

A Diamond in the Rough: The Transnational Duty to Prevent Human Trafficking in the Protocol

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INTRODUCTION

Human trafficking has emerged as one of the most pressing human rights issues of our time. The fight against human trafficking has begun to focus on prevention efforts, bringing more attention to factors that make people vulnerable to traffickers in the first place. States have demonstrated a strong political willingness to address the factors that make people, particularly women and children, vulnerable to trafficking in their countries of origin. This paper argues that States parties to the Protocol have gone so far as to establish a transnational duty to prevent human trafficking that is stronger than prevention obligations in the human rights framework.

The international legal framework for human trafficking is largely articulated in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* (the "Protocol").¹ The Protocol takes a three-pronged approach to trafficking, known as the "three Ps": (1) criminalizing and "P"rosecuting the act of trafficking, (2) trafficking "P"revention programs and (3) aid (or "P"rotection) for victims of trafficking. States who are members of the Protocol ("States Parties") have mainly focused on criminalization, and to a lesser extent aid, for victims of trafficking.²

The duty to prevent can be found in the Protocol and also somewhat indirectly in human rights treaties.³ Many scholars argue that a human rights approach to human trafficking should be employed; some of these scholars argue

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1. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319 [hereinafter the "Protocol"], available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCbook-e.pdf>. For more information and resources on the three-prong approach in the Palermo Protocol see UNODC's Response to Human Trafficking, UNODC, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menuaside>.

2. See Jonathan Todres, *The Importance of Realizing Other Rights to Prevent Sex Trafficking*, 12 CARDOZO J. L. & GENDER 885 (2006) [hereinafter Todres, *Importance of Other Rights*] (arguing that various countries have focused their efforts primarily on the criminalization prong, with comparatively minimal resources being allocated to prevention or victim assistance programs).

3. See Protocol, *supra* note 1; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3. ("ICESCR"); Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13. ("CEDAW"); Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. ("CRC").

this is necessary in order to effectively address the “root causes” of human trafficking.⁴ This line of scholarship generally argues that the criminal law model, employed by the Protocol, tends to focus on the “bad actors” at the expense of underlying and complex global and social economic and political forces.⁵

The major claim of this paper is that States Parties to the Protocol have a *transnational duty* to prevent human trafficking; that under the Protocol States have a shared responsibility to prevent international human trafficking, and this responsibility extends past national borders.⁶ These obligations are stronger than those in human rights treaties and therefore focusing on human rights standards waters down the shared prevention responsibilities. In other words, using the human rights framework to address human trafficking comes with an opportunity cost. Therefore, it should be avoided, at least in the narrow (but important) area of transnational prevention addressing root causes that make people, especially women and children, vulnerable to trafficking.

Article 9 of the Protocol sets out the States Parties’ prevention obligations regarding human trafficking. The language used in this provision is unusually strong. States Parties must establish comprehensive policies to prevent and combat trafficking as well as protect victims of trafficking from revictimization.⁷ States Parties must endeavor to conduct mass media campaigns and other social and economic measures to prevent trafficking within their borders.⁸ They must also establish policies to cooperate with non-governmental organizations, and other civil society groups.⁹ States Parties are obliged to adopt or strengthen educational, social or cultural measures to discourage the demand that fosters human trafficking.¹⁰

Of particular note, and the subject of this paper, is paragraph 9(4) of the Protocol. This provision requires “*States Parties to take or strengthen measures including through bilateral and multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.*” This paper seeks to determine what the intended scope and strength of this provision is, and starts with the hypothesis that the obligations in the Protocol are stronger than the human rights

4. See, e.g., Ankita Patel, *Back to the Drawing Board: Rethinking Protections Available to Victims of Trafficking*, 9 SEATTLE J. FOR SOC. JUST. 813 (2011) (discussing the systematic gaps that allow human trafficking to continue despite efforts to abolish the practice).

5. See Todres, *Importance of Other Rights*, *supra* note 2 (arguing that too heavy a focus on the perpetrators detract attention from other issues such as gender-based violence, various forms of discrimination, birth registration, health, and education, that foster the current climate in which sex trafficking thrives).

6. The terminology of a “shared responsibility” to prevent human trafficking is borrowed from Anne Gallagher in ANNE T. GALLAGHER, *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING* 414 (2010). However, Gallagher argues that the obligations of the Protocol and the human rights regime collectively create this shared responsibility. In contrast, this paper argues that the obligations in the Protocol are stronger than those in human rights treaties, and therefore relying on the human rights framework undercuts the transnational obligations under the Protocol.

7. Protocol, *supra* note 1, at art. 9, ¶ 1.

8. *Id.* at art. 9, ¶ 2.

9. *Id.* at art. 9, ¶ 3.

10. *Id.* at art. 9, ¶ 5.

alternatives.

The particular interpretive query is: *did States Parties intentionally sign themselves up for mandatory transnational obligations to address the root causes of human trafficking in countries of origin?* This paper argues that the intention of States Parties when using the language “take or strengthen measures through bilateral or multilateral cooperation” was to create strong transnational prevention obligations in countries of origin. In so arguing, this paper encourages greater international attention be paid to the shared responsibility to alleviate the root causes of trafficking.

Part II explains why prevention is considered the “end goal” of the fight against human trafficking by politicians, human rights advocates and academics. It goes on to explain what is meant by the “root causes” of trafficking, and what those causes are. Part III outlines the two major frameworks being used to understand and combat human trafficking: the law enforcement and human rights frameworks. This Part explains the strengths and weaknesses of each framework and posits why neither have focused on transnational prevention obligations.

Part IV seeks to interpret paragraph 9(4) according to the interpretation strategy set out in Articles 31 and 32 of the *Vienna Convention of the Law of Treaties* (the “Vienna Convention”).¹¹ The ordinary meaning of the paragraph is interpreted in light of the Protocol’s object and purpose, and in its textual context. It also compares the language of the Protocol to the language regarding international cooperation and prevention that is in the cornerstone human rights treaties.

This Part goes on to examine the subsequent state practice of major destination countries to determine if they are acting as though they have an obligation to prevent trafficking transnationally. It then examines the *travaux préparatoires* of this paragraph, to clarify its intended scope. This interpretive project concludes that 9(4) does indeed create strong transnational obligations on all States Parties to alleviate the root causes of trafficking in countries of origin.

Part V goes beyond the interpretation strategy set out in the Vienna Convention. It presents three reasons why the United States (the “US” or the “United States”) may have introduced this paragraph into the Protocol. Firstly it explains how President Clinton was keen to build a legacy of protecting and promoting women’s rights. This legacy was built over his eight years in office, and was met with considerable political resistance in most areas except human trafficking. As a result, Clinton led the charge of human trafficking and brought the issue to prominence in the international arena.

Second, this Part argues that the United States had already drafted domestic legalization that would require it to establish prevention programs in countries of origin. It posits that the United States introduced this strong obligation in the Protocol in order to ensure other countries of destination shared the burden that the US had already established for itself in domestic legislation. It finally argues that countries of destination including the US have pursued policies of border control externalization. Under this policy, destination countries encourage and

11. Vienna Convention on the Law of Treaties art. 32, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention].

support increased border control in origin and transit countries. This policy could be easily expanded to prevention measures, and may be an additional reason why all the signatory destination countries signed themselves up for these obligations – in order to keep the problem off their territory.

The paper concludes that in the context of transnational prevention programs to address root causes of trafficking, States Parties have strong mandatory obligations. These obligations override the less onerous due diligence obligations imposed under human rights law. However, at this stage the content and details surrounding this rule are unclear. This provision is a skeletal starting point, one that will hopefully be given flesh through further development in this area. By highlighting this overlooked and rough gem, this paper seeks to motivate actors in civil society and government to further develop the notion of a shared responsibility to prevent human trafficking. It calls on the anti-trafficking movement to take future action in this direction.

I. PREVENTION AS END GOAL

Human trafficking is expensive and difficult to police. Today, the trade in human beings is underground and requires new, expensive police training and infrastructure to fight.¹² In addition, the process of rehabilitating a survivor of human trafficking is long, difficult, arduous and expensive.¹³ The physical and psychological effects of human trafficking are severe. Accordingly, there is a growing body of literature and political will towards recognizing prevention as the end goal. Politicians, academics and advocates are highlighting the importance of preventing people from becoming victims of trafficking in the first place.¹⁴

Anne Gallagher, a leading academic in the area of human trafficking, notes that prevention measures address the causes of human trafficking and are generally considered to focus on factors that:

12. See US Dep't of State's Office to Monitor and Combat Trafficking in Persons, *U.S. Government Response*, <http://www.state.gov/j/tip/response/index.htm>, U.S. DEPARTMENT OF STATE, (last visited Apr. 9, 2014) (stating that combating human trafficking requires multidisciplinary efforts, including the efforts of law enforcement agencies).

13. See Jonathan Todres, *Assessing Public Health Strategies for Advancing Child Protection: Human Trafficking as a Case Study*, 21 J.L. & POL'Y 93, 99-100 (2012) (noting that a survivor-centered approach is difficult because agencies will focus on tasks like law enforcement, which are easier to perform and measure, than tasks like rehabilitating survivors).

14. See, e.g., Kalen Fredette, *Revisiting the UN Protocol on Human Trafficking: Striking Balances for More Effective Legislation*, 17 CARDOZO J. INT'L & COMP. L. 101 (2009) (arguing that "curbing rampant human trafficking requires revamping national and international legislation to stimulate multinational cooperation and motivate States to tackle the problems 'root causes,' prosecute offenders, and sponsor new local initiatives for victim prevention, protection and assistance"); Jonathan Todres, *Taking Prevention Seriously: Developing a Comprehensive Response to Child Trafficking and Sexual Exploitation*, 43 VAND. J. TRANSNAT'L L. 1 (2010) (arguing that efforts to eliminate trafficking are ineffective because of an inadequate focus on prevention); Jonathan Todres, *Widening Our Lens: Incorporating Essential Perspectives in the Fight Against Human Trafficking*, 33 MICH. J. INT'L L. 53 (2011) (arguing that states need to place a greater emphasis on prevention of trafficking and attack the problem on both the supply side and demand side); Charles Tucker et al., *An Analysis of Human Trafficking for Sexual Exploitation in Vietnam and a Comprehensive Approach to Combating the Problem*, 16 U.C. DAVIS J. INT'L L. & POL'Y 437 (2009) (discussing initiatives to rehabilitate victims that could be helpful for the Vietnamese government to reduce human trafficking).

- (1) increase *vulnerability* of victims and potential victims;
 - (2) create or sustain a *demand* for the goods and services produced by trafficked persons; and
 - (3) create or sustain a culture where traffickers can operate with *impunity*.¹⁵
- The focus of this paper is on the first category of prevention measures: factors that increase vulnerability of victims and potential victims.

A. Root Causes of Trafficking

Trafficking thrives when governments fail to protect and promote people's civil, political, economic and social rights.¹⁶ The former Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, explains: "In the absence of equal opportunities for education, shelter, food, employment, relief from unpaid domestic and reproductive labour, access to structures of formal State power, and freedom from violence, women will continue to be trafficked."¹⁷

Although not all victims of trafficking are poor, uneducated, unemployed or otherwise vulnerable, effectively addressing the factors that make the majority of potential trafficking victims vulnerable would likely reduce overall trafficking numbers.¹⁸

II. CURRENT LEGAL FRAMEWORKS FOR COMBATTING HUMAN TRAFFICKING

The two major frameworks being used to fight and understand human trafficking are law enforcement and human rights. What follows is a brief description of both the law enforcement framework and the human rights framework as applied to the problem of human trafficking. The purpose of this discussion is to situate the reader in the current international response to trafficking. It is meant to outline the strengths and weaknesses of each approach. By describing what is currently being done, the intention is to highlight the importance of the transnational prevention measures under the Protocol.

A. Law Enforcement Framework

The predominant international approach to human trafficking is focused on law enforcement strategies and techniques. The Protocol is a subset of the convention regarding transnational organized crime¹⁹; a State cannot become a

15. GALLAGHER, *supra* note 6, at 414.

16. Special Rapporteur on Violence Against Women, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, ¶ 55, Econ. and Social Council, U.N. DOC. E/CN.4/2000/68 (Feb. 29, 2000) (by Radhika Coomaraswamy) [hereinafter Coomaraswamy Report]. This report discusses the women in particular, but the discussion on root causes is equally applicable to children and men, as recognized by Coomaraswamy.

17. *Id.* at ¶ 60.

18. See AMY O'NEILL RICHARD, CENTER FOR THE STUDY OF INTELLIGENCE, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME 53-56 (1999) (discussing prevention of trafficking by addressing economic problems like high unemployment among women).

19. United Nations Convention Against Transnational Organized Crime, Dec. 13, 2000, S. TREATY DOC. NO. 108-16, available at <http://www.unodc.org/unodc/treaties/CTOC/>.

party to the Protocol without first signing the convention.²⁰ Human trafficking is accordingly treated as a subset of the fight against transnational organized crime.²¹

Gallagher explains that “[t]he origins of the Trafficking Protocol can be traced back to Argentina’s interest in the issue of trafficking in minors and its dissatisfaction with the slow progress on negotiating an additional protocol to the Convention on the Rights of the Child (CRC) to address child prostitution and child pornography.”²² Argentina was also concerned that the human rights paradigm could not adequately address child prostitution and child pornography and “lobbied strongly for trafficking to be dealt with as part of the broader international attack on transnational organized crime.”²³

Criminalization of trafficking is axiomatic to the law enforcement approach.²⁴ The Protocol focuses on strong state obligations to make trafficking a criminal act in domestic legislation. The number of states that have criminalized trafficking is used as a yardstick to determine how the global community is faring in its war on trafficking in persons.²⁵

This criminal focus brings up many controversial issues regarding the type of behavior that should be considered a crime. Bruch, an law professor and human trafficking scholar notes that this controversy basically centers on the thorny issues of whether prostitution should ever be a legal option; the role of “consent”; and what protections should be afforded to apparently willing participants in “sex work.”²⁶

Another central feature of the Protocol is the strong border control measures. State Parties are required to strengthen border controls in order to detect and prevent trafficking in persons. Regulations must be implemented that prevent the illegal transport of persons on commercial carriers. The Protocol also creates obligations on States Parties to repatriate victims of human trafficking, and to exchange information and issue documentation to this end.

In contrast, the provisions providing protection for victims are thin. Assistance to and protection of victims of trafficking is only required in “appropriate cases and to the extent possible,”²⁷ providing states parties with

20. See Protocol, *supra* note 1, at art. 1(1) (stating that the Protocol supplements the Convention and shall be interpreted “together with the Convention”).

21. Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 STAN J. INT’L L. 1, 14 (2004).

22. Anne Gallagher, *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis*, 23 HUM. RTS. Q. 975, 982 (2001).

23. *Id.*

24. See Bruch, *supra* note 21, at 17 (discussing advantages and disadvantages to a law enforcement approach focused on prosecuting traffickers). See also Kelly E. Hyland, *The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 8 HUM. RTS. BRIEF 30, 31 (“[T]he true force of the document lies in the law enforcement provisions”).

25. For example, every year the US Office to Monitor and Combat Trafficking in Persons issues an annual Trafficking in Persons Report (the “TIP Report”), available at <http://www.state.gov/j/tip/rls/tiprpt/index.htm>. This TIP Report ranks countries and the action they have taken to combat human trafficking on a three-tier system. One of the major factors considered in the report is whether a country has criminalized human trafficking.

26. Bruch, *supra* note 21, at 19.

27. Protocol, *supra* note 1, at art. 6 (1).

enough wiggle room to essentially make the requirement a discretionary one. Temporary resident permits are also left up to the discretion of states, requiring them only to “consider adopting” measures “in appropriate cases.”²⁸ Bruch points out that “[n]ot only is there little protection for victims, but there is also very little role for them to play – other than as subjects of stories that evoke shock and pity – in asserting or protecting their rights and interests.”²⁹

The law enforcement approach provides limited protections for human rights, while simultaneously implicating human rights in several important ways.³⁰ And “[i]n their zeal to combat trafficking, many states adopted laws restricting the freedom of movement of migrants, particularly female migrants.”³¹ States have also made social assistance and residency rights contingent on cooperation with prosecuting traffickers.³²

B. Human Rights Framework

The human rights approach has a subtle but profound difference: the “victims” of human trafficking are seen instead as individuals with inalienable rights simply by virtue of being human. The importance of the human rights framework in the human trafficking discourse should not be ignored. Bruch notes that, “[t]hrough the law enforcement approach has been the dominant framework at the international level,” the human rights approach has become increasingly influential in past decades.³³ Indeed, the international human rights community was the primary international actor with respect to the issue of human trafficking before the creation of the Protocol. Further, many human rights advocates decried the fact that the Protocol is administered by with a law enforcement approach as being inappropriate.³⁴

It is easy to see how human trafficking can be re-conceptualized as a human rights issue. Human trafficking is widely recognized as modern-day slavery.³⁵ While this characterization is not without dissenters,³⁶ there is consensus that

28. *Id.* at art. 7 (1).

29. Bruch, *supra* note 21, at 21.

30. See generally James Hathaway, *The Human Rights Quagmire of “Human Trafficking”*, 49 VA. J. INT’L L. 1 (2008) (discussing ways in which the anti-trafficking movement raises additional human rights concerns).

31. Bruch, *supra* note 21, at 21.

32. For an example, see the T-Visa system in the United States. For a description of this system please see Llezlie Green Coleman, *Procedural Hurdles and Thwarted Efficiency: Immigration Relief in Wage and Hour Collective Actions*, 16 HARV. LATINO L. REV 1 (2013).

33. Bruch, *supra* note 21, at 15.

34. See, e.g., Hathaway, *supra* note 30, at 34 (suggesting that the transnational criminalization of human smuggling raises human rights concerns); Coomaraswamy Report, *supra* note 16, at ¶¶ 42-48 (reviewing human rights concerns including governments’ conflation of illegal human trafficking with illegal migration or smuggling).

35. See President Barack Obama, Remarks by the President to the Clinton Global Initiative (Sept. 25, 2012), available at <http://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative> [hereinafter Remarks by the President] (recognizing how conceptualizing trafficking as “modern-day slavery” can be powerful political rhetoric).

36. See Hathaway, *supra* note 30, at 8 (noting that anti-human trafficking efforts focus on only a small subset of “the slavery problem”).

“the duty to eradicate slavery “attracts no principled dissent.”³⁷ Hathaway points out that the human right to not be enslaved has been recognized by the International Criminal Court as an *erga omnes* norm, which he explains as “an obligation owed by states to the international community as a whole.”³⁸

The violence, abuse, exploitation and discrimination inherent in trafficking implicate many other well-recognized human rights contained in a plethora of widely ratified human rights instruments. Coomaraswamy notes that:

States have a duty to provide protection to trafficked persons pursuant to the Universal Declaration of Human Rights, as well as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Protection of the Rights of Migrant Workers and Members of their Families. . . the Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, and International Labour Organization Conventions No. 29 concerning Forced Labour and No. 105 concerning the Abolition of Forced Labour.³⁹

1. Violence Against Women

Since the 1970’s the anti-trafficking movement has focused on women’s rights under the rubric of violence against women. Bruch notes:

[T]he human rights violations inherent in trafficking have been a point of emphasis in the “second wave” of attention and advocacy – more particularly, it has been considered an issue of women’s human rights . . . As in the law enforcement and labor rights contexts, trafficking is often linked to or conflated with prostitution in human rights discourse, and it is almost always considered under the rubric of “violence against women.”⁴⁰

Violence against women is an important aspect of human trafficking that needs to be given more attention. However, Bruch correctly notes that this approach ignores non-female victims of trafficking as well as the complex set of facts, conditions and rights violations that lead to human trafficking in the first place.⁴¹

By focusing on the issue of violence against women, the human rights community is yet to focus sufficiently on prevention measures. There is a growing grassroots movement in countries of destination fighting to end the demand for sex workers.⁴² However, the human rights community has not

37. *Id.*

38. *Id.*

39. See Coomaraswamy Report, *supra* note 16, at ¶ 20.

40. Bruch, *supra* note 21, at 28.

41. *Id.* at 32.

42. See Stephanie M. Berger, *No End in Sight: Why the “End Demand” Movement is the Wrong Focus for Efforts to Eliminate Human Trafficking*, 35 HARV. J. L & GENDER 523, 544-558 (2012) (describing “End

embraced the idea of a shared responsibility to prevent trafficking in countries of origin.

2. State Responsibility and Due Diligence

Many human rights treaties impose a duty on States Parties to try and prevent human rights abuses inherent in the trafficking of persons.⁴³ This obligation is measured with a “due diligence” standard.⁴⁴ Coomaraswamy explains: “[t]hese duties combine to constitute the State’s duty to act with due diligence to ‘prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted by the damages resulting from the violation’.”⁴⁵

Coomaraswamy highlighted that States must act in good faith to effectively prevent violence against women.⁴⁶ She emphasized that the due diligence standard is not met with the mere enactment of formal legal provisions.⁴⁷ Dr. Yakin Erturk, the Special Rapporteur on violence against women from 2003-2009, notes: “[a]s such, the concept of due diligence provides a yardstick to determine whether a State has met or failed to meet its obligations in combating violence against women. However, there remains a lack of clarity concerning its scope and content.”⁴⁸

It is generally recognized that States have a duty to prevent violence against women, regardless of whether those acts are perpetrated by a State or by private persons.⁴⁹ The extent of this duty is not entirely clear, and is contained mostly in soft law.⁵⁰ The responsibility to discharge due diligence obligations to prevent violence against women, including trafficking, has generally been discharged by the adoption of specific legislation, the development of awareness-raising campaigns and the provision of training for specified professional groups.⁵¹

Demand” movements in Canada, Sweden, and the United States).

43. Coomaraswamy Report, *supra* note 16, at ¶ 20.

44. *Id.* at ¶ 52 (stating that “[i]n addition to being articulated in international instruments themselves, the due diligence standard, as articulated in the Velásquez-Rodriquez case, has been widely accepted as the measure by which State responsibility for violations of human rights by non-State actors is assessed”).

45. *Id.* at ¶ 51.

46. *Id.* at ¶ 53.

47. *Id.*

48. Special Rapporteur on Violence Against Women, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, The Due Diligence Standard as a Tool for the Elimination of Violence Against Women, ¶ 14, Econ. and Social Council, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006) (by Dr. Yakin Erturk) [hereinafter Erturk Report].

49. Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993) urges states, in its article 4(c), to “[e]xercise due diligence to prevent. . . violence against women, whether those acts are perpetrated by the State or by private persons.” See also Erturk Report, *supra* note 48 (quoting the Declaration on the Elimination of Violence against Women).

50. See also Comm. on the Elimination of Discrimination against Women, 11th Sess., General Recommendation No. 19 (1992), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

51. See *id.* (recommending that states enact legislation and raise awareness to change attitudes).

It is clear that in the context of human rights law, there is a duty on states to take some measures to prevent human trafficking and compliance with this duty is measured with the due diligence standard. However, the scope and content of this duty is still unclear. Further, this duty has simply not risen to the level of shared responsibility to address root causes of trafficking in countries of origin.

III. PROPER INTERPRETATION OF 9(4): THE VIENNA CONVENTION

This section of the paper seeks to determine whether all States Parties to the Protocol have a transnational duty to prevent human trafficking in countries of origin. The provision that is the subject of our interpretive inquiry is 9(4), which reads:

States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

The particular interpretive query is: *did States Parties intentionally sign themselves up for mandatory transnational obligations to address the root causes of human trafficking in countries of origin?* In order to answer this interpretive question this paper uses the approach set forth in the Vienna Convention on the Law of Treaties Articles 31 and 32 as a starting point.

A. Ordinary Meaning

When interpreting the words of a treaty, the starting point is the *ordinary meaning* of the terms of the treaty.⁵² The language in a treaty should be given its normal and natural meaning, the interpretation that is standard and commonplace. The “ordinary meaning” rule of statutory interpretation is rooted in the assumption that the drafters intended words to have their common, usual and normal meaning unless a contrary meaning is given. The ultimate goal of treaty interpretation is to discover which obligations, rights and responsibilities the parties to the treaty intended to sign themselves up for. Ascribing the natural meaning to language to discover the likely intended meaning of that language is therefore a reasonable and useful exercise regardless of whether or not it is prescribed by the Vienna Convention.

The object of our inquiry is not a specific word or even a particular phrase, but rather a whole sentence. Specifically, we are seeking to clarify whether and to what extent States Parties intended to sign themselves up for mandatory transnational obligations to establish prevention programs in countries of origin. In examining the ordinary meaning of 9(4) it is useful to separate the provision into its distinct parts, and examine the natural or normal meaning of each part.

1. “States Parties shall take or strengthen measures”

When “shall” is used, it indicates a mandatory obligation. “Shall” imposes an imperative to take or strengthen measures. If the drafters intended for the requirement to “take or strengthen measures” was optional, then “should,”

52. Vienna Convention, *supra* note 11, at art. 31(1).

“may,” or similar non-obligatory language would have been used.

What is the ordinary meaning of “take or strengthen measures”? The Black’s Law Dictionary defines “measures” as: “[c]alculated actions taken to remedy a situation or condition. For example, a company takes appropriate measures to spur its growth by borrowing money from a bank to fund its strategy.”⁵³

Therefore, the States Parties have a mandatory obligation to take calculated actions to remedy a situation or condition. This is a positive and mandatory obligation on all States Parties. The provisions require States Parties to “take or strengthen,” meaning that every state, regardless of the efforts currently in place, is still required to do more to strengthen their measures. The situation or condition that States Parties must take calculated action to remedy is: “the factors that make persons, especially women and children, vulnerable to trafficking.”⁵⁴

2. “including through bilateral or multilateral cooperation”

“Cooperation” is defined as: “the action of cooperating; common effort” and the “association of persons for common benefit.”⁵⁵

This mandatory obligation to take calculated actions must include “bilateral or multilateral cooperation.” If transnational cooperation were not obligatory, the provision would not use such strong language. This is a natural consequence of the ordinary meaning rule of interpretation. For example, the provision could read “including, where appropriate,” or “States Parties should consider including.” Instead, the provision requires States Parties to take measures, and those measures must include bilateral or multilateral cooperation.

An alternate interpretation could find cooperation is encouraged but not necessary. Under this interpretation, if the States Parties wanted prevention obligations to necessarily include transnational efforts, they would have said so explicitly. Verbiage such as “and must include” or “necessarily including” could have been used to indicate this intention. However, this interpretation does not pay due regard to the sentence as a whole.

As the previous discussion concluded, it is plain that the first clause of this provision creates a mandatory obligation on States Parties to take or strengthen measures; the question is whether these measures must include transnational efforts. When faced with this kind of interpretive query, it is important to go back to first principles. Under the ordinary meaning rule, we are to interpret words and phrases in a way that gives them a meaning that is standard and commonplace.

When an imperative order is followed by “including something else,” it is standard to interpret the order as necessarily including that something else, but that something else is not all that is required. Let us take for example an order like: “Danny, you must do your chores, including taking out the garbage.” The commonplace understanding of this phrase would be that Danny is required to

53. *Measures Definition*, THELAWDICTIONARY.COM, <http://thelawdictionary.org/measures/> (last visited Apr. 9, 2014).

54. Discussed below.

55. *Cooperation Definition*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/cooperation> (last visited Apr. 9, 2014).

do his chores, and one of these several chores is taking out the garbage. The something else is a necessary but insufficient condition to satisfying the imperative.

This is the same structure as that used in 9(4). The States Parties are required to take measures, and one of those measures includes bilateral and multilateral cooperation. Therefore, this provision requires States Parties to work together, and this collaboration must be either bilateral, multilateral, or both.

3. “to alleviate the factors that make persons . . . vulnerable to trafficking such as poverty, underdevelopment and lack of equal opportunity”

What is the ordinary or normal meaning of “to alleviate the factors that make persons vulnerable to trafficking”? To “alleviate” is to make a problem or suffering less severe: to allay, soothe, ease mitigate, or relieve.⁵⁶ The ordinary meaning of the verb “to alleviate” falls short of “to fix” or “to solve”; it is rather an action that seeks to lessen or mitigate, rather than eradicate.

The problem that States Parties must seek to make less severe, are “the factors that make persons . . . vulnerable to trafficking.” At this stage of the inquiry, it is important to remain true to the spirit of the ordinary meaning rule, and avoid importing any normative arguments about what ought to count as a factor that makes a person vulnerable to trafficking.

A “factor” is a circumstance, a fact or influence that contributes to a result, the result here being vulnerability to trafficking.⁵⁷ The provision uses factors in plural, signifying that there are more than one circumstance, fact and/ or influence that make a person vulnerable to trafficking. The provision gives examples of the types of factors that should be considered: “*such as poverty, underdevelopment and lack of equal opportunity.*” By providing a list of the types of factors that the States Parties consider make persons vulnerable to trafficking, they have shed light on the types of measures that this provision is meant to mandate.

Factors such as poverty, underdevelopment, and lack of equal opportunity are generally understood as “root causes.”⁵⁸ They are the social and economic factors that make persons vulnerable to trafficking. While the trafficking victim is not necessarily from an impoverished or underdeveloped area, these factors make a person more likely to fall victim to traffickers.

By listing poverty, underdevelopment and lack of equal opportunity, States Parties are essentially explaining that the types of measures meant to be mandated by this provision are social and economic programs that address the commonly understood “root causes” of human trafficking. It is important to highlight that this interpretation is based solely on the natural meaning to be ascribed to the list provided in the provision. This interpretation falls out of the ordinary meaning of the words and phrases used in the provision and the examples provided therein.

56. *Alleviate Definition*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/alleviate> (last visited Apr. 9, 2014).

57. *Factor Definition*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/factor> (last visited Apr. 9, 2014).

58. See Gallagher, *supra* note 22, at 995.

4. “especially women and children”

The provision requires States Parties to take measures to alleviate factors that make persons, especially women and children, vulnerable to trafficking. By highlighting women and children, the provision is emphasizing women and children as a population that is of particular concern to the States Parties. The provision does not exclude other groups of persons, but rather indicates that there is a particular concern and political will to take measures to alleviate the factors that make women and children vulnerable to trafficking.

Seeking to discover the ordinary meaning of a treaty provision is the obvious interpretive starting point. The exercise can seem tedious and elementary, but in examining the natural and normal meaning of words it is possible to glean a good deal of information regarding the intention of the States Parties. “Shall” creates mandatory obligations on the States Parties. This obligation includes the requirement to coordinate with other countries to implement measures. The types of measures that must be implemented are those that alleviate factors such as poverty, underdevelopment and lack of equal opportunity.

B. Object and Purpose

The ordinary meaning of the terms of the treaty should be interpreted in good faith in their context and in light of its object and purpose.⁵⁹ The *Convention Against Transnational Organized Crime* (the “Convention”) is the “parent agreement” to the Protocol.⁶⁰ A State Party cannot become a signatory of the Protocol without first becoming a member of the Convention. The Convention therefore is an essential part of the context in which we must examine when interpreting the provision at issue. Article 1 of the Protocol confirms that the Protocol supplements the Convention and it shall be interpreted together with the Convention. Therefore, when interpreting 9(4) we must consider its context in light of the object and purpose of both the Convention and the Protocol.

1. Object and Purpose of Convention and Protocol

The Convention is basically a multilateral agreement for cooperation in fighting organized crime: “[t]he convention is essentially an instrument of international cooperation—its purpose being to promote interstate cooperation in order to combat transnational organized crime more effectively.”⁶¹

The purpose of the Protocol is two-pronged and set out in Article 2. The first stated purpose is to prevent and combat trafficking in persons, paying particular attention to women and children. The second is to promote and facilitate cooperation among States Parties to this end.⁶²

When assessing the meaning of the provision at issue, we must ensure that the ordinary meanings of the words used are not contrary to the object and

59. Vienna Convention, *supra* note 11, at art. 31(1).

60. Gallagher, *supra* note 22, at 977.

61. *Id.* at 978.

62. *Id.* at 983.

purpose of the Convention or the Protocol. The stated purpose of the Convention is international cooperation in combatting transnational organized crime. The stated purpose of the Protocol is to prevent and combat trafficking, while simultaneously facilitating cooperation among states parties to this end.

Interpreting 9(4) as including a transnational obligation to establish prevention programs in countries of origin is consonant with the stated purpose of both the Convention and the Protocol. Both agreements are seeking to increase international cooperation and promote creative and effective responses to transnational organized crime. A transnational duty to prevent does not offend these high level objectives; indeed, it supports the stated purpose of both the Convention and the Protocol.

C. Contextual Interpretation

According to the Vienna Convention, the ordinary meaning of the terms of the treaty should be interpreted in good faith in their context.⁶³ The context of a treaty includes its text, preamble and annexes.⁶⁴ As is demonstrated below, the text of both the Convention and the Protocol support an interpretation of 9(4) that includes a strong transnational duty to prevent human trafficking in countries of origin.

The Convention also creates mandatory transnational obligations on States Parties to address the factors that render socially marginalized groups vulnerable to exploitation by organized crime. Further, an examination of the language of other provisions of the Protocol supports this paper's interpretation of 9(4). The verbiage used in 9(4) resembles the strong obligatory language in the provisions requiring criminalization of trafficking, increased cooperation at borders and information exchange. These provisions are at the very heart of the Protocol. It is argued herein that similar language in 9(4) supports the interpretation that transnational prevention was also intended to create strong, mandatory, and positive obligations for States Parties under the Protocol.

1. The Convention

The Convention is the "parent agreement" to the Protocol. Accordingly, it is appropriate to examine the Convention's provisions dealing with transnational prevention obligations to see if they support a notion of mandatory transnational obligations with respect to trafficking in persons. If there are strong obligations in the Convention for transnational, social, and economic measures to prevent organized crime, this would obviously support the interpretation of 9(4) being set forth herein.

Article 31 of the Convention sets out the obligations and responsibilities that States Parties have to prevent transnational organized crime. The list of prevention obligations is outlined in Annex I. This long list of prevention obligations evinces the central role that prevention has in this Convention. However, as a textual matter there are several other important points to be made with respect to this article.

63. Vienna Convention, *supra* note 11, at art. 31(1).

64. *Id.* at art. 31(2).

2. "Shall, as appropriate"

First, the obligation regarding transnational social and economic prevention measures is listed at 31.7. The language used in 31.7 is "*States Parties shall, as appropriate. . .*" The article goes on to explain roughly what appropriate action is, detailing that this obligation includes transnational and international collaboration to promote and develop measures. The type of measures referred to in this article include "*participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to transnational organized crime.*"

The language used in the Convention dealing with transnational prevention obligations is strikingly similar to the language used in 9(4) of the Protocol. It is easy to recognize that the two agreements are related, and that the provisions of the Convention are broader, allowing for specific obligations to be set forth in the Protocol. Both agreements speak of "international programs" and "bilateral and multilateral cooperation" which is aimed at "alleviating" the circumstances or factors that make persons including "socially marginalized groups" and "especially women and children" "vulnerable" to the "action of transnational organized crime" and "trafficking."

The language in the two provisions are so similar that it is reasonable to conclude that the specific obligations in 9(4) of the Protocol are meant to add flesh to the broader prevention obligations set forth in the Convention. The fact that these strong overarching obligations can be found in the Protocol's parent agreement supports an interpretation of 9(4) that includes strong mandatory transnational prevention duties.

3. The Protocol

The Preamble of the Protocol declares that "effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in countries of origin, transit and destination that includes measures to prevent such trafficking."⁶⁵

The preamble reiterates that prevention of human trafficking is a central goal of the Protocol, and that the approach used to prevent trafficking must be comprehensive and international, including measures in countries of origin, transit and destination. Admittedly, this declaration does not explicitly state that States Parties have a shared responsibility to prevent trafficking in countries of origin. However, the preamble does reiterate the central role that prevention has, and the need for a "comprehensive international approach." Transnational prevention obligations are consistent with a comprehensive international approach to prevent trafficking in persons.

As stated above, there are two main purposes of the Protocol: to prevent and combat trafficking in persons, paying particular attention to women and children⁶⁶, and to promote cooperation among States Parties to meet these

65. Protocol, *supra* note 1, at Preamble.

66. Protocol, *supra* note 1, at art. 2(a).

objectives.⁶⁷

A shared responsibility to prevent human trafficking in countries of origin is in agreement with these stated purposes. Cooperation among States Parties is to be encouraged to prevent trafficking. Cooperation is by no means synonymous with transnational prevention obligations; however, a notion of shared responsibility to prevent human trafficking is nonetheless consistent with the cooperative spirit of the Protocol.

There are several provisions in the Protocol that charge states with obligations. As discussed above, these obligations relate to criminalization, border control, repatriation, victim protection, prevention, information exchange and immigration matters. Annex II sets out the language used in each of these provisions. Several important conclusions can be drawn when examining the charging language of the Protocol as a whole:

Obligations related to assistance for victims of trafficking are weak, employing language such as “in appropriate cases and to the extent possible,” and “shall consider.”

The provisions regarding immigration matters are also weak, using charging provisions such as “shall consider permitting,” “shall give due regard” and “shall take measures as may be necessary within available means.”

Those provisions that create obligations on States Parties to cooperate in the repatriation of victims are strong, using language such as “shall facilitate and accept,” “shall agree to issue” and “shall establish.”

States have strong obligations to criminalize trafficking. The language used to create these strong obligations includes “shall as appropriate” and “shall adopt measures.”

States have strong obligations to exchange information and provide training to law enforcement and immigration officials. The language used to create these strong obligations includes “shall as appropriate,” “shall provide or strengthen” and “shall comply.”

States have strong obligations to take border control measures, these obligations are created with the following language: “shall strengthen to the extent possible,” “shall adopt measures” and “measures shall include establishing.”

States have strong obligations to prevent trafficking. The language used in these provisions include “shall establish” and “shall take or strengthen.”

The interpretive task at this stage of the analysis is to examine the text of the Protocol to determine whether the plain interpretation (above) is supported by the textual context of the Protocol. What the above analysis makes clear is that provisions related to criminalization, border control, cooperation in repatriation, prevention, and information exchange are strong. The charging language used with respect to transnational prevention obligations is at least as strong as that language creating obligations to criminalize, which is at the heart of the Protocol. This tends to confirm that States Parties intended to create strong mandatory obligations to prevent trafficking transnationally.

In addition to the context of the Protocol and the Convention, examining co-

67. *Id.* at 2(c).

operation language in relevant human rights treaties can provide further information regarding the relative strength of 9(4). Those Conventions that include international co-operation provisions, or prevention obligations, are listed in Annex III. A summary of the most relevant provisions are listed below:

The Universal Declaration recognizes a right to social security as a member of society and requires international cooperation to realize this right.

States Parties to the ICESCR undertake to cooperate internationally with a view progressively realizing the economic, social and cultural rights set out in the ICESCR.

Similar to the ICESCR, the CRC requires States Parties to realize the economic, social and cultural rights of children progressively, and within the framework of international cooperation, where needed.

The CRC requires States Parties to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form.

The prevention obligations in the CAT are purely national.

The Migrant Workers Convention requires States Parties, including States of transit, to collaborate with a view to preventing and eliminating illegal or clandestine movements and the employment of migrant workers in irregular situations.

The Slavery Convention requires States Parties to exchange information and cooperate in the realization of the provisions of the Slavery Convention.

States recognize the economic barriers that some countries face in recognizing economic, social and cultural rights. Not all States have equal resources and this reality is dealt with in the ICESCR and CRC when States Parties undertake to cooperate internationally with a view to realizing people's economic, social and cultural rights. It is interesting that in both conventions, the provisions related to international cooperation use the language of an "undertaking" rather than imposing a duty with "shall." An "undertaking" is a promise to do something, to guarantee some action is taken.⁶⁸ "Shall" on the other hand is an imperative, a command to do what is set out in the legislation.⁶⁹

Only in relation to trafficking is the language "shall" used in the human rights treaties demonstrating that in relation to trafficking, there is a greater political willingness to include transnational prevention obligations. The CRC requires States Parties to take all appropriate national, bilateral, and multilateral measures to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form. This provision does not list "root causes" and would not apply to trafficking victims who are over 18 years of age. However, it does appear to provide an additional obligation on States Parties to undertake transnational prevention measures to stop the trafficking of children.

68. *Undertaking Definition*, THELAWDICTIONARY.COM, <http://thelawdictionary.org/undertaking/> (last visited Apr. 9, 2014).

69. *Shall Definition*, THELAWDICTIONARY.COM, <http://thelawdictionary.org/shall/> (last visited Feb. 2, 2014).

D. Subsequent State Practice

When interpreting a treaty, the Vienna Convention confirms that subsequent state practice that establishes what the agreement was between the States Parties can be taken into account: "There shall be taken into account, together with the context: any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation."⁷⁰ Therefore, if States Parties are acting as though they do have transnational prevention obligations arising from the Protocol, this will evidence their intention to be bound by mandatory obligations in Article 9(4).

This section reviews transnational prevention programs and initiatives that the major countries of destination have implemented since ratifying the Protocol. The countries or regions that are discussed are: Australia, Canada, Europe and the United States.⁷¹ The purpose of this analysis is to seek to establish whether these countries have been operating on the assumption that they have shared responsibility to prevent trafficking in countries of origin.

Admittedly this interpretive approach requires a logical leap that some readers may find troubling. We must assume the State Party considers itself legally bound by international law rather than simply morally bound or motivated by domestic politics. Accordingly, the State practice explained below does not confirm nor deny what the motivation for this practice was. The fact that these practices were only introduced after the creation of the Protocol tends to support the contention that these States considered themselves legally bound by the Protocol. However, admittedly this connection is tenuous and could also be explained by politics or even a subjective moral imperative.

1. Australia

In October of 2003, the Australian Government announced a \$20.5 million AUD package of measures to combat people trafficking. The announcement "foreshadowed the development of the *Australian Government's Action Plan to Eradicate Trafficking in Persons*."⁷² This Australian Action Plan was published in June of 2004. In May 2007, the Australian Government allocated a further \$38.3 million AUD over four years to continue and build on the 2003 measures.⁷³

One of the stated objectives of the Australian Action Plan is to combat poverty and enhance human security by cooperating with Eastern European partner countries in the field of prevention.⁷⁴ This includes the promotion and

70. Vienna Convention, *supra* note 11, at art. 31(3)(b).

71. These countries are widely recognized as being the major countries of destination, see Coomaraswamy Report, *supra* note 16, at ¶ 70.

72. National Audit Office, The Auditor General, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Audit Report No. 30 2008-09 (2009) 12 (Austl), available at http://www.anao.gov.au/uploads/documents/2008-09_Audit_Report_30.pdf. R. 20.1, 18.2.3, 4.2, Australian Guide to Legal Citation at <http://www.law.unimelb.edu.au/files/dmfile/FinalOnlinePDF-2012Reprint.pdf>

73. *Id.*

74. Anti-People Trafficking Interdepartmental Committee, Inaugural Report, *Trafficking in Persons, The Australian Government Response (January 2004 - April 2009)* (2009) (Austl), see Objective 2 of the Action Plan, available online, <http://www.protectionproject.org/wp-content/uploads/2010/11/NAP-Australia-2004-2009.pdf>.

development of projects regarding the implementation of preventative measures, which include awareness-raising campaigns, as well as the promotion of the economic activities of vulnerable groups.⁷⁵

The Australian Government's Action Plan states a transnational prevention program as one of its objectives. It goes on to clarify that these transnational prevention programs include more than awareness-raising: they also include development activities for vulnerable groups.

2. Canada

Canada published a National Action Plan to Combat Human Trafficking in 2012.⁷⁶ The Canadian Action Plan states that: "[t]he Government of Canada recognizes the importance of developing holistic strategies that address the root causes and risk factors that can lead to human trafficking and related forms of exploitation, and that will assist in reducing the levels of victimization and the harms associated with it."⁷⁷

Canada will seek to prevent human trafficking internationally. The Canadian government has explicitly stated that their actions are motivated by the provisions of the Protocol:

Canada was among the first countries to ratify the Protocol, "Our efforts are guided by this Trafficking Protocol and through a 4 pillar approach [that] seeks to prevent trafficking from occurring, protect victims of human trafficking, bring its perpetrators to justice and build partnerships domestically and internationally."⁷⁸ Under the Children and Youth Strategy, the Canadian Government supports a range of programs, which address the factors that make children and youth vulnerable to human trafficking. These include investments in health and education, and programs to ensure that schools are safe and free from violence and which protect the human rights of children and youth. Through this Strategy, the Government of Canada will support international partners to increase capacity to prevent and combat human trafficking by developing tools, resources and by providing training to properly equip partners to review and design programs with consideration of unsafe migration and human trafficking risks; ensuring investments include support for community-based women and youth protection mechanisms; ensuring investments in education include the systematic incorporation of curriculums that tackle safe migration and human trafficking scenarios; and, ensuring birth registration is included and promoted in bilateral partners' frameworks and throughout programming.⁷⁹

The Canadian Government recognizes the importance of addressing root

75. *Id.* at VIII.4 of the Action Plan (emphasis added).

76. Government of Canada, *National Action Plan to Combat Human Trafficking* (2012), available at <http://www.publicsafety.gc.ca/cnt/cntrng-crm/hmn-trffckng/fndng-prgrms-eng.aspx>. [hereinafter Canadian Action Plan].R. 18.2.3, 4.2 S.C.

77. *Id.* at 11.

78. *Human Trafficking, Government Response to Trafficking*, PUB. SAFETY CAN., <http://www.publicsafety.gc.ca/cnt/cntrng-crm/hmn-trffckng/index-eng.aspx> (last visited Apr. 6, 2014).

79. Canadian Action Plan, *supra* note 75, at 12.

causes and risk factors that lead to human trafficking. Further, the programs envisioned by the Canadian Government include transnational prevention programs in countries of origin. Canada is acting as though it has a shared responsibility to prevent trafficking in countries of origin, although the motivations for these actions are nebulous.

3. Europe

The Council of the European Union published a notice on the "EU plan on best practices and procedures for combating and preventing trafficking in human beings" in 2005.⁸⁰ The EU Best Practices states that "EU action should be focused on improving our collective understanding of the issues and joining up our efforts to maximize our effectiveness"⁸¹ and that "action at EU level requires permanent improvement of the . . . understanding . . . the root causes in countries of origin . . . This is fundamental to designing a strategy to prevent and combat trafficking."⁸²

The EU Best Practices goes on to state that Member States should act at a wider international level on prevention strategies specific to vulnerable groups such as women and children⁸³ and that anti-poverty strategies should be an integral part of the anti-trafficking strategies.⁸⁴ The EU Best Practices also calls for regional solutions to prevent human trafficking, and that Member States should continue to promote regional initiatives that compliment and inspire EU wide cooperation in the prevention of human trafficking.⁸⁵

The Committee of Ministers of the Council of Europe adopted three legal texts addressing trafficking in human beings for sexual exploitation.⁸⁶ As Gallagher explains: "Together, these instruments proposed a comprehensive strategy to deal with trafficking throughout and beyond Europe, focusing on harmonization of definitions, research, criminal justice measures, assistance to victims, and international cooperation."⁸⁷ Two of these legal texts were adopted after the introduction of the Protocol.⁸⁸ Both of these legal texts explicitly recognize the provisions of the Protocol as a source of legal obligation, which is motivating the European policy on human trafficking.

The European Union has published its policy on prevention of human

80. GALLAGHER, *supra* note 6 for more information on these provisions.

81. EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings, 2005 O.J. (C 311) at 1.

82. *Id.*

83. *Id.*

84. *Id.* at 2.

85. *Id.* at 3.

86. Eur. Consult. Ass., *Recommendation of the Comm. Of Ministers*, 710th Meeting., Doc. No. R (2000) 11 (2000), available at <https://wcd.coe.int/ViewDoc.jsp?id=355371>; Eur. Consult. Ass., *Recommendation of the Comm. Of Ministers*, 771st Meeting, Doc. No. Rec (2001) 16 (2001), available at <https://wcd.coe.int/ViewDoc.jsp?id=234247> [hereinafter *Recommendation Rec (2001) 16*]; Eur. Consult. Ass., *Recommendation of the Comm. Of Ministers*, 794th Meeting, Doc. No. Rec (2002) 5 (2002), available at <https://wcd.coe.int/ViewDoc.jsp?id=280915> [hereinafter *Recommendation Rec (2002) 5*]. See GALLAGHER, *supra* note 6 (providing a summary of the documents developed by the Council of Europe's Committee of Ministers).

87. GALLAGHER, *supra* note 6, at 111.

88. *Recommendation Rec (2001) 16, supra* note 85; *Recommendation Rec (2002) 5, supra* note 85.

trafficking in its Best Practices, as well as in other documents addressing trafficking.⁸⁹ What these documents evidence is that the EU considers transnational cooperation in the prevention of human trafficking to be a key component of the overall EU approach to fighting trafficking. Further, the EU explicitly stated in two of its legal texts that the obligations under the Protocol are motivating their policy in the area of transnational prevention.

4. United States

The United States went one step further than the policies outlined above. The US included transnational duties to prevent root causes in countries of origin in its domestic trafficking legislation.⁹⁰ The provision requires the President to establish and carry out international initiatives to enhance economic opportunities for potential victims of trafficking as a method to deter trafficking.⁹¹ These initiatives may include:

- (1) microcredit lending programs, training in business development, skills training and job counseling;
- (2) programs to promote women's participation in economic decision making;
- (3) programs to keep children, especially girls, in elementary and secondary schools and to educate persons who have been victims of trafficking;
- (4) development of educational curricula regarding the dangers of trafficking; and
- (5) grants to nongovernmental organizations to accelerate and advance the political, economic, social and educational roles and capacities of women in their countries.⁹²

The Office to Monitor and Combat Trafficking in Persons manages the only foreign assistance program dedicated solely to combating human trafficking outside of the United States. The Department of State's Trafficking in Persons Report, published annually in June, provides a diagnostic assessment of the efforts of more than 180 governments to combat trafficking, slavery and exploitation, and is strategically linked to our anti-trafficking foreign assistance priorities.⁹³

The Office conducts an annual open and competitive grant application and review process. By the end of the 2012 competition for funding, the Office

89. See *supra* notes 80-84 and accompanying text (discussing the European Union's best practices).

90. See Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7104 (2006) (directing the President to establish "international initiatives to enhance economic opportunity for potential victims of trafficking.").

91. §7104(a).

92. *Id.*

93. For a description of this office and their activities please see U.S. Dep't of State's Office to Monitor and Combat Trafficking in Persons, *About Us*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/j/tip/about/index.htm> (last visited Feb. 14, 2014). To read more about their Trafficking in Persons reports, see U.S. Dep't of State's Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/j/tip/rls/tiprpt/index.htm> (last visited Feb. 14, 2014).

received more than 500 applications requesting more than \$280 million in assistance - far more than the US could support. By the end of 2012, the Office awarded a total of nearly \$17.7 million to fund 40 grants. Annex III sets out the grants issued in 2012 by the US Government that establish transnational prevention programs.

Thus, major countries of destination have been implementing transnational prevention programs. These programs were only created after the Protocol came into force. Therefore, these programs may have been created pursuant to the obligations set out in 9(4). However, it is difficult to determine why these programs were created and so their existence is of limited assistance.

E. *Travaux Préparatoires* of Article 9(4)

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion. This inquiry can be undertaken in order to confirm the meaning resulting from the *travaux préparatoires* for the Convention and Protocol. The *travaux préparatoires* may also be used to confirm whether States Parties intended to sign themselves up for transnational prevention obligations.

1. General Background to the Negotiations

The General Assembly of the United Nations established an intergovernmental, ad-hoc committee to develop a new international legal regime to fight transnational organized crime in 1998.⁹⁴ After eleven sessions involving the participation of over 120 states, the ad-hoc committee finished its work in October 2000.⁹⁵ The work of this ad-hoc committee culminated in the creation of the Convention, the Protocol, as well as two additional protocols: one on smuggling of migrants⁹⁶ and one on the trafficking of firearms.⁹⁷

2. Introduction of 9(4)

Interestingly, the draft Protocol did not contain transnational prevention obligations until the eleventh session. On September 24, 2000, at the very end of the negotiations on the Protocol, the United States introduced the following

94. G.A. Res. 53/111, U.N. GAOR, 53d Sess., 85th plen. mtg., U.N. Doc. A/RES/53/111 (Jan. 20, 1999). See also GALLAGHER, *supra* note 22, at 1 (describing author's participation in the committee). R. 21.7.2 S.C.

95. Rep. of the Ad Hoc Comm. on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions, 11th Sess., Oct. 2-28, 2000, U.N. Doc. A/55/383; GAOR, 55th Sess., Agenda Item 105 (Nov. 2, 2000) [hereinafter Rep. Of the Ad Hoc Comm. on Transnational Organized Crime]. See also, Gallagher, *supra* note 22, at 1.

96. Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25 (III), U.N. GAOR, 55th Sess., Supp. No. 49, U.N. Doc. A/45/49 (Vol. I), at 40 (Nov. 15, 2000), available at http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf.

97. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, adopted by G.A. Res 55/255, U.N. GAOR, 55th Sess., U.N. Doc. A/Res/55/255 (May 31, 2001), available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/A-RES%2055-255/55r255e.pdf>.

additions to the prevention provisions:

4. States Parties, whether they are countries of origin, transit or destination shall take measures to address the root factors that encourage trafficking in persons, such as poverty, underdevelopment and lack of equal opportunity,
5. States Parties, whether they are countries of origin, transit, or destination, shall take measures, such as educational, social, or cultural measures, to discourage the demand that nurtures the exploitation of persons
6. States Parties shall take such measures as may be necessary to prevent and prohibit anyone from knowingly transporting a person across an international border for the purpose of the exploitation or the prostitution of others.⁹⁸

The first point to highlight about the introduction of this provision is the fact that the United States put it forward. The United States is widely recognized as being a major destination country for human trafficking. For the US to suggest an obligation on all States Parties to address the root factors that encourage trafficking including poverty, underdevelopment and lack of equal opportunity is significant. This provision was put forward by one of the major countries of destination, one that wields significant political sway. The reasons why the United States might have put forward this amendment are discussed in the following section. However, at this stage it is salient to note that the United States was acting intentionally when it proposed adding transnational prevention obligations into the Protocol at the eleventh hour.

The wording of the proposed addition sheds light on the intended meaning of the provision that was ultimately adopted. The proposal requires all States Parties “whether they are countries of origin, transit or destination” to take measures to “address the root factors that encourage trafficking in persons, such as poverty, underdevelopment and lack of equal opportunity.”⁹⁹ This proposal clearly creates shared responsibilities on States Parties to address the root causes of trafficking. Both provisions contain the same list of root causes of trafficking that these transnational measures should address. This confirms that this provision is aimed at prevention programs in countries of origin that address the root causes of trafficking, especially for women and children.

There are several differences between the proposed text and the verbiage that was eventually accepted. The provision that was ultimately adopted arguably creates stronger obligations because it obliges States Parties to “take or strengthen,” rather than just to “take.” The adopted text also clarifies that the measures should “include bilateral or multilateral cooperation.” The proposed text did not explicitly require States Parties to cooperate, but rather mandated all States Parties, regardless of whether they are countries of origin, transit, or destination, to address root factors.

An alternate analysis might find the *proposed addition* provides for stronger

98. Proposals and contributions received from Governments, United States of America: amendments to article 10 of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, U.N. Doc. A/AC.254/5/Add.33 (Sept. 25, 2000), available at <https://www.unodc.org/unodc/en/treaties/CTOC/background/session11.html>.

99. *Id.*

transnational obligations than the wording that was actually adopted – by explicitly stating that countries of origin, transit and destination must address root causes such as poverty, underdevelopment and lack of equal opportunity. The question is how much turns on the change from addressing countries of origin, transit and destination to obliging all States Parties to include bilateral and multilateral cooperation. Both interpretations are reasonable. However, on a balance, regardless of which provision is stronger, arguably both are strong enough to create mandatory transnational obligations on States Parties.

The Notes of the Secretariat on this proposal indicate that:

At the eighth session of the Ad Hoc Committee the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children’s Fund and the International Organization for Migration proposed that reference could usefully be made to the steps that could be taken by States Parties to address the root causes of trafficking, including economic factors, social factors, political and legal factors and international factors.¹⁰⁰

At the Eleventh Session, the Ad Hoc Committee considered, finalized and approved article 10, as amended with the inclusion of two additional paragraphs based on the a proposal submitted by the United States and on a similar proposal submitted by China. The last amendments are included in the Protocol that was submitted to the General Assembly for adoption.¹⁰¹

Surprisingly, this addition was met with very little discussion and no objections. There were 120 states represented at the eleventh session when this provision was introduced. All the states had an opportunity to speak to this proposal during the concluding remarks of the ad-hoc committee. None of the states voiced any concerns about the proposed addition. This silence on behalf of the States Parties, coupled with the opportunity to speak, makes it reasonable to conclude that the States Parties acquiesced in the addition of transnational prevention obligations.

In Sum: Subsequent state practice demonstrates that states have implemented novel transnational programs since the Protocol came into force. However (except for perhaps the EU who specifically cite the Protocol as a reason for acting), we cannot know whether states are acting because they feel legally obliged to under the Protocol, or for some other reason. Further, the discussion of this provision at the negotiations of the Protocol is sparse, and does not confirm nor deny the position of this paper.

Under the general interpretation principles set forth in the Vienna Convention, Articles 31 and 32, the starting point is the ordinary meaning of the

100. U.N. Office on Drugs and Crime, *Travaux préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, (2005) available at <https://cms.unov.org/documentrepositoryindexer/GetDocInOriginalFormat.drsx?DocID=e1123e02-eb43-40ee-b24a-22532e686769>.

101. Rep. of the Ad Hoc Comm. on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions, Addendum, Interpretive notes for the official records (*travaux préparatoires*) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, 398, U.N. Doc A/55/383/Add.1 (Nov. 3, 2000), available at http://www.unodc.org/pdf/crime/final_instruments/383a1e.pdf.

words and phrases.¹⁰² If this interpretive method results in ambiguities, the next stage is to examine subsequent state practice and the *travaux préparatoires* which document the negotiations leading up to the conclusion of the agreement. The plain language of the provision clearly indicates a mandatory transnational obligation and arguably there is no ambiguity. If there is no ambiguity, there is no need to resort to subsequent state practice or the negotiations. When these sources are examined, they do not contradict the interpretation set forth in this paper. Therefore, the fact that these sources are inconclusive is not determinative.

IV. POSSIBLE MOTIVATIONS OF THE UNITED STATES

The above interpretation is based on the approach set forth in the Vienna Convention on the Law of Treaties. This paper has sought to establish that the ordinary meaning of the provision plainly creates a shared responsibility on states to prevent human trafficking in countries of origin. The object and purpose of both the Convention and the Protocol and the text of both instruments support this interpretation. The subsequent practice of major countries of destination and the *travaux préparatoires* arguably support this interpretation, but this analysis is not determinative given the difficulty of gleaning intentionality from state practice, and the lack of definite statements in the *travaux préparatoires*.¹⁰³

Some readers may find this conclusion troubling, even perplexing. It may seem counterintuitive and contrary to the typical reluctance of developed countries, and particularly the United States, to sign themselves up for positive obligations to prevent human rights abuses in other countries. These readers would be absolutely correct. If this paper's interpretation of 9(4) is correct, it is significantly more robust than the current notions of state responsibility in human rights law.

This section of the paper explores the possible motivations for this unusual behavior. It sets out two reasons why the Clinton Administration may have decided to introduce this shared responsibility canvassed above: a desire to share this burden with other destination countries and the creation of a presidential legacy.¹⁰⁴ This argument obviously involves conjecture: it is impossible to know exactly why the US introduced this section in the eleventh hour. However, all statutory interpretation, whether international or domestic, involves speculation and conjecture into political motivations of the drafters. A good interpretation will be one rooted in logical connections that evidence the likely motivation of a particular political actor. The possible motivations canvassed below explain why the US may have wanted to create this strong transnational responsibility.

A. A Presidential Legacy

President William Jefferson Clinton made a campaign promise to further the

102. Vienna Convention, *supra* note 11, at art. 31.

103. Vienna Convention, *supra* note 11, at art. 32.

104. Susan Tiefenbrun, *The Cultural, Political, and Legal Climate Behind the Fight to Stop Trafficking in Women: William J. Clinton's Legacy to Women's Rights*, 12 *CARDOZO J.L. & GENDER* 855, 856-57 (2006) [hereinafter Tiefenbrun].

rights of women and during Clinton's eight years as President: "he supported legislation that would fulfill his promises to advance women's rights and to enhance women's image and role in society."¹⁰⁵

The Clinton Administration left an "extensive and unprecedented legacy to the furtherance of women's rights."¹⁰⁶ This legacy is evidenced by the appointment of women to positions of high office in the executive branch of the government¹⁰⁷ as well as the judiciary¹⁰⁸, the promulgation of domestic legislation¹⁰⁹ and this all arguably culminated in the passing of the *Trafficking Victims Protection Act* (TVPA) in 2000.

Tiefenbrun states that "[t]he Clinton Administration left a legacy to the valorization of women and to the enhancement of women's rights by adopting a multi-pronged cultural, political, and judicial approach that has had a direct impact in the United States and an indirect effect abroad."¹¹⁰

This international effect can be felt most acutely in the area of human trafficking, which is evidenced both by the TVPA and the US involvement in the adoption of the Protocol. The TVPA contains multilateral efforts to combat trafficking in persons "and should be recognized. . .for its multilateral efforts to work with other nations where poverty, poor education and cultural barriers to

105. *Id.* at 857.

106. *Id.*

107. *Id.* at 858-59 ("During the Clinton Administration, the cabinet was composed of fourteen executive departments, each headed by a Secretary. The five women appointed to the cabinet by Clinton include: Madeline K. Albright, Secretary of State, 1997- 2001; Janet Reno, Attorney General, 1993-2001; Alexis M. Herman, Secretary of Labor, 1997-2001; Donna E. Shalala, Secretary of Health and Human Services, 1993-2001; and Hazel R. O'Leary, Secretary of Energy, 1993-1997. In addition to the five women appointed to cabinet positions, Clinton also named eight women to departments in high-ranking cabinet-level positions. They include: Madeleine K. Albright, U.N. Ambassador, 1993-1997; Aida Alvarez, Administrator, Small Business Administration, 1997-2001; Charlene Barshefsky, U.S. Trade Representative, 1997-2001; Carol M. Browner, Administrator, Environmental Protection Agency, 1993-2001; Janice R. Lachance, Director, Office of Personnel Management, 1997-2001; Alice M. Rivlin, Director, Office of Management and Budget, 1994-1996; Laura D'Andrea Tyson, Chair, National Economic Council, 1995-1997; and Janet L. Yellen, Chair, Council of Economic Advisors, 1997-1999.").

108. *Id.* at 860-61 ("During his tenure as President, Clinton successfully appointed a total of three hundred and seventy-eight persons to various levels of the federal bench, one hundred and thirteen of whom were women. The number of Clinton's female judicial appointees is greater than the preceding three administrations combined.").

109. Tiefenbrun outlines the domestic legislation that the Clinton Administration introduced that advanced women's rights in Part II of her paper. These include: The Family and Medical Leave Act of 1993 (FMLA), Women's History Month Proclamation, National Institutes of Health Revitalization Act of 1993 (NIHRA), National Women's Health Resources Center, Washington D.C., Small Business Guaranteed Credit Enhancement Act of 1993, National Breast Cancer Awareness Month Proclamation, Stamp Out Breast Cancer Act, National Mammography Day Proclamation, Mammography Quality Standards Reauthorization Act of 1998, National Women Veterans Recognition Week Proclamation, Preventive Health Amendments of 1993, Freedom of Access to Clinic Entrances Act of 1994, Violence Against Women Act (VAWA), Women's Educational Equity Act, Women's Health and Cancer Rights Act, Women's Health Research and Prevention Amendments of 1988, Women's Progress Commemoration Act, Women's Business Centers Amendments Act of 1999, Women's Business Centers Sustainability Act of 1999, Breast and Cervical Cancer Prevention and Treatment Act of 2000, and as discussed below the Trafficking Victims Protection Act. *Id.* at 862-69.

110. *Id.* at 855.

women's equality foster trafficking in women."¹¹¹ The Clinton Administration galvanized support for the Protocol and it is fair to conclude as Tiefenbrun does that "[t]rafficking had never effectively been addressed until the Clinton Administration focused world-wide attention on this international crime."¹¹²

This legacy was built against considerable political resistance. As outlined by Tiefenbrun, the appointment of women to high offices and judicial offices was especially contested.¹¹³ Further, President Clinton's *Violence Against Women Act* did not survive a constitutional challenge.¹¹⁴ Yet President Clinton continued his fight for women's rights, and reintroduced the VAWA in the TVPA in 2000. This introduction has not been subsequently challenged. In fact, it was promoted and advanced by the subsequent Bush Administration who introduced subsequent amendments to the TVPA in 2003 and 2005.¹¹⁵ The issue of human trafficking enjoys an unusual level of bipartisan support in domestic American politics, which undoubtedly allowed the Clinton Administration to make the huge strides it did on the issue of human trafficking.¹¹⁶

This legacy was recognized by (then) Senator Hillary Clinton in a 2004 congressional speech in which she stated "No country has done more than the United States to bring worldwide trafficking out of the shadows and into the glare of public attention, and I am committed to doing whatever I can to help continue that leadership."

She also stated, "Root causes such as economic deprivation demand and warrant growing attention. There are no short-term fixes. The incidence of re-trafficking among children, many who have attempted to flee homes of violence and abuse or have been sold by their families, must be addressed."¹¹⁷

President Clinton has continued to advance his fight against human trafficking after leaving office. In 2005 President Clinton established the Clinton Global Initiative (CGI) which is an organization that convenes global leaders to "create and implement innovative solutions" to global challenges. CGI holds annual meetings where heads of state, Nobel Prize laureates, leading CEOs, heads of NGOs and philanthropists meet. To date these participants have made commitments valued at more than \$88¹¹⁸ billion dollars.¹¹⁹ In 2012 the issue that CGI focused on was human trafficking. To galvanize support for this issue President Clinton had President Barack Obama speak on the US support for this cause.¹²⁰

In Sum: Clinton's presidential campaign focused on advancing women's

111. *Id.* at 877.

112. *Id.* at 855.

113. *Id.* at 859.

114. *Id.* at 869.

115. *Id.*

116. See Jacqueline Berman, *The Left, the Right, and the Prostitute: The Making of U.S. Antitrafficking in Persons Policy*, 14 TUL. J. INT'L & COMP. L. 269, 283 (2006) (noting the "unlikely partnership" between evangelical Christians and feminists on the issue of trafficking).

117. 150 CONG. REC. S8274-03 (daily ed. July 16, 2004) (statement of Sen. Hillary Clinton).

118. See *About Us*, CLINTON GLOBAL INITIATIVE, <http://www.clintonglobalinitiative.org/aboutus/> (last visited Feb. 15, 2014).

119. *Id.*

120. Remarks by the President, *supra* note 35.

rights. When in office President Clinton met with significant resistance in his efforts to improve women's rights. One area where there was widespread support for action was that of human trafficking of women. President Clinton, President Bush, Senator Hillary Clinton and President Obama have all publically stated that the US must lead the charge in the fight against human trafficking. Given this political will, coupled with the heinous nature of human trafficking for sex slavery, the Clinton Administration decided to focus its efforts on the fight against human trafficking. This created a legacy for President Clinton, one that he continues to advance today under the auspices of the CGI.

B. Sharing the Responsibility

The TVPA is unique in its "expression of American willingness to work with other nations to eradicate the global problem of sex trafficking."¹²¹ The TVPA obliges the United States to "work bilaterally and multilaterally to abolish the trafficking industry by taking steps to promote cooperation among countries linked together by international trafficking routes."¹²²

The CIA published a comprehensive report in April of 2000, just shy of 6 months before the passing of the TVPA on October 28, 2000. One of this report's major conclusions is that "[t]rafficking to the US is likely to increase given weak economies and few job opportunities in the countries of origin. . . . Though it may be impossible to eradicate trafficking to the US, it is possible to diminish the problem significantly by targeted prevention and micro-credit strategies in source countries" (emphasis added).¹²³ The Clinton Administration seems to have recognized that "one country's isolated efforts to combat trafficking will be futile without a larger coordinated international effort."¹²⁴

In addition to the annual Trafficking in Persons Reports (TIP Report), the TVPA mandates the establishment of transnational prevention programs to address the factors that make persons vulnerable to trafficking.¹²⁵ These programs include microcredit lending, programs to promote women's participation in economic decision making, programs to keep girls in school and grants to NGOs to advance the political, economic, social and educational roles and capacities of women in countries of origin, as discussed above.

The TVPA was enacted on October 28, 2000, the same month as the Protocol. It is reasonable to conclude that, in anticipation of the obligations imposed on the US under its domestic TVPA, the US wanted to ratchet up the transnational prevention obligations on other countries as well. This strategy would help fulfill the US obligation to "promote cooperation among countries linked together by international trafficking routes." It would also allow the US to share the burden of the international prevention programs mandated by the TVPA.

121. Susan Tiefenbrun, *The Saga of Susannah, A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107, 169 (2002) [hereinafter Tiefenbrun, *The Saga of Susannah*].

122. Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101(24) (2006).

123. See Richard, *supra* note 18, at iii.

124. Tiefenbrun, *The Saga of Susannah*, *supra* note 11, at 143.

125. 22 U.S.C. § 7104.

The funding burden created by the TVPA is very real. The Office to Monitor and Combat Trafficking in Persons administers an International Grant Program, as discussed above. Last year, that program received “applications requesting more than \$98 million in assistance – far more than our funding could support.”¹²⁶ In 2013 the US awarded a total of nearly \$19 million to fund 35 grants, which resulted in a gap of funding of \$79 million.¹²⁷

In addition to the shortfall of funding for transnational prevention programs, the United States may have also recognized the less tangible benefits of collaboration. Acting in concert to prevent trafficking would create a pool of resources that would not be available should the US work alone. Intelligence and police infrastructures could be shared; information and research could be pooled; programs requiring the multilateral cooperation of countries of origin, transit and destination would be easier to facilitate. A more global prevention effort would also soften any criticism of cultural or economic imperialism that might be levied against the US activities abroad.

C. Externalizing Prevention

As a corollary, if the reason the United States introduced transnational prevention obligations was to share this burden, this doubles as a reason for other destination countries to object to these duties. In other words, why would other countries of destination agree to share this burden with the United States? One answer is simply power politics: when the United States chooses to engage in international law making, they can wield significant political sway in the international arena. The establishment of the International Criminal Tribunal for the former Yugoslavia is a classic example of how involvement of the US in international law and tribunals can result in groundbreaking achievements.

Another reason that other countries of destination may have been willing to sign themselves up for transnational prevention obligations is particular to the reality of policing international trafficking. Trafficking is a clandestine industry, the routes of traffickers shift as the countries of origin and transit shift and the internet and social media sites have changed the way in which people are bought and sold. It is a very difficult fight to win and countries of destination recognize the inherent difficulties in combatting human trafficking.

States have been criticized for “externalizing” border control efforts in the context of irregular migration and trafficking.¹²⁸ These strategies basically involve encouraging countries of origin to tighten border control in order to prevent the trafficking victims or irregular migrants from ever arriving on the soil of the destination country. In their extreme iterations, these border control

126. See U.S. Dep’t of State’s Office to Monitor and Combat Trafficking in Persons, *International Grants Program*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/j/tip/intprog/index.htm> (last visited Feb. 15, 2014).

127. *Id.*

128. See Special Rapporteur on trafficking in persons, especially women and children, *Rep. of the Special Rapporteur on trafficking in persons, especially women and children*, ¶ 68-69, Human Rights Council, U.N. Doc. A/HRC/20/18 (Jun. 6, 2012) (by Joy Ngozi Ezeilo), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/138/05/PDF/G1213805.pdf?OpenElement> (noting the importance of international cooperation, given the border-crossing nature of human trafficking).

policies in origin countries have severely restricted the free movement of people, particularly women and children.¹²⁹

By arguably perverse logic, the prevention obligations in the Protocol can be viewed as a State policy of externalizing the problem of human trafficking more generally.¹³⁰ Shifting the border-policing burden to origin countries is a demonstrated pattern of state behavior in the context of combatting trafficking. Shifting the focus of prevention to countries of origin is a similar strategy. However, recognizing that this burden cannot be shifted without economic assistance, 9(4) may have been introduced to allow states to keep the traffickers and victims out of their territory. By funding these root causes programs, the destination countries are essentially promulgating an externalizing policy, and recognizing that in order for it to be effective it must be funded in part by countries with greater wealth (i.e. countries of destination).

The Clinton Administration was working off intelligence that it would be possible to diminish the problem of human trafficking to the US significantly by targeted prevention and micro-credit strategies in source countries. It was in the final stages of enacting domestic legislation that would require the US to establish International Grant Programs aimed at preventing human trafficking in countries of origin. It is reasonable to conclude that in anticipation of this grant program, the US wanted to share its burden, as well as reap the benefits of pooled resources with other destination countries.

V. RELATIONSHIP WITH DUE DILIGENCE STANDARD

The above analysis has sought to establish that States Parties to the Protocol have a transnational duty to take or strengthen measures to alleviate poverty, underdevelopment and lack of equal opportunity that make people, but especially women and children, vulnerable to trafficking. It is argued that a plain reading of this paragraph creates a particularly strong obligation on countries of destination to share the responsibility of addressing root causes of trafficking in countries of origin.

This provision creates a significantly higher standard of behavior than the more general due diligence obligations to prevent trafficking, particularly in relation to transnational prevention obligations. In this circumstance, the more onerous standard of the Protocol will apply to States Parties. This is determined by employing the *lex specialis* legal maxim.

When the particular rule is not “setting aside” the general rule, in other words when there is no normative conflict between the two standards, the principle of *lex specialis* is formally speaking not required.¹³¹ In this case, there is

129. Protocol, *supra* note 1, addresses this phenomenon in article 11(1) where it encourages increased border control to prevent trafficking, but also requires such measures still protect the freedom of movement of persons in accordance with international standards.

130. The normative implications of this argument, while interesting, are beyond the scope of this paper and not discussed herein.

131. Rep. of the Int'l Law Comm'n on the work of its fifty-fifth session (2003), Topical Summary of the discussion held in the Sixth Committee of the General Assembly during its fifty-eighth session, prepared by the Secretariat, 56th Sess., May 3-Jun. 4, 2004 and Jul. 5-Aug. 6, 2004, U.N. Doc. A/CN.4/537 (Jan. 21, 2004), available at <http://daccess-dds-ny.un.org/doc/UNDOC>

arguably no normative difference between the two rules. The Protocol is arguably not creating an exception to the due diligence obligations but rather imposing a higher standard of behavior on that duty. However, regardless of this maxim's formal application, the rule in the Protocol will "trump" the less onerous due diligence obligations at least with respect to transnational prevention obligations. In either case, the maxim is still a useful mechanism to understand the relationship between the Protocol's transnational prevention obligations and due diligence obligations in human rights law.

VI. IMPLEMENTING THE TRANSNATIONAL PREVENTION OBLIGATION

It is beyond the scope of this paper to set forth which possible modes of implementation and enforcement are most suitable (and possible) for this shared responsibility to prevent. Subsection 9(4) does not set forth a compliance mechanism. Further, the Protocol does not have a complaints procedure or Committee analogous to those often found in many human rights conventions. However, just because the international framework to fight human trafficking is different from the standard human rights structure, does not mean that there is no space within this framework for development, collaboration and ultimately effective enforcement and implementation.

The current response to human trafficking is quite recent and there was no significant political attention to trafficking in persons before 1999. This is partly because trafficking surged as borders opened, particularly after the fall of the Soviet Union. However, the lack of attention to trafficking can also be attributed to its clandestine nature: most people including politicians and police did not know that trafficking was actually taking place, or at least did not know it was operating on such a large scale. Now that states are starting to address the problem, the fight against trafficking is proving to be a difficult and onerous one. The international and underground nature of human trafficking has challenged States to develop new ways to combat this crime.

The Internet and social media sites have exacerbated this situation as traffickers have benefitted enormously from them. The Internet is the place where many people are bought and sold; it is also where many potential victims first make contact with their future traffickers. It also serves as an anonymous space where people with deviant proclivities can find communities, which may further normalize this behavior; chat sites dedicated to pedophiles are an example of this. As a result, States are being forced to innovate and rapidly evolve policing strategies. What is emerging is a new and different approach, a new paradigm for combatting human trafficking. The framework that is being created to fight human trafficking is only in its early stages of development, and

/GEN/N04/216/84/PDF/N0421684.pdf?OpenElement. The ILC stated: "there are two ways in which law may take account of the relationship of a particular rule to a general one. A particular rule may be considered an application of a general standard in a given circumstance. The special relates to the general as does administrative regulation to a law in domestic legal order. Or it may be considered as a modification, overruling, or a setting aside of the latter. The first case is sometimes seen as not a situation of normative conflict at all but is taken to involve the simultaneous application of the special and general standard. Thus only the later is thought to involve the application of a genuine *lex specialis*."

is constantly being challenged by emerging technology. It contains, *inter alia*, elements of classical policing, elements of novel collaboration with border officials, elements of human rights and strong prevention obligations.

In many ways, 9(4) reflects the general state of the international framework for combatting human trafficking: it is promising but underdeveloped. This provision contains strong obligations, but is a skeletal starting point. Further development in this area is needed to determine what the standards are for complying with this standard, and which mechanisms can be used to measure this compliance. Two possibilities might be including the progress of countries in establishing transnational prevention programs in the United States Trafficking In Persons Report. Another limited option would be requiring States Parties to the CRC to include a discussion of efforts employed to transnationally preventing the trafficking of children, pursuant to the particularly strong language in Article 35.

However, regardless of how this obligation is monitored and implemented, there are two salient points: first, 9(4) offers nothing more than a strong transnational bare bones obligation. Second, there are options to transform this obligation into a useful tool for addressing the root causes of trafficking, particularly poverty, underdevelopment and lack of equal opportunity.

VII. SLIPPERY SLOPE OBJECTIONS

Some readers may object to this paper's interpretation of 9(4) because it could result in an overly broad obligation. On the one hand, this understanding of a transnational prevention obligation might be seen as too vague to be enforceable (discussed above). On the other hand, readers may be concerned with possible unintended overly broad and intrusive obligations this interpretation may place on States Parties. This interpretation, it could be argued, would open origin countries up to interference with cultural practices or beliefs that they have fiercely protected in the international human rights arena. Seen as a slippery slope, this argument maintains that a shared prevention responsibility cannot possibly be what the drafters of the Protocol envisioned.

For example, Coomaraswamy reported that "[i]n the absence of equal opportunities for education, shelter, food, employment, relief from unpaid domestic and reproductive labour, access to structures of formal State power, and freedom from violence, women will continue to be trafficked."¹³² Transnational prevention programs that could address these root causes may seek to amend marriage laws in origin countries that do not allow for equal rights of men and women in the marriage. They could create programs that attack cultural practices such as female genital mutilation or polygamy. These are highly contentious issues and areas where states and the local populations have resisted outside advocacy for change. For example, the article on marriage equality in the Convention on the Elimination of Discrimination Against Women (CEDAW) is the one with the most reservations from States Parties, many of whom are also origin, destination and transit countries.¹³³ A shared prevention

132. Coomaraswamy Report, *supra* note 16, at ¶¶ 60.

133. See reservations to Article 16 at *Declarations, Reservations and Objections to CEDAW*, UN

responsibility, it is argued, cannot therefore possibly be what was envisioned when drafting the Protocol.

In response, it is important to reiterate that this paper merely seeks to set out a starting point, a base obligation. The contours of state consent are still unclear, and it is uncertain how willing origin countries will be to transnational programs that address sensitive cultural issues. Although developing countries have welcomed economic and technical cooperation internationally, it is unclear how they would react to programs aimed at controversial cultural practices.

Uruguay made a statement in its concluding remarks, where it was speaking on behalf of the Group of 77 (and Pakistan).¹³⁴ A representative of Uruguay stated that they “wished to reiterate the importance of reinforcing technical and economic cooperation internationally, as a means of giving States the possibility to fulfill all the obligations arising from the Convention.”¹³⁵

The Group of 77 was not concerned that the international cooperation set out in the Protocol would impede on their sovereignty, although they only conceived of cooperation as being purely economic and technical. It may well be that as a result of *realpolitik*, the prevention programs set up pursuant to this provision will focus on less contentious issues, such as access to education, shelter, food and employment.

CONCLUSION

The particular interpretive query of this paper is: *did State Parties intentionally sign themselves up for mandatory transnational obligations to address the root causes of human trafficking in countries of origin?* It is argued herein that the ordinary meaning of 9(4) clearly creates a shared responsibility to prevent trafficking in origin countries. In the context of transnational prevention programs to address root causes of trafficking, States Parties to the Protocol have strong mandatory obligations. These obligations override the less onerous due diligence obligations imposed under human rights law by virtue of the *lex specialis* maxim. This interpretation is bolstered by the aim and purpose of the Protocol because one of the three cornerstone goals of the Protocol is prevention.

Examining human rights conventions reveals that the language in 9(4) is stronger, except for one small but important exception. The CRC also obliges States Parties to undertake appropriate international measures to prevent to abduction, sale or traffic in children. At this stage, the content and details surrounding this rule are unclear. In fact, the entire international framework for combatting human trafficking is in a phase of rapid development. This paper has argued that this emerging framework does not fit neatly into either the traditional “law enforcement” or “human rights” frameworks. The unique international and clandestine nature of this phenomenon requires creative and novel responses to it. One of these responses is providing for mandatory

WOMEN, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (last visited Feb. 15, 2014).

134. The Group of 77 is a group of 77 developing nations. The member states of this group are available online. *The Member States of the Group of 77*, THE GROUP OF 77, <http://www.g77.org/doc/members.html> (last visited Feb. 15, 2014).

135. Rep. of Ad Hoc Comm. on Transnational Organized Crime, *supra* note 95, at ¶ 86.

transnational prevention obligations. This provision is a skeletal starting point, one that will hopefully be given flesh through further development in this area.

By bringing into focus the strong prevention obligations in the Protocol, this paper has sought to question the widely held view that using a human rights discourse and framework to address human trafficking is preferable. In fact, this approach comes at an opportunity cost since the prevention obligations under the developed human rights concepts of due diligence are simply nowhere near as strong as under the Protocol.

However, what is also clear from the above analysis is that the fight against trafficking in persons has created a new framework and it is not entirely clear how this framework will operate. In the context of transnational prevention, compliance and enforcement mechanisms could be found in the TIP Reports or potentially in the country reporting under the CRC. It may well be that in this way the law enforcement and human rights frameworks will both support this transnational prevention obligation.

By highlighting this overlooked yet still rough gem, this paper seeks to motivate actors in civil society and government to further develop the notion of a shared responsibility to prevent human trafficking. It calls on the anti-trafficking movement to take future action in this direction.

Annex I:
Prevention Obligations in Convention

Article	Subject	Language	Provision
31(1)	Projects to establish and promote best practices	shall endeavor	States Parties shall endeavor to develop and evaluate national projects to establish and promote best practices and policies aimed at the prevention of transnational organized crime.
31(2)	Participation in lawful markets.	shall endeavor	States Parties shall endeavor, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets.
31(3)	Reintegration	shall endeavor	States Parties shall endeavor to promote the reintegration into society of person convicted of offences covered by this Convention.
31(4)	Vulnerability of Legal Instruments	shall endeavor	States Parties shall endeavor to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.
31(5)	Public Awareness	shall endeavor	States Parties shall endeavor to promote public awareness regarding the existence, causes and gravity of the treat posed by transnational organized crime. Information may be disseminated where appropriate through the

			mass media and shall include measures to promote public participation in preventing and combating such crime.
31(6)	Registrar	shall inform	Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.
31(7)	Participation in international projects aimed at the prevention of transnational organized crime	shall, as appropriate	States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

**Annex II:
Obligations in Protocol**

Article	Subject	Language	Provision
5(1)	Criminalization	shall as appropriate	States Parties "shall" "as appropriate" establish criminal offences.
5(2)	Criminalization	shall adopt measures	Each State Party "shall adopt measures" necessary to establish several additional the crimes of being an accomplice and attempting to commit.
6(2)	Assistance to and protection of victims	shall ensure in appropriate cases	Each State Party "shall ensure" "in appropriate cases" that victims of trafficking receive information on court proceedings.
6(6)	Assistance to and Protection of Victims	shall ensure in appropriate cases	Each State Party "shall ensure" that victims have the possibility of compensation for damages.
8(1)	Repatriation	shall facilitate and accept	The State Party of which the victim is a national "shall facilitate and accept" the return of that person without unreasonable delay.
8(4)	Repatriation	shall agree to issue	A State Party "shall agree to issue" travel documentation in order to facilitate their return home.
9(1)	Prevention	shall establish	States Parties "shall establish" comprehensive policies and programs and other measures To prevent and combat trafficking To protect victims, especially women and children, from revictimization.

9(4)	Prevention	shall take or strengthen measures	States Parties “shall take or strengthen measures” including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
9(5)	Prevention	shall take or strengthen measures	States Parties “shall take or strengthen measures” including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
10(1)	Information Exchange and Training	shall, as appropriate	Law enforcement, immigration and other relevant authorities “shall, as appropriate” cooperate with one another by exchanging information.
10(2)	Information Exchange and Training	shall provide or strengthen	States Parties “shall provide or strengthen” training for law enforcement, immigration and other relevant authorities in the prevention of trafficking in persons.
10(3)	Information Exchange and Training	shall comply	A State Party “shall comply” with any request from a State that transmits information and places restrictions on its use.
11(1)	Border Measures	shall strengthen, to	States Parties “shall strengthen, to the extent

		the extent possible	possible," such border controls as may be necessary to prevent and detect trafficking in persons.
11(2)	Border Measures	shall adopt measures	Each State Party "shall adopt measures" to prevent, "to the extent possible," means of transport operated by commercial carriers from being used on the commission of crimes created in this Protocol.
11(3)	Border Measures	measures shall include establishing	such "measures shall include establishing" the obligation of commercial carriers to ascertain that all passengers are in possession of proper travel documents.
13	Legitimacy and validity of documents	"shall, in accordance with its domestic law, verify"	A State Party "shall, in accordance with its domestic law, verify" within a reasonable time, the legitimacy and validity of travel documents.

Article	Subject	Language	Provision
6(1)	Assistance to and protection of victims	In appropriate cases and to the extent possible each State Party shall	"In appropriate cases and to the extent possible each State Party shall" protect the privacy and identity of trafficking victims
6(3)	Assistance to and protection of victims	Each State Party shall consider implementing measures	"Each State Party shall consider implementing measures" to provide for the physical, psychological and social recovery of victims of trafficking
6(5)	Assistance to and Protection of Victims	shall endeavor to provide	Each State Party "shall endeavor" to provide for the safety of victims of trafficking within its territory.

7(1)	Status of Victims	shall consider permitting	Each State Party "shall consider permitting" victims to remain in its territory
8(2)	Repatriation	shall give due regard	Each State Party "shall give due regard" for the safety of the victim being repatriated to their country of nationality, and this repatriation "shall preferably" be voluntary
9(2)	Prevention	shall endeavor to undertake	States Parties "shall endeavor to undertake" to establish research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking.
12	Security and control of documents	shall take such measures as may be necessary, within available means	Each State Party "shall take such measures as may be necessary, within available means" To ensure travel documents cannot be misused, and To ensure the integrity of travel documents to prevent their unlawful creation or misuse.
11(4)	Border Measures	shall consider taking measures	Each State Party "shall consider taking measures" that deny entry of persons convicted of crimes under this Protocol
11(5)	Border Controls	shall consider taking measures	Each State Party "shall consider taking measures" that deny entry of persons convicted of crimes under this Protocol.
11(6)	Border Controls	shall consider strengthening	Parties "shall consider strengthening" cooperation among border control agencies and establishing direct channels of communication.

**Annex III:
International Cooperation and Prevention Obligations in Applicable
Human Rights Treaties**

Convention	Article	Language
Universal Declaration of Human Rights	22	Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.
International Covenant on Economic, Social and Cultural Rights (ICESCR)	2(1)	Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	16	Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.
Convention on the Rights of the Child (CRC)	4	States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources..., within the framework of international co-operation.

Convention on the Rights of the Child	35	States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.
Convention on the Protection of the Rights of Migrant Workers and Members of their Families (Migrant Workers Convention)	68	(1). States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include: (a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration; (b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements; (c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.
Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (Slavery Convention)	3	The States Parties to this Convention shall exchange information in order to ensure the practical co-ordination of the measures taken by them in combating the slave trade and shall inform each other of every case of the slave trade, and of every attempt to commit this criminal offence, which comes to their notice.
Slavery Convention, the Supplementary Slavery Convention	8	1. The States Parties to this Convention undertake to co-operate with each other and with the United Nations to give effect to the foregoing provisions.

**Annex IV:
2012 US Funded International Prevention Programs**

Country: Thailand

Implementer: New Life Center Foundation (NLCF)

Amount: \$125,000

Duration: 24 months

Description: With additional funding, the NLCF will continue its work with vulnerable tribal populations throughout Thailand. In the area of prevention, activities include education, including training in Thai language skills, human rights, and labor laws; life skills, and vocational training. In the area of protection, it provides a safe shelter to victims of trafficking, medical and mental health services, interpretation assistance, formal and informal education, vocational training, therapeutic activities, and reintegration assistance.

Country: Sri Lanka

Implementer: International Organization for Migration (IOM)

Amount: \$450,000

Duration: 24 months

Description: IOM will strengthen the Government of Sri Lanka's efforts to identify and protect victims. It will strengthen the newly-formed anti-TIP unit within the Ministry of Justice and enhance the capacity of the Sri Lanka Bureau of Foreign Employment (SLBFE) and labor and consular officers stationed abroad to prevent TIP and protect victims. It will enhance the capacity of existing short-term shelters and help establish a new one. It will also develop and implement standard operating procedures for running shelters and a handbook for providing assistance to victims.

Country: Haiti

Implementer: International Rescue Committee

Amount: \$750,000

Duration: 18 months

Description: IRC will work in partnership with the Institute for Social Wellbeing and Research and a local non-governmental organization to strengthen the overall legal and operational framework for child trafficking prevention, prosecution of traffickers, and protection for victims of trafficking in Haiti with a particular emphasis on restavek children and children living in Residential Care Centers (RCCs). In addition to providing direct services, the project will establish a task force to coordinate counter-trafficking actions and improve state capacity to support TIP victims. In addition, the IRC will advocate for the closing of Residential Care Centers (RCCs) suspected of abuse or trafficking and for strengthened monitoring of these centers.

Country: Nicaragua

Implementer: Casa Alianza

Amount: \$550,000

Duration: 36 months

Description: The project will continue to expand the national prevention campaign, and provide comprehensive residential and specialized services to children and adolescents.

Country: Global

Implementer: The National Underground Railroad Freedom Center

Amount: \$225,000

Duration: 12 months

Description: The National Underground Railroad Freedom Center, building on its expertise connecting the history of the abolition of chattel slavery with the modern anti-trafficking movement, will create an awareness campaign about modern forms of slavery around the world that highlights the 150th anniversary of the Emancipation Proclamation. This project will feature the stories of several modern-day abolitionists abroad, provide an opportunity to inspire local activism informed by the U.S. experience and the experiences highlighted of the modern-day abolitionists, and will enhance prevention efforts abroad by serving as a platform where foreign governments, international NGOs and other community-based groups can access video content and additional online resources.