



Organization for Security and Co-operation in Europe

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on Combating Trafficking in Human Beings*

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ASSESSMENT OF THE UNITED STATES HUMAN TRAFFICKING SITUATION AND ANTI-TRAFFICKING ACTIVITIES

This assessment is based upon my country visit as Special Representative on Combating Trafficking in Human Beings in 2004, during which I visited state institutions and NGOs, such as the GTIP Office, the Department of Justice, the State Department, the Congress, the Helsinki Commission, the EUR Bureau, the Office for Global Affairs, USAID, International Rescue Committee, Safe Horizons, International Organization for Adolescents, Shared Hope International, the Protection Project, the Media and Development International, St. Thomas Law School / Miami, and met with Ambassador John Miller and his staff, Congressman Chris Smith, Assistant Attorney General Alex Acosta and staff, Maureen Walsh, Elizabeth Prior, Laura Lederer, Ambassador Carlos Pasquale, John Markey, Linda Smith, etc. The assessment is additionally based on my participation in the Conference “War against Trafficking in Persons”, on the TIP Reports, on the reports of the Department of Justice, etc.

GENERAL

The United States is primarily a destination country and has internal human trafficking, although this receives less attention than the transnational form.

The United States government (USG) began serious work against human trafficking in the late 1990s. The U.S. continues to be active and make progress in the U.S. and internationally. It reports that it has expended \$ 96 million in the U.S. and internationally in FY 2004 and \$ 295 million on anti-trafficking efforts since 2000, which must be considered generous contributions to the fight against this critical world-wide problem. It would be most useful to divide these programs -- the U.S. State Department website lists international funding -- into programs that predominantly and directly target human trafficking and those that are not primarily directed at human trafficking but rather designed to achieve indirect anti-trafficking results. This division into direct vs. indirect anti-trafficking benefits has been adopted in the 2005 TIP Report for Tier-assessment purposes.

The USG has initiated hundreds of projects that have led to advances in anti-trafficking work in a number of countries and heightened awareness of this issue. There is much to be commended in the continuing USG involvement.

While there is much activity and spending, there is, unfortunately, less evidence of results and demonstration of sustainable effectiveness than would be expected. This can be observed both internationally and within the U.S.

For example, and most significantly, in the U.S. where the USG can do the most, there is significantly increasing human trafficking. The U.S. government's own estimates of the number of victims trafficked to the United States every year (last estimated by the USG at 14,500 – 17,000 new transnational victims trapped in the U.S. annually – other sources believe that figures may amount to 50,000 - plus an additional unregistered number of new internal victims) remains high in absolute terms and in comparison with many other countries around the world. Without taking anything away from the progress that the U.S. has made, it must be observed that the number of victims identified and assisted in the United States is far too low, the prosecution of traffickers, which has been impressive in specific cases, is nevertheless disappointing in numerical terms, and prevention methodologies and “awareness campaigns” remain unproven as to their results.

The US provided leadership with its anti-trafficking law signed in 2000. This law has many commendable features, providing for terms of up to 20 years imprisonment as well as for fines for human trafficking with respect to peonage, slavery, involuntary servitude or forced labour.

RATIFICATION OF THE PALERMO PROTOCOL

The Palermo Protocol is recognized by the OSCE and around the world as the central international instrument in the fight against human trafficking. Under this agreement, the governments around the world undertook to pass anti-trafficking legislation and other measures to combat this problem.

Consequently, the Palermo Protocol has been widely recognized by governments as the primary catalyst for new criminal provisions against trafficking in persons and for other anti-trafficking measures around the globe, since 2000.

To date, the USG has not ratified this most basic international anti-trafficking agreement. In contrast, at least 35 OSCE Participating States, which is the majority of the OSCE Participating States that are rated in the U.S. Trafficking in Persons (“TIP”) Report, have already ratified the UN Protocol.

Ratification of the Palermo Protocol is not sufficient to establish a country's high-level political will to fight human trafficking, but it is an important signpost, and failure to push for and accomplish ratification does at least raise concerns about the limits to a country's political will and intention to work in close partnership with the international community in fighting human trafficking.

INSTITUTIONAL MECHANISMS: NATIONAL ACTION PLAN, NATIONAL COORDINATOR

The United States has several interagency mechanisms in place to coordinate at least parts of their response.

It must be observed that, at the same time, the United States has not put in place the institutional mechanisms that it promotes internationally as helpful in understanding and combating human trafficking. These mechanisms include: adoption of a comprehensive and integrated national plan of action and creation of the positions of national anti-trafficking coordinators for strengthening domestic multi-agency responses within the United States at federal, state and local levels.

None of these mechanisms are an absolute requirement of a coherent and comprehensive national response. Nevertheless, the creation of official governmental positions provides an institutional focus of accountability and institutional mechanisms that can be useful tools and which have been positive components of national responses elsewhere. A number of Tier 1 and Tier 2 countries have such institutional responses in place or in process.

The U.S has put in place several task forces. There is a task force at Cabinet level which, however, meets only about once a year. There is also a Senior Policy Operating Group on Trafficking in Persons (SPOG), chaired by the director of the State Department's Office to Monitor and Combat Trafficking in Persons. One of its responsibilities, according to the TIP Report, is to coordinate U.S. agency strategic plans designed to address trafficking in persons. In addition, there is a coordinating Task Force led by the Departments of Justice and Labor. The U.S. should be commended for the creation of high-level government task forces dealing with the trafficking problem. Still, there remain some questions regarding the effectiveness of this collection of task forces, when it comes to coordinating the implementation of anti-trafficking strategies and efforts within the United States. This is especially hard to gauge, because the apparent central body, the SPOG, is led by the Department of State which

has no day-to-day responsibility for implementation or the results generated by any domestic program. There does not appear to be a public record of the SPOG's activities or deliberations that would permit realistic assessment. At least on the surface, therefore, it appears that this mechanism may not provide the U.S. with an entity that is comparable to or sufficient as a national coordinating body, accountable for achieving anti-trafficking results within the borders of its own country.

IDENTIFICATION OF TRAFFICKING VICTIMS BY THE U.S. GOVERNMENT & PROACTIVE INVESTIGATION

Since the enactment of the United States' first anti-trafficking law, the USG reports that somewhat more than 600 victims have been found. Not all of these victim identifications are attributable to actions taken by the U.S. government. More should be done in this area for the government to meet its responsibility to rescue victims.

In law enforcement trainings throughout the world, the standard is for more proactive investigations leading to arrests and prosecution than for reactive responses. The U.S. continues to open new investigations often as a result of information received by the DOJ "complaint line", and there may be some proactive investigations pursued by the investigative branches of U.S. departments, but a great deal more needs to be done in utilising the law enforcement tools available to U.S. investigators to uncover larger trafficking criminal enterprises and to disable them.

In addition, proactive investigation is the tool with which to initiate identification of human trafficking victims, with a view to rescuing them, rather than waiting for them to appear on the doorstep. Hence, proactive investigation is a critical factor of success.

Child trafficking

More must be done to fight child trafficking and to address the special needs of children found to have been trafficked. The extent and nature of child trafficking into and within the U.S. is not known. Efforts to elucidate the situation ought to be stepped up. This would be important to developing a responsible approach tailored to the special needs of children.

PREVENTION

The United States has invested millions of dollars to fund a federal awareness campaign within the United States called the Rescue and Restore Victims of Human Trafficking public awareness campaign launched by the Department of Health and Human Services. Measuring prevention is an elusive task; measuring identification, rescuing and restoring is a very concrete one. As yet, there does not appear to be evidence of awareness activities being translated into effective prevention, identification, rescuing, or rehabilitation of victims of human trafficking in the U.S. And there is no public report available to gauge the effectiveness or nature of any benefits to trafficking victims or potential victims of these awareness efforts.

There are few, if any, identifiable anti-trafficking programs targeted to address social and economic root causes of internal trafficking in the United States, including prevention of internal child trafficking. This also includes demand (although pending legislation may address this to some degree in the future).

In the United States, as elsewhere, the risk of being prosecuted is not high enough to alter traffickers' sense of impunity. Deterrence effects will only be achieved, when there are more sustained pro-active investigations that lead directly to the prosecution and conviction of many more traffickers and to the disabling of networks through forfeiture of criminal assets.

The U.S. international prevention efforts to some extent parallel its domestic efforts. U.S. funding emphasizes large media-based awareness campaigns in OSCE countries without any apparent connection between these and prevention results. There is no meaningful analysis of what works and why, what is less effective and why. Pamphlets, posters, films and the like should be part of any comprehensive program, but boosting prevention by paying more attention to economic and social root causes in countries of origin is warranted.

ASSISTANCE & PROTECTION

While the United States is to be commended for dedicating tens of millions of dollars to the assistance of trafficking victims, relatively few victims have in fact been assisted.

As noted above, the U.S. government has lagged in developing effective means to pro-actively identify trafficking victims. Because identification is a precondition of providing assistance and protection, tens of thousands of trafficking victims apparently remain undiscovered within the boundaries of the

United States and are subjected to the will of the traffickers without assistance or protection. For example, the U.S. Department of Justice reported that in FY 2003, only 151 victims were certified to receive benefits (145 adults, 6 children). Again, the U.S. government estimate is for approximately one hundred times as many new victims every year.

The United States is only one of many countries which imposes conditions on certain benefits for those who are otherwise declared to be “victims” of the violent crime of trafficking. Countries are free, of course, to decide to do this. But no country can claim to have adopted a victim-centered approach, if care or other benefits are conditioned upon law enforcement or other considerations extraneous to the recovery needs of the victim. There are good reasons for countries to encourage cooperation with law enforcement, but if help or benefits to victims of this heinous crime and human rights violation are conditioned, countries must be prepared to accept the criticism that this is a form of benign coercion, even if it is for the good purpose of helping convict the criminals. All the more so, since it is directed at individuals who, by definition, have recently escaped a coercive environment.

There are other examples. In the past at least, and maybe even now, the U.S. charged \$200 to apply for a T-visa to obtain legal status for temporary residence (although there is a process to have it waived). There may be administrative or anti-fraud reasons that made levying a fee seem like a good idea, but it is absolutely inconsistent with a victim-centered approach to collect a fee from someone who has been held in servitude (even if it is waivable).

The number of visas approved for temporary residence (T-visas) is falling below already low numbers. In FY 2003, 328 T-visas were granted. In FY 2004, this number fell to 136, with more applications denied than approved. On the good side, the U.S. remains one of the few countries where permanent residence for a trafficking victims is possible.

The annual TIP Report appears to continue to violate basic protection principles by publishing photographs that include trafficking victims, including children, without protecting their identities (and presumably without their informed consent). The TIP Report should not implicitly endorse the unacceptable, though quite common media practice of reporting about trafficking with photographs (and often other identifying information) of victims (and sometimes their families), thereby subjecting them to an increased risk of retribution by traffickers and exacerbating the potential stigma and ostracism if/when they return to their home communities. This perpetuates a very bad and dangerous example of treating trafficking victims. Ironically, there are several

photos in the 2005 TIP Report representing sex tourists with the images of their faces manipulated to hide their identities. At least that much should be due to victims as well.

PROSECUTION

The Criminal Division of the Department of Justice's Civil Rights Section has carried out a number of significant and successful prosecutions. However, there are proportionately few arrests and prosecutions in the United States compared with 1) arrests and prosecutions in a number of other countries and 2) the pool of traffickers that may be assumed to operate in the U.S., considering that there are at least 14,000 new victims each year.

Moreover, the annual number of prosecutions has not increased at the rate one would hope for. According to the USG's own report, submitted by the Department of Justice, the number of trafficking cases filed for the years FY 01, 02 and 03 has remained relatively flat. There were 10 additional cases filed in 2001 and 2002 and this increased to 12 in 2003. The number of defendants charged actually declined from 38 in FY 2001 to 31 in FY 2003. Similarly, the convictions remained relatively constant (15 in 2001, 23 in 2003 and 21 in 2003).

To put the U.S. figures into context, a number of OSCE countries rated in Tier 2 have a comparable number of arrests, prosecutions and convictions.

TRAINING OF LAW ENFORCEMENT

The coverage of training of law enforcement and prosecutors should be broadened. While the level of training offered by the Criminal Section of the Department of Justice's Civil Rights Division is reportedly high, there is no systematic training in the United States of all the relevant federal law enforcement bodies, including border officials, investigators and prosecutors (e.g. Assistant U.S. Attorneys), who need skills to respond properly to human trafficking cases. Nor is there systematic training of State and local law enforcement bodies, the first responders to and identifiers of trafficking cases.

SCOPE OF THE FIGHT AGAINST TRAFFICKING IN PERSONS

As the U.S. TIP Report observes, the range of forms of trafficking in persons is broad. Sex trafficking is so heinous that it is rightfully the focus of much

attention and justifies an extraordinary countervailing effort. The USG has supported some programs that address trafficking into forced labor. However, in the past at least, the USG has risked being perceived, rightly or not, as focusing almost exclusively on combating sex trafficking and also prostitution. The 2005 TIP Report signals that the U.S. State Department will now give increasing attention to trafficking into forced and bonded labor (there have already been some convictions) which must be considered a positive development.

PROSTITUTION

As a cornerstone of its anti-trafficking strategy, USG policy promotes the “Swedish model” which seeks to reduce prostitution by decriminalizing the selling of sex (i.e. the prostitutes) and arresting the buyer. The Executive Director of the Protection Project of the Johns Hopkins University School of Advanced International Studies summarized it succinctly: “According to this approach, buying sex is a crime and selling sex is not a crime.”

Decriminalizing the selling of sex and making the demand for purchasing sex a crime is based on enacting into a country’s criminal law the tenet that all prostitutes are victims of a violent crime against women.

The reported genesis of the USG anti-trafficking policy, which incorporates the strong USG position that all prostitution is inherently harmful and dehumanizing which, in its turn, underlies the stance that all prostitutes are to be considered (and presumably treated as) victims, is found in U.S. President George Bush’s December 2002 National Security Directive (the full text of which is classified and not available to the public).

USG federal officials, including the U.S Secretary of State in her introduction to the 2005 TIP Report, have increasingly characterized their work as being part of the “abolitionist movement” (a name intended by the USG to refer to the objective of eradicating human trafficking and also used by those who advocate the strategy of abolishing prostitution by arresting the buyers instead of the prostitutes). Some in the international community are confused by the USG’s promotion of this “Swedish model”, because it is in conflict with the anti-prostitution laws and policy in the United States. In the United States prostitution is illegal (in all but a few parts of Nevada). In contrast to Sweden, where prostitutes are not subject to arrest, in the U.S. prostitutes are regularly arrested as perpetrators of a crime. They are considered to be criminals and therefore treated as criminals, not victims, under the law of the U.S. And those who buy sex can also be arrested. (Thus, the only difference between

advocating the “Swedish model” and advocating the “U.S. model” is Sweden’s decriminalization of the sellers of sex.)

Stronger focus on the demand element of the human trafficking chain is important. The Swedish strategy that emphasizes fines and arrests of buyers and does not arrest prostitutes may turn out to be a positive contribution to anti-trafficking work, although there is not yet enough objective evidence to determine this conclusively. How this conflict between US federal government’s advocacy of this model based upon decriminalizing prostitutes as a central component of an anti-trafficking policy and the anti-prostitution laws of the States and cities in the United States will be resolved remains to be seen. To resolve it, will make the USG’s international anti-trafficking policy certainly more comprehensible to the countries of the OSCE and to other countries as well.

DEMAND

Demand initiatives can be one important component of a comprehensive anti-trafficking strategy. Within the United States it is generally a crime to be a “customer” of prostitution. Trafficking to the U.S. nevertheless remains high, and is increasing each year, according to U.S. estimates. The U.S. should, therefore, seek to enact more effective approaches addressing demand.

The U.S. has begun to address military-based demand. The 2005 TIP Report states that: “DoD (the U.S. Department of Defense) has proposed an addition to its Manual for Courts Martial that would make patronizing a prostitute a specific, chargeable offense under the Uniform Code of Military Justice. The proposal is expected to take effect in late 2005.” The practical scope and effectiveness of enforcement will be followed closely.

CONCLUSION

As with many countries that are making significant efforts and progress in combating human trafficking, and yet may not achieve the concrete results hoped for, it is hard to say where the U.S. would be appropriately categorized in its own tiering system. The U.S. has provided leadership, global activity (and substantial effort within the U.S.) as well as generous funding, which might suggest Tier 1. At the same time, there is still a sizable gap between the activity and meaningful results in fundamental areas of protection and assistance, prevention and law enforcement as well as prosecution in the United States. As noted above, some other countries with similar results – for example as regards the number of arrests or prosecutions – are ranked by the U.S. in Tier 2. There

are also countries, which have done far less than the U.S., that fall within Tier 2. It is further noteworthy that one criterion for being classed in the Tier 2 Special Watch List is that the “absolute number of victims of severe forms of trafficking is very significant or is significantly increasing”; starting from the country’s own estimates of annual trafficking to the U.S., both facts apply to the United States.