes against humanity. Judge Phillipe Kirsch said that "[t]he Court does not have the power to arrest these persons. That is the responsibility of States and other actors. Without arrests, there can be no trials."

[132] Guy Horton, *Dying Alive: An Investigation and Legal Assessment of Human Rights Violations Inflicted in Burma, With Particular Reference to the Internally Displaced, Eastern Peoples,* § 12.52 (April 2005), *available at,* www.ibiblio.org/obl/docs3/Horton-2005.pdf (quoting the Rome Statute, Explanatory Memorandum, Section 12.52 Crimes against humanity (RSICC/C, Vol. 1 p. 360)).

[133] *Accord*, Duong, *supra* note 59, at 1200 n.62.

[134] *Id.*

[135] *See, e.g.*, Revolutions in Cuba and Iran.

[136] RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 402–404 (1987).

[137] Alien Tort Claims Act, 28 U.S.C. § 1350.

[138] Foreign Sovereign Immunities Act, 28 U.S.C. § 1604.

[139] Symposium, *The ILC's State Responsibility Articles,* 96 AM. J. INT'L L. 773 (2002).

[140] UN Special Rapporteur on Violence Against Women, *15 Years of the United Nations Specila Rapporteur on Violence Against Women, Its Causes and Consequences,* 34 (2009), *available at,* http://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf.

[141] Mark Gibney, et al., *Transnational State Responsibility for Violations of Human Rights*, 12 HARV. HUM. RTS. J. 267 (1999); Mark Gibney & Dr. David Warner, *What Does it Mean to Say I'm Sorry? President Clinton's Apology to Guatemala and its*

Significance for International and Domestic Law, 28 DEN. J. INT'L L. & POL'Y 223, 224 (2000).

[142] Ved P. Nanda, *The Protection of Human Rights under International Law: Will the U.N. Human Rights Council and the Emerging New Norm" Responsibility to Protect" Make a Difference?* 35 DENV. J. INT'L L. & POL'Y 353 (2007); *See also* American University Washington College of Law, evening panel program, "Human Trafficking and State Responsibility: Perspective on the Domestic and International Response, http://www.humantrafficking.org/events/106.

[143] Nanda, *supra* note 142.

[144] *Id.*

[145] International Covenant on Economic, Social, and Cultural Rights (ICESCR), Dec. 16, 1966, 992 U.N.T.S. 3.

[146] Universal Declaration for Human Rights, G.A. Res. 217 (III) A, U.N. GAOR, 3d Sess., U.N. Doc. A/810, at 74 (Dec. 10, 1948).

[147] Gibney, et al., *supra* note 141. "What is missing [in the human rights discourse] is an interpretation of the duties states take on when they assist and allow offending governments to operate, and in so doing become [the] offending states themselves." *Id.* at 295.

[148] Writers, however, have pointed out the common bases between the two doctrines, although each achieves a different objective. These writers argue for the recognition of a "transnational state responsibility" that removes the sovereign defense asserted by oppressive nation-states who violate their citizens' human rights. *See id.*

[149] Alien Tort Claims Act, 28 U.S.C. § 1350 (2006); Torture Victim Protection Act, Pub. L. No.102–256, 106 Stat. 73 (1992) (codified as amended at 28 U.S.C. § 1350 (2006)).

[150] Duong, *supra* note 59, at 1202 n.69 (summary listing of ATCA cases brought against multinationals for international torts).

[151] Duong, *supra* note 59; Duong, *supra* note 97.

[152] Modern international commercial law (as well as the broader category of "international business law" or "international economic law") is rooted in the ancient *lex mercatoria* (the "law merchant"), a medieval body of customary legal rules used in international trade to supplement the often incomplete commercial laws of nation states. *See generally* Friedrich K. Juenger, *American Conflicts Scholarship and the New Law Merchant*, 28 VAND. J. TRANS. L. 487 (1995) (discussing rules of decisions applied by international arbitrators); Karyn S. Weinberg, *Equity in International Arbitration: How Fair is "Fair?" A Study of Lex Mercatoria and Amiable Composition*, 12 B.U. INT'L L. J. 227, 229-30 (1994) (describing *lex mercatoria*). *Lex mercatoria* was common, at least to European nations, but obviously Asian countries, the Arab world, the Americas, and Africa also observed customary rules of commerce. Ancient creative literature originating from Eastern traditions, such as the anonymously authored Arabian Nights, made endless references to traveling merchants trading transnationally, in regions such as the Middle East, Asia Minor, the Far East, and Africa.

[153] Doe v. Unocal Corp., 110 F. Supp. 2d 1294 (D. California), reversed in part, aff'd in part; remanded, 197 F.3d 161 (5th Cir. 1999), reh'g en banc, 2003 WL 359787 (9th Cir.) (case settled confidentially one day before hearing).

[154] Eric Engle, *Corporate Social Responsibility (CSR): Market-Based Remedies for International Human Rights Violations?* 40 WILLAMETTE L. REV. 103, 117 (2004) (most efforts at reforming U.S. security law to promote corporate attention to human rights issues "have focused…on shareholders' rights to propose resolutions for adoption by the company."); Paul Redmond, *Sanctioning Corporate Responsibility for Human Rights,* 27 ALTERNATIVE L. J. 23, 23 (2002) ("Corporate law['s]…concerns are with financial accountability to investors, not accountability for human rights standards.").
[155] Duong, *supra* note 59, at 1181 n.21 (describing the Brenton Woods institutions and other IFIs).
[156] Duong, *supra* note 59, at 1260 n. 213 (summary description of IFIs and bilateral credit institutions); Duong, *supra* note 97, at 94 n.347 & 348 (describing the World Bank group and various Regional Development Banks as financial institutions that provide multilateral financing).
[157] Victims of Trafficking and Violence Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (current version at 22 U.S.C. § 7101 et seq (West 2010)).
[158] *See supra* sources and information in note 154.
[159] Duong, *supra* note 97.
[160] Duong, *supra* note 97.
[161] Who We Are, Amnesty Int'l (last visited on Apr. 18, 2011), http://www.amnesty.org/en/who-we-are. Amnesty International has the following mission statement:

> Amnesty International is a global movement of 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

[162] *See* Appendix B.
[163] The ABA is a voluntary bar association. Because of its standards of professionalism and resources, it has also acquired the status as the accreditation agency for American law schools.
[164] *Id*. Among the most effective websites is: Child Sex Tourism Resources and Child Wise Tourism, http://www.etravelblackboard.com/index.asp?id=66266&nav=48.
[165] Infra §VI(A), at 706.
[166] ECPAT, *supra* note 60, at 32.
[167] For my "one-woman" anti-human trafficking project conducted during my law professorship at the University of Denver, of the time I dedicated to the project, at least about 60 percent was spent on community activism and nonlegal work.
[168] Doyle, *supra* note 57.
[169] *Id*.
[170] Duong, *supra* note 59, at 1202, n.69.

[171] Id. *Accord* Doe v. Unocal Corp., 110 F. Supp. 2d 1294 (D. California), reversed in part, aff'd in part; remanded, 197 F.3d 161 (5th Cir. 1999), reh'g en banc, 2003 WL 359787 (9th Cir.) (case settled confidentially one day before hearing).

[172] It should be noted that voices in contradiction of this speech paper has also been raised in legal academia. In defense of governments, these voices use multiculturalism to portray child and under-aged prostitution as characteristic of certain "local cultures," and that the victims make choices and even like their torture. This means that consumers from the West should be free to roam, because their purchasing power is only the result of supply and demand – an economic phenomenon. Certainly, any animal or human can be beaten and broken well enough to accept their "hell" as their "heaven," to regard their oppressor as their benefactor, and to accept their condition as a choice, simply because they know of no other choice. Anything, therefore, can be sold and become a business transaction, including the sale of body parts and murders for hire. If that is the case, the entire philosophy behind a criminal justice system and the state responsibility doctrine (i.e., the role of the state is to protect the weak and the vulnerable) will collapse.

[173] Martin Patt, *Country Ratings and Tier Placements,* www.gvnet.com/humantrafficking/00-Ratings.htm. At the same time, economists and activists have also raised the argument that long-term economic sanctions may just worsen the socioeconomic root cause.

[174] President Abraham Lincoln, The Gettysburg Address (Nov. 19, 1863).

[175] Dr. Martin Luther King, Jr., Address at March on Washington: I Have a Dream (Aug. 28, 1963), *available at* http://mlk-kpp01.stanford.edu/index.php/encyclopedia/documentsentry/doc_august_28_1963_i_have_a_dream/.

[176] Stephanie Richard, Note*, State Legislation and Human Trafficking: Helpful or Harmful?* 38 U. MICH. J.L. REFORM 447, 451 (2005).

[177] OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, THE FACTS ABOUT HUM. TRAFFICKING, (Dec. 7, 2005), *available* at: http://www.state.gov/g/tip/rls/fs/2005/60840.htm.

[178] *Id*.

[179] P.L. 108-21 §105, *Penalties Against Sex Tourism*.

[180] POLARIS PROJECT, U.S. POLICY ALERT ON HUMAN TRAFFICKING: SUMMARY OF U.S. POLICY ACTIVITY (Apr. 2007).

[181] *Id*.

[182] *Id.*

[183] *Id.*