

# BREACH: THE NATIONAL SECURITY IMPLICATIONS OF HUMAN TRAFFICKING

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## I. INTRODUCTION

Since the terrorist attacks of September 11, 2001, any issue dealing with national security is at the forefront of political discussion. As a result of this intense focus, new connections have been established between crimes not normally associated with national security and the security of the United States. Indeed, the crime of trafficking in persons has recently been added to

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the list of crimes that are being studied for possible national security implications.

On December 16, 2002, President Bush identified this correlation as more than merely theoretical and recognized the public policy concern by signing National Security Directive 22, which specifically linked human trafficking to terrorism and public health.<sup>1</sup> In addition, Congress weighed in on the issue with the Intelligence Reform and Terrorism Prevention Act of 2004, which established the Human Smuggling and Trafficking Center to study the related issues of human trafficking, alien smuggling, and criminal support of underground terrorist travel.<sup>2</sup> Furthermore, the Trafficking Victims Protection Reauthorization Act of 2005 developed an interagency task force with a mandate to study the “interrelationship between trafficking in persons and terrorism.”<sup>3</sup> President Obama has also taken a hard stance against trafficking, stating at one point during his campaign that combating trafficking will be a “top priority” in his administration.<sup>4</sup>

This article will begin with a survey of human trafficking laws in the United States in order to give a historical backdrop on this issue. In addition, the history of national security, both its definition and evolution in U.S. law, will be explored. After the legal history of trafficking and national security law is discussed, this article will explore the connections between the United States’ national security and the crime of trafficking in persons. This section will specifically focus on how the crime of trafficking in persons breaches this country’s national security, both directly and indirectly. Finally, the article will

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1. Press Release, The White House, Office of the Press Secretary, ‘Trafficking in Persons National Security Presidential Directive (Feb. 25, 2003), <http://www.fas.org/irp/offdocs/nspd/trafpers.html>. Despite the existence of a link between national security and human trafficking being made public, consider the following argument:

Whatever those specific links might be founded upon is unclear and inscrutable, as the specific concerns that allegedly link human trafficking to terrorism are cloaked under classified status and cannot be released to the public. Perhaps they deal with the facet of human trafficking that has been understood for a decade, which is that traffickers in human beings also traffic drugs and weapons, as once the routes and players have been set up, the goods, be they humans, drugs, or weapons, are interchangeable.

Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 362 (2007).

2. Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, § 7202, 118 Stat. 3638, 3813 (2004) (codified as amended at 8 U.S.C. § 1777 (2006)).

3. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 104(c)(4), 119 Stat. 3558, 3564 (codified as amended at 22 U.S.C. § 7109a (2006)).

4. *Road to the White House Interview by Rev. Rick Warren with Senator Barack Obama* (C-SPAN television broadcast Apr. 14, 2009), available at <http://vietnameseworkersabroad.wordpress.com/2009/04/14/key-briefs-reports-obama-on-human-trafficking-this-has-to-be-a-top-priority/> [hereinafter *C-SPAN Interview*].

offer recommendations to better equip the United States to combat this breach.

## II. HISTORY

### A. *History of Trafficking Law*

Trafficking in humans is one of the fastest growing criminal activities in the world.<sup>5</sup> This crime is similar to human smuggling, but there are distinct differences between these two crimes. Human smuggling is defined as the “facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border, in violation of one or more countries [sic] laws, either clandestinely or through deception, such as [with] the use of fraudulent documents.”<sup>6</sup> Human smuggling is frequently conducted with an eye to obtaining a financial or material benefit for the smuggler, but material or financial gains are not necessarily elements of this crime.<sup>7</sup> In addition, human smuggling is often done with the consent of the person(s) being smuggled, who often pay large sums of money in order to be smuggled.<sup>8</sup> Once the persons being smuggled reach their destination, they are generally left to their own devices.<sup>9</sup>

Contrary to smuggling, human trafficking “targets the trafficked person as an object of criminal exploitation.”<sup>10</sup> To be considered trafficking, the act must contain an element of coercion, fraud or force, unless the victim is under eighteen and is involved in commercial sex acts.<sup>11</sup> “The purpose . . . of the trafficking enterprise is to profit from the exploitation of the victim.”<sup>12</sup> Furthermore, in contrast to human smuggling, “[h]uman trafficking does not require the crossing of an international border.”<sup>13</sup> In fact, trafficking may not even require the transportation of a victim from one place to another.<sup>14</sup> Victims of human trafficking in the United States could be United States citizens, legal permanent residents, or visitors.<sup>15</sup>

It is estimated that human trafficking yields between seven and ten billion dollars a year, falling behind only weapon and drug trafficking.<sup>16</sup> In 2006, the

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5. Rosy Kandathil, *Global Sex Trafficking and the Trafficking Victims Protection Act of 2000: Legislative Responses to the Problem of Modern Slavery*, 12 MICH. J. GENDER & L. 87, 88 (2005).

6. U.S. Dep't of State, *Distinctions Between Human Smuggling and Human Trafficking* (Apr. 1, 2006), <http://www.state.gov/m/ds/hstcenter/90434.htm> [hereinafter *Distinctions*].

7. *Id.*

8. *Id.*

9. *Id.* However, “[f]requently, at the end of the journey, smuggled aliens are held hostage until their debt is paid off by family members or others.” *Id.*

10. *Id.*

11. *Id.*

12. *Distinctions*, *supra* note 6.

13. *Id.*

14. *Id.*

15. *Id.*

16. Kara C. Ryf, Note, *The First Modern Anti-Slavery Law: The Trafficking Victims Protection Act of 2000*, 34 CASE W. RES. J. INT'L L. 45, 46-47 (2002). “According to the U.S.

United States Department of State estimated that 800,000 men, women, and children are trafficked across international borders each year, and that millions more are trafficked within their national borders for a variety of purposes.<sup>17</sup> This number has increased in recent years, as in 2000 it was estimated that 700,000 people were being trafficked each year, including 50,000 women and children into the United States.<sup>18</sup> To combat these terrible crimes in the past, “law enforcement used a combination of criminal, labor, and immigration laws . . . . However, cobbling various charges together to prosecute defendants often failed to reflect the seriousness of the crimes committed.”<sup>19</sup>

Facing these grim numbers, many in the law enforcement and human rights communities began to put pressure on both Congress and the White House to enact a comprehensive law in this area. In 2000, the Congress responded to the pressure, and the Trafficking Victims Protection Act (TVPA) was enacted into law.<sup>20</sup> The purpose of the TVPA is to find and protect those who have fallen victim to trafficking, and punish those who engage in the crime.<sup>21</sup> In order to keep the law current, Congress updated and reauthorized the TVPA in 2003<sup>22</sup> and again in 2005.<sup>23</sup>

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Federal Bureau of Investigation, human trafficking generates an estimated \$9.5 billion in annual revenue.” U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REPORT 13-14 (2005), *available at* <http://www.state.gov/documents/organization/47255.pdf> [hereinafter STATE DEPARTMENT REPORT].

17. FRANCIS T. MIKO, TRAFFICKING IN PERSONS: THE U.S. AND INTERNATIONAL RESPONSE 1 (2006), *available at* <http://fpc.state.gov/documents/organization/70330.pdf>.

18. 22 U.S.C. § 7101(b)(1) (2000). The Congressional Findings indicate:

Many of these persons are trafficked into the international sex trade, often by force, fraud, or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.

*Id.* § 7101(b)(2). More recent reports indicated that the numbers could be as high as 800,000, of which “approximately 80 percent are women and girls and up to 50 percent are minors. The data also illustrate that the majority of transnational victims are trafficked into commercial sexual exploitation.” STATE DEPARTMENT REPORT, *supra* note 16, at 6.

19. Kandathil, *supra* note 5, at 89 (footnote omitted).

20. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, (codified as amended at 22 U.S.C. § 7101-12 (2006)).

21. *Id.* § 102(a).

22. *See generally* Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003) (codified as amended at 22 U.S.C. §§ 7101-12 (2006)). The Trafficking Victims Protection Reauthorization Act of 2003, effective December 19, 2003, changed, among other things, the age from fifteen years to eighteen years so that victims under the age of eighteen years are exempt from the “law enforcement cooperation” requirement and added civil compensation for victims. *See id.* § 4(a)(4); 8 U.S.C. § 1101(a)(15)(T)(i)(III)(aa); *see also* 8 U.S.C. § 1184(o)(6).

In 2006, the U.S. Department of Justice (DOJ) released a report that analyzed the successes and failures in the area of human trafficking, which included an analysis of the TPVA and its two reauthorizations.<sup>24</sup> The report indicates that while the United States has accomplished much in combating trafficking, there are areas for improvement.<sup>25</sup> Indeed, “[a] careful reading of the DOJ Report combined with case studies taken from those working directly with victims of human trafficking . . . reveal existing interagency tensions and a lack either of awareness or concern by persons tasked to carry out the implementation of the Act.”<sup>26</sup>

The DOJ released another report in May 2008 that specifically analyzed the government’s efforts to combat trafficking in humans during fiscal year 2007.<sup>27</sup> The May 2008 report ended with eight recommendations on how to improve efforts to combat human trafficking in fiscal year 2008.<sup>28</sup> Three of the recommendations focused on vital ways to improve interagency and collaborative efforts.<sup>29</sup>

### B. Defining “National Security”

In order to have a meaningful discussion concerning the impact of human trafficking on the United States’ national security, one must have a working definition of national security. Indeed, “if we cannot define national security, we are less apt to uphold and defend it.”<sup>30</sup> This definition cannot be too broad as to incorporate anything that could possibly affect an interest of the United States, yet it cannot be so narrow that it does not cover the critical areas. As one commentator<sup>31</sup> wrote:

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23. *See generally* Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended at 22 U.S.C. § 7101 (2006)) (adding, among other details, child sex tourism as a crime).

24. *See generally* CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, REPORT ON ACTIVITIES TO COMBAT HUMAN TRAFFICKING: FISCAL YEARS 2001-2005 (2006), *available at* [http://www.usdoj.gov/crt/crim/trafficking\\_report\\_2006.pdf](http://www.usdoj.gov/crt/crim/trafficking_report_2006.pdf) [hereinafter DOJ REPORT].

25. *See* Haynes, *supra* note 1, at 340.

26. *Id.*

27. *See generally* U.S. DEPT. OF JUSTICE, ATTORNEY GENERAL’S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF THE U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS: FISCAL YEAR 2007 (2008), *available at* <http://www.justice.gov/archive/ag/annualreports/tr2007/agreporthumantrafficking2007.pdf> [hereinafter ATTORNEY GENERAL’S REPORT].

28. *Id.* at 62.

29. *Id.* The three recommendations to improve interagency and collaborative efforts are: (1) “Increase inter-agency efforts to combat trafficking for labor exploitation, in addition to sex trafficking;” (2) “Ensure that law enforcement agents and service grantees, subcontractors, and partners collaborate expeditiously to identify victims, provide care, and secure immigration relief;” (3) “Continue to expand inter-agency coordination of [trafficking in persons] efforts including international funding.” *Id.*

30. JAMES E. BAKER, IN THE COMMON DEFENSE: NATIONAL SECURITY LAW FOR PERILOUS TIMES 20 (2007).

31. Judge James E. Baker was appointed by President Clinton to the United States Court of Appeals for the Armed Forces on September 19, 2000. Judge Baker previously served as Special Assistant to the President and Legal Adviser to the National Security Council (NSC)

Defining national security is more than an academic exercise. Terminology matters. It matters to policy, to process, to the law, and to the application of legal values to all three. Core definitions of national security inform how policymakers and lawyers interpret the application of specific statutory definitions tied to national security.<sup>32</sup>

The question of what is “national security,” is one that dates back to the beginning of the republic.<sup>33</sup> However, since September 11, 2001, “the lines between foreign and domestic issues of national security, and even between peace and war, have seriously eroded: Every foreign issue has domestic ramifications, and the country lives in a seemingly permanent ‘Global War on Terrorism.’”<sup>34</sup>

There is no one official definition of national security in United States law. Indeed, both the National Security Act<sup>35</sup> and PATRIOT Act<sup>36</sup> lack a definition. The fact that the president has enormous power in the area of national security could be a reason for the omission.<sup>37</sup> By not having an active legal definition, the federal government has more flexibility to keep options open and use the heavy hand of federal authority when a new security issue arises. However, different areas of the law provide some explanation and elucidation of the legal term “national security.” For example, the Immigration and Nationality Act states that “the term ‘national security’ means the national defense, foreign relations, or economic interests of the United States.”<sup>38</sup>

Beyond codified definitions, different presidents have emphasized different views to define the term national security. President George W. Bush has stressed the protection of the United States’ constitutional system of government, the advancement of the United States’ interests around the world, and the United States’ economy as fundamental components of

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(1997-2000), where he advised the President, the National Security Advisor and the NSC staff on U.S. and international law involving national security, including: use of force, the law of armed conflict, intelligence activities, foreign assistance, terrorism, arms control, human rights, and international law enforcement. *See id.* at i.

32. *Id.* at 20.

33. *See* STEPHEN DYCUS ET AL., NATIONAL SECURITY LAW 1 (4th ed. 2007) (stating that “[i]t might appear that national security issues have only recently taken center stage in our national life. In fact, they have held that position periodically throughout our history.”); Mark R. Shulman, *The Progressive Era Origins of the National Security Act*, 104 DICK. L. REV. 289, 291 (2000).

34. DYCUS ET AL., *supra* note 33, at 2.

35. *See generally* National Security Act of 1947, 50 U.S.C. § 401 (2006).

36. *See generally* Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107-56, 115 Stat. 272.

37. *See id.* § 106.

38. 8 U.S.C. § 1189(d)(2) (2006).

national security.<sup>39</sup> President Clinton, on the other hand, put emphasis on “our people, our territory and our way of life.”<sup>40</sup>

Expanding on this concept, former government official Joseph Romm<sup>41</sup> argues that national security relates to events that “(1) threaten drastically and over a relatively brief span of time to degrade the quality of life for the inhabitants of a state, or (2) threaten significantly to narrow the range of policy choices available to the government of a state.”<sup>42</sup> “Consequently, Romm includes on the national security agenda issues of global warming [and] energy security”<sup>43</sup> and may even include, as this article argues, human trafficking. Anything could arguably affect the “way of life” of the American people. However, because President Clinton’s and Mr. Romm’s portrayal of national security focuses more on the people of the United States, rather than President Bush’s general “interests around the globe,” we believe that President Clinton’s and, more specifically, Mr. Romm’s definition of national security is more appropriate for the subject at hand.

### III. CONNECTIONS

It could be argued that on some level most, if not all, crimes have a negative effect on a peoples’ way of life. However, there are a few crimes that are so corrosive to a society that they start to bring down the collective rather than just individuals. Indeed, the crime of murder could hardly be seen as a national security crime, yet genocide<sup>44</sup>—the systematic killing of whole groups of people—certainly would be. The same is true with a single case of involuntary servitude or forced prostitution. Standing alone, these crimes do not constitute

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39. President George W. Bush, Organization of the Nat’l Security Council System, National Security Presidential Directive-1 (Feb. 13, 2001), <http://www.fas.org/irp/offdocs/nspd/nspd-1.htm>.

40. BAKER, *supra* note 30, at 16.

41. *Joseph Romm*, CENTER FOR AMERICAN PROGRESS, <http://www.americanprogress.org/aboutus/staff/RommJoseph.html> (stating that Dr. Joseph Romm, Ph.D., is a leading expert on advanced transportation technologies and that he served as the Acting Assistant Secretary at the Department of Energy’s Office of Energy Efficiency and Renewable Energy during 1997 and Principal Deputy Assistant Secretary from 1995 through 1998).

42. BAKER, *supra* note 30, at 18.

43. *Id.*

44. Article 2 of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as

any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) [k]illing members of the group; (b) [c]ausing serious bodily or mental harm to members of the group; (c) [d]eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) [i]mposing measures intended to prevent births within the group; [and] (e) [f]orcibly transferring children of the group to another group.

U.N. Convention on the Prevention and Punishment of the Crime of Genocide, art. 2, Dec. 9, 1948, *available at* <http://www2.ohchr.org/english/law/genocide.htm>.

a breakdown of national security, but taken as a whole, in the context of human trafficking, these crimes indeed represent a breach of national security.

To understand this assertion, the connections between national security and human trafficking must be explored. This section identifies how human trafficking rots the fabric of our society and, as a result, has a destructive effect on the United States' national security.

#### *A. The Unstable Country*

Just twenty years ago, this country's greatest national security threat was the Soviet Empire, a country with a sophisticated military and a nuclear arsenal to go along with it. Today, while large countries such as China are still considered threats, it is the small, unstable states that dominate the United States' attention and money. This is where Americans spill their blood in the name of national security. Indeed, a large percentage of the 2007 national defense budget was spent on Iraq and Afghanistan, both small and very unstable countries.<sup>45</sup>

There is no empirical evidence indicating that human trafficking is a major factor in causing a country to become unstable. However, this crime is indicative of a decaying society, and decaying societies give birth to corrupt governments. The countries that are the worst offenders with regard to human trafficking often share the title of countries that are less than friendly with the United States. Indeed, according to the State Department's human trafficking "blacklist," Cuba, Iran, and North Korea are countries listed in Tier 3, the most egregious violators,<sup>46</sup> and all three countries are considered, at the very least, antagonistic toward the United States.<sup>47</sup> In fact, two of these three were named as part of the axis of evil in President Bush's 2002 State of the Union

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45. The exact percentage of the defense budget spent on Iraq and Afghanistan is hard to compute. For 2007, the normal defense budget was \$439.3 billion. OFFICE OF MGMT. AND BUDGET, U.S. EXECUTIVE OFFICE OF THE PRESIDENT, FISCAL YEAR 2007 MID-SESSION REVIEW: BUDGET OF THE U.S. GOVERNMENT 26, 27 (2006), <http://www.gpoaccess.gov/usbudget/fy07/pdf/07msr.pdf>. However, this is only the official budget of the Department of Defense and does not account for the extra-budgetary supplements needed to fight the wars in Iraq and Afghanistan. See Robert Higgs, *The Trillion-Dollar Defense Budget Is Already Here*, THE INDEPENDENT INST. (March 15, 2007), <http://www.independent.org/newsroom/article.asp?id=1941>. If you add all of the military related activities the total number spent on defense is estimated to be somewhere between \$900 billion and \$1 trillion in 2007. *Id.* Thus, the money being spent indirectly on the wars in Iraq and Afghanistan is significantly larger than the amount actually budgeted for these wars. *Id.*

46. STATE DEPARTMENT REPORT, *supra* note 16, at 42. It should be noted that not all of the Tier 3 countries are hostile toward the United States. Both Kuwait and Saudi Arabia are on the Tier 3 list, and both are considered close allies of the United States. *Id.*

47. See President George W. Bush, State of the Union Address (Jan. 29, 2002).



address,<sup>48</sup> and all three have been identified by the United States as supporters of international terrorism.<sup>49</sup>

Other countries on the Tier 3 list are not openly hostile against the United States, yet they are excellent examples of the phrase “unstable country.” The countries that are, or have been, on this list are Burma,<sup>50</sup> Sudan,<sup>51</sup> and Syria.<sup>52</sup> Most of the countries on the Tier 3 list are considered serious violators of human rights and strain the stability of their regions, and in some cases, the world.<sup>53</sup> Tier 3 countries affect the United States’ national security on many levels.<sup>54</sup> Specifically, these countries have the potential to affect the national security of the United States on a military, economic, and/or a diplomatic level.

48. *Id.*

49. Christopher R. Fenton, Note, *U.S. Policy Towards Foreign Direct Investment Post-September 11: Exon-Florio in the Age of Transnational Security*, 41 COLUM. J. TRANSNAT’L L. 195, 220 (2002) (citing KENNETH KATZMAN, CONGRESSIONAL RESEARCH SERVICE, TERRORISM: NEAR EASTERN GROUPS AND STATE SPONSORS, 2001, available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB55/crs20010910.pdf>).

50. OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT: TIER PLACEMENTS (2010), available at <http://www.state.gov/g/tip/rls/tiprpt/2010/142755.htm> [hereinafter TIER PLACEMENTS]; see also U.S. Dep’t of State, Country Reports on Human Rights Practices: Burma (2008), available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100515.htm> [hereinafter Burma]. This report documents, among other atrocities, that “[e]thnic armed groups allegedly committed human rights abuses, including forced labor, although to a much lesser extent than the government. Some cease-fire groups also reportedly committed abuses, including forced relocation of villagers in their home regions. Armed insurgent groups and cease-fire groups also recruited child soldiers.” *Id.*

51. TIER PLACEMENTS, *supra* note 50; U.S. Dep’t of State, Country Reports on Human Rights Practices: Sudan (2008), available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100506.htm> [hereinafter Sudan]. This report documented that “tribal factions committed serious abuses during the year, including the reported killing of approximately 1,600 persons. Government, janjaweed militias, and tribal factions razed numerous villages, committed acts of torture, and perpetrated violence against women.” *Id.*

52. OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT: TIER PLACEMENTS (2008), available at <http://www.state.gov/g/tip/rls/tiprpt/2008/105383.htm>; U.S. Dep’t of State, Country Reports on Human Rights Practices: Syria (2008), available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100606.htm> [hereinafter Syria]. The State Department reported that “President al-Asad was confirmed for another seven-year term in elections that were considered by international and local human rights advocates as neither free nor fair. The civilian authorities maintained effective control of the security forces, and members of the security forces committed numerous, serious human rights abuses.” *Id.*

53. See Burma, *supra* note 50; Sudan, *supra* note 51; Syria, *supra* note 52.

54. See WORLDWATCH INSTITUTE & CENTER FOR AMERICAN PROGRESS, AMERICAN ENERGY: THE RENEWABLE PATH TO ENERGY SECURITY 8 (2006), available at <http://images1.americanprogress.org/il80web20037/americanenergynow/AmericanEnergy.pdf>. This particular section of the report addresses the United States’ dependence on oil from unstable countries. *Id.* at 8-9. Specifically, the United States’ “dependence on imported oil is undermining the country’s national security by tying the U.S. economy to unstable and undemocratic nations, thus increasing the risk of military conflict in political hotspots around the globe.” *Id.* at 8.

### 1. Military Level

Unstable countries have enormous potential to affect the national security of the United States on a military level. First and foremost, two democracies have never gone to war against each other.<sup>55</sup> The international theory surrounding this idea is known as the “Democratic Peace.”<sup>56</sup> The Democratic Peace theory holds that democracies are generally not aggressive, and when democracies use force, that use of force “tends to be defensive in nature.”<sup>57</sup> Professor Bruce Russett has explained:

[A] striking fact about the world comes to bear on any discussion of the future of international relations: in the modern international system, democracies have almost never fought each other . . . . By this reasoning, the more democracies there are in the world, the fewer potential adversaries we and other democracies will have and the wider the zone of peace.<sup>58</sup>

Professor Rudy Rummel has provided further support for this notion. Professor Rummel analyzed all major conflicts between 1816 and 1991, screening out conflicts below a threshold of 1,000 deaths, and found that in those 175 years there were 198 wars between non-democracies and 155 conflicts between non-democracies and democracies.<sup>59</sup> Spencer Weart, a historian and a physicist, went one step further and wrote:

[N]ot only modern democracies, but all democracies, have kept peace with one another . . . . Some studies have set a cutoff of 1,000 battle deaths for an international confrontation to be called a war. Even if a stricter cutoff at 200 deaths is adopted, there is nothing left on the list that can be called a war between unambiguous, well-established democracies.<sup>60</sup>

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55. SPENCER R. WEART, NEVER AT WAR: WHY DEMOCRACIES WILL NOT FIGHT ONE ANOTHER 2-3, 13 (1998).

56. Michael L. Smidt, *The International Criminal Court: An Effective Means of Deterrence?*, 167 MIL. L. REV. 156, 162 (2001).

57. *Id.*

58. John Norton Moore, *Toward a New Paradigm: Enhanced Effectiveness in United Nations Peacekeeping, Collective Security, and War Avoidance*, 37 VA. J. INT'L L. 811, 823 (1997) (quoting BRUCE RUSSETT, GRASPING THE DEMOCRATIC PEACE: PRINCIPLES FOR A POST-COLD WAR WORLD 4 (1993)).

59. R.J. RUMMEL, DEATH BY GOVERNMENT 2 (1994).

60. Moore, *supra* note 58, at 823 (footnote omitted). Several other scholars have come to the same conclusion. For example, James Lee Ray concluded that

[t]he main strength of the democratic peace proposition stems from its simplicity. It is a relatively straightforward proposition, and the most important supporting evidence (the absence of war between democratic states) requires no complex technique to unearth. Yet, the proposition is also able to withstand complex, powerful and sophisticated theoretical as well as empirical scrutiny. The proposition is deserving of the attention it

These statistics strongly indicate that unstable nations pose a threat to the United States. It seems apparent that if there were more stable countries and democracies in the world, there would likely be less war. Accordingly, the military threat to the national security of the United States would be diminished if there were fewer wars around the world.

Moreover, democratic countries are much less likely to commit atrocities against their neighbors or their own citizens.<sup>61</sup> Another staggering statistic demonstrates this proposition: “99.6 percent of casualties in twentieth century war[s] were the result of tyrant-initiated conflicts.”<sup>62</sup> Thus, because we are much more likely to have conflict with an unstable country, the very nature of their existence threatens to adversely affect the national security of the United States.

The notion that the spread of democracies could reduce atrocities has been recognized by the Executive for at least the last nine years. President Clinton recognized this idea in his National Security Strategy in 1999:

Underpinning our international leadership is the power of our democratic ideals and values. In crafting our strategy, we recognize that the spread of democracy, human rights and respect for the rule of law not only reflects American values, it also advances both our security and prosperity. Democratic governments are more likely to cooperate with each other against common threats, encourage free trade, promote sustainable economic development, uphold the rule of law, and protect the rights of their people. Hence, the trend toward democracy and free markets throughout the world advances American interests. The United States will support this trend by remaining actively engaged in the world, bolstering democratic institutions and building the community of like-minded states. This strategy will take us into the next century.

. . . .

The United States works to strengthen democratic and free market institutions and norms in all countries, particularly those making the transition from closed to open societies. This commitment to see freedom and respect for human rights take hold is not only just, but pragmatic. Our security depends upon the protection and expansion of democracy worldwide, without which repression, corruption and instability could engulf a number of countries and threaten the stability of entire regions.<sup>63</sup>

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has received up to this point, and promises to become a standard feature of the academic field of international politics, influential ultimately among policymakers as well as the general public.

*Id.* (footnote omitted).

61. See generally Thomas C. Wingfield, *The Convergence of Traditional Theory and Modern Reality: Just War Doctrine and Tyrannical Regimes*, 2 AVE MARIA L. REV. 93 (2004).

62. *Id.* at 111.

63. THE WHITE HOUSE, A NATIONAL SECURITY STRATEGY FOR A NEW CENTURY 4, 25 (1999), available at <http://www.au.af.mil/au/awc/awcgate/nss/nssr-1299.pdf>.

## 2. Economic Level

In addition to possible military conflict, these unstable countries affect the commerce of the United States, and the United States considers its economy a critical national security interest.<sup>64</sup> Due to globalization, unstable countries can affect the economy of the United States on a national security level.<sup>65</sup> Globalization has many benefits, “such as enlarging the world economy, promoting technological innovations, fostering universal political participation, and enhancing international cooperation.”<sup>66</sup> However, one of the major drawbacks of globalization is that it could adversely affect national security by contributing to the causes of terrorism.<sup>67</sup> A specialist in international affairs at the Congressional Research Service succinctly stated that “[t]he globalization of the international economy, the internationalization of markets, and the integration of organized criminal activity into this changing market structure have transformed largely domestic criminal issues to issues with broader implications.”<sup>68</sup> Specifically, the traditional barriers of time, distance, and space are broken down in this connected world of open borders, deregulation, and freer movement of people, money, and services.<sup>69</sup> This connected world allows criminal organizations, terrorists, drug traffickers, and human traffickers to operate in environments that are not highly regulated.<sup>70</sup> In addition, globalization and modern communication systems have opened the door for smaller groups and private individuals to accumulate wealth at levels that were generally attainable only by nation states.<sup>71</sup>

One could even say that efforts to support globalization and efforts to protect national security are at odds. As aptly stated by a migration expert,

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64. See Matthew R. Byrne, Note, *Protecting National Security and Promoting Foreign Investment: Maintaining the Exon-Florio Balance*, 67 OHIO ST. L.J. 849, 906-07 (2006).

65. See Doris Estelle Long, “Globalization”: *A Future Trend or a Satisfying Mirage?*, 49 J. COPYRIGHT SOC’Y U.S.A. 313, 320 (2001). In discussing the development of globalization, the author stated:

[G]lobalization in its present form encompasses more than transborder trading activity. To the contrary, the interconnectedness of today’s global economy is epitomized by a multiregional trading system in which acts in one country have a direct . . . impact on the other members of the trading network.

*Id.*

66. See Arthur C. Helton & Dessie P. Zagorcheva, *Globalization, Terror, and the Movements of People*, 36 INT’L LAW. 91, 92 (2002).

67. See *id.*

68. Raphael Perl, Specialist in International Affairs, Congressional Research Service, *Organized Crime, Drug Trafficking, and Terrorism in a Changing Global Environment*, Statement before the House Judiciary Committee, Subcommittee on Crime (Dec. 13, 2000), [http://www.globalsecurity.org/security/library/congress/2000\\_h/001213-perl.htm](http://www.globalsecurity.org/security/library/congress/2000_h/001213-perl.htm).

69. *Id.*

70. *Id.*

71. *Id.*

“[w]hereas globalization demands and fosters the expansion of international travel, extending across all social strata and poor as well as affluent countries, national security calls for the imposition of restrictive controls that will impede movement.”<sup>72</sup> Because of the effects of globalization, trafficking in humans may become more of a threat to national security due to the relative ease of travel and communication in both the domestic and foreign realm.<sup>73</sup> This article does not argue that the United States should move from globalization to isolationism; we argue that the smaller world created by globalization allows the crime of trafficking in humans to thrive, and for players in unstable nations to infiltrate the borders of the United States and affect the country’s national security.

In addition, these unstable nations can affect the national security of the United States on an economic level through foreign direct investment. Like globalization, foreign direct investment has many advantages despite its potential to impact the national security of the United States. These advantages include, but are not limited to: (1) uniting disparate national interests and promoting stability between nations; (2) helping to fuel national economic growth by providing capital to finance demands for investment that exceed the domestic economy’s supply; and (3) contributing to the development and modernization of technology and products.<sup>74</sup>

Even with these advantages, foreign direct investment could negatively affect the national security of the United States in several ways. First, the companies that invest in the United States could still be under the influence of their home nations.<sup>75</sup> If the company’s home nation has interests that are antagonistic to the United States, then the national security of the United States could be at risk. Also, if one of these companies experiences a security breach, then sensitive United States information could be leaked to another nation.<sup>76</sup>

Lastly, most unstable countries have unbridled corruption throughout their governments and economies. Because of this corruption, it is harder to do business with unstable countries, thus hurting the United States’ economy.

### 3. Diplomatic Level

Trafficking in persons can also cause diplomatic burdens ultimately affecting national security. More directly, the United States may sanction

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72. Aristide Zolberg, *Guarding the Gates in a World on the Move*, SOCIAL SCIENCE RESEARCH COUNCIL, <http://essays.ssrc.org/sept11/essays/zolberg.htm>.

73. See sources cited *supra*, Part II.A.

74. Shannon M. Haley, *A Shot Across the Bow: Changing the Paradigm of Foreign Direct Investment Review in the United States*, 32 BROOK. J. INT’L L. 1157, 1159-60 (2007) (listing additional foreign direct investment advantages, such as creating opportunities for United States companies abroad and foreign companies in the United States that produce a large percentage of United States exports and jobs).

75. *Id.* at 1161.

76. *Id.* at 1161-62.

countries with rampant human trafficking violations.<sup>77</sup> The decision to sanction should be based on set criteria, and not on political calculations.<sup>78</sup> Despite this fact, the decision to put a country on the Tier 2 or Tier 3 lists, let alone sanction a country, can put a strain on diplomatic relations. For example, after Venezuela was put on the Tier 2 list, its government wholly rejected the findings of the United States' Human Trafficking Report and accused the United States of using the report as political weapon to damage the image of the Chávez government.<sup>79</sup> This point is crucial, because almost every major conflict has started with diplomatic strain or dispute.<sup>80</sup> Therefore, the diplomatic burden that human trafficking causes has the potential to morph into a major national security threat.

In sum, these unstable countries “may be marginal in terms of conventional late-twentieth-century conceptions of strategy, but in an age of cultural and racial clash, when national defense is increasingly local, [these small capricious states] distress [can] exert a destabilizing influence on the United States.”<sup>81</sup>

### B. Penetrating the Border

Anytime there is a motive to illegally penetrate the borders of a country, national security questions are raised. One obvious threat comes from

77. Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT'L L. 437, 483-84 (2006).

78. *Id.* at 483-84. As one author has noted,

[o]f the 15 countries ranked Tier 3 in the 2003 TIP Report, the United States ultimately sanctioned only Burma, Cuba, and North Korea. Of the ten countries ranked Tier 3 in 2004, these three countries were again subject to sanctions, along with Equatorial Guinea, Sudan, and Venezuela. In 2005, the United States ultimately sanctioned five of the fifteen Tier 3 countries—Cuba, Burma, North Korea, Venezuela, and Cambodia. That the countries sanctioned include those already under sanctions from the United States or those with which the United States has little economically and strategically at stake invites the familiar criticism of U.S. sanctions policy for ‘picking and choosing among human rights violators.’

Unfortunately, the standard used to measure compliance—i.e., whether governments are making ‘significant efforts to comply’ with U.S. minimum standards—renders the trafficking sanctions regime vulnerable to selective enforcement. Determining whether a government's effort to comply is sufficiently ‘significant’ is at base an entirely subjective standard, especially given the absence of any concrete baselines for the different tiers—e.g., a requirement that Tier 1 countries have a comprehensive anti-trafficking law.

*Id.* at 484-85 (footnotes omitted).

79. Chris Carlson, *Venezuela Denounces US Report on Human Trafficking*, VENEZUELANALYSIS.COM (June 14, 2007), <http://venezuelanalysis.com/news/2447>.

80. See generally Smidt, *supra* note 56, at 161-66.

81. ROBERT D. KAPLAN, *THE COMING ANARCHY: SHATTERING THE DREAMS OF THE POST COLD WAR* 55-56 (2001).

common criminals who enter the United States illegally and may view the U.S. “as fertile ground for violence.”<sup>82</sup> To a minor degree, the very nature of these criminals represents a national security threat because they hurt the way of life for thousands of Americans. For example, from February 2007 through June 2007, Immigration and Customs Enforcement’s (ICE) California Gang Initiative in San Diego, San Francisco, and Los Angeles, targeted gang members who had illegally reentered the United States after they had already been deported.<sup>83</sup> During that time frame, ICE arrested 139 gang members and associates, and 46 of the 139 were prosecuted for criminal violations.<sup>84</sup>

The second obvious threat is from terrorists and spies. Indeed, if terrorists and spies seek to gain access to the United States they may do so by using human traffickers.<sup>85</sup> Those who traffic humans will often traffic drugs and weapons, which have long been recognized as national security threats.<sup>86</sup> Hence, once the infrastructure to traffic is established, including the formation of professional contacts and routes, the manner in which traffickers move drugs, weapons, or terrorists into the United States becomes interchangeable.<sup>87</sup> Recently, evidence appears to have surfaced that al-Qaeda had plans to infiltrate the United States using the Southern border.<sup>88</sup> “Several al-Qaida [sic] leaders believe operatives can pay their way into the country through Mexico and also believe illegal entry is more advantageous than legal entry for operational security reasons.”<sup>89</sup> Specifically, intelligence officials warned different law enforcement agencies throughout the United States that al-Qaeda terrorists were identified and seen with members of *La Mara Salvatrucha 13* (also known as MS-13).<sup>90</sup> Intelligence such as this gives grave concern that “the gang may be smuggling Islamic fundamentalist terrorists into the country.”<sup>91</sup>

During Operation Community Shield (OCS), ICE addressed the public safety threat that violent transnational gangs, such as MS-13, pose.<sup>92</sup> OCS demonstrated that most of the major metropolitan areas in the United States were experiencing an increase in gang activity.<sup>93</sup> More recent indicators have

82. See Mary De Ming Fan, *The Immigration-Terrorism Illusory Correlation and Heuristic Mistake*, 10 HARV. LATINO L. REV. 33, 40 (2007).

83. See U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY, ICE FISCAL YEAR 2007 ANNUAL REPORT: PROTECTING NATIONAL SECURITY AND UPHOLDING PUBLIC SAFETY 18, available at <http://www.ice.gov/doclib/news/library/reports/annual-report/2007annual-report.pdf>.

84. *Id.*

85. See Haynes, *supra* note 1, at 362.

86. *See id.*

87. *See id.*

88. *The World Wide Threat: Hearing Before the S. Select Comm. on Intelligence*, 109th Cong. (2005) (statement of Admiral James M. Loy, Deputy Secretary, U.S. Dep’t of Homeland Security), available at [http://www.fas.org/irp/congress/2005\\_hr/021605loy.pdf](http://www.fas.org/irp/congress/2005_hr/021605loy.pdf).

89. *Id.*

90. Michele McPhee, *Gang Tied To Terrorists*, BOSTON HERALD, Jan. 5, 2005, at 5.

91. *Id.*

92. See U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *supra* note 83, at 18.

93. *Id.*

also suggested that smaller communities in the United States are experiencing gang activity.<sup>94</sup> OCS also showed that these violent transnational gangs are largely made up of “foreign-born nationals” and that MS-13 is “among the largest and most violent of street gangs in the United States.”<sup>95</sup> MS-13 is heavily involved in the business of alien smuggling and human trafficking.<sup>96</sup> If gangs are willing to traffic children into the United States for sexual exploitation,<sup>97</sup> is there any reason they would not help a terrorist enter the United States with a dirty bomb?<sup>98</sup> Even if these traffickers are not directly helping organizations such as al-Qaeda, the routes that these traffickers use and the contacts that help them penetrate the United States’ border can also be used by terrorists, spies, or others that wish to do Americans harm.<sup>99</sup> In total, this information shows the grave national security threat that the United States faces when criminals and/or terrorists penetrate the border.

The United States government has already recognized the link between human trafficking and terrorism and, as a result, formed the Human Smuggling and Trafficking Center (HSTC).<sup>100</sup> The HSTC is composed of experts from the prosecutorial, law enforcement, consular, policy, intelligence, and diplomatic areas.<sup>101</sup> These different components were teamed together to

94. *Id.*

95. *Id.*

96. *The 9/11 Reform Act: Examining the Implementation of the Human Smuggling and Trafficking Center: Hearing Before the Subcomm. on Management, Integration, and Oversight of the H. Comm. on Homeland Security*, 109th Cong. 10-11 (2006) (statement of Chris Swecker, Acting Executive Assistant Director of Law Enforcement Services, U.S. Dep’t of Justice) [hereinafter *Hearing*].

97. See John Tanagho, Comment, *New Illinois Legislation Combats Modern-Day Slavery: A Comparative Analysis of Illinois Anti-Trafficking Law with Its Federal and State Counterparts*, 38 LOY. U. CHI. L.J. 895, 942 n.467 (2007).

98. See Daniel J. Mabrey et al., *Developing Collaboration for Security Along the Texas/Mexico Border: An Experiment in Intelligence-led Policing*, 2006 J. INST. JUST. & INT’L STUD. 207, 207.

99. See Haynes, *supra* note 1, at 361-62.

100. See Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, § 7202, 118 Stat. 3638, 3813 (2004) (codified as amended at 8 U.S.C. § 1777 (2006)).

101. See U.S. Dep’t of State, Human Smuggling and Trafficking Center (HSTC) Charter and Amendments (2004), available at <http://www.state.gov/m/ds/hstcenter/41444.htm>. The Charter of the HSTC states that these different components were teamed together in order to perform the following functions, in addition to any functions that the President of the United States may assign: (1) serve as the focal point for interagency efforts to address terrorist travel; (2) serve as a clearinghouse with respect to all relevant information from all Federal Government agencies in support of the United States strategy to prevent separate, but related, issues of clandestine terrorist travel and facilitation of migrant smuggling and trafficking of persons; (3) ensure cooperation among all relevant policy, law enforcement, diplomatic, and intelligence agencies of the Federal Government to improve effectiveness and to convert all information available to the Federal Government relating to clandestine terrorist travel and facilitation, migrant smuggling, and trafficking of persons into tactical, operational, and strategic intelligence that can be used to combat such illegal activities; and (4) prepare and submit to Congress, on an annual basis, a strategic assessment regarding vulnerabilities in the United States and foreign travel system that may be exploited by international terrorists, human smugglers and traffickers, and their facilitators. *Id.*



serve as the “intelligence fusion center” of the federal government and the “information clearinghouse” for all federal agencies that address “human trafficking, human smuggling, and human smuggler and document provider facilitation of terrorist mobility.”<sup>102</sup> In essence, the HSTC facilitates the exchange of information to support the investigation and prosecution of criminals who are involved in trafficking of humans.<sup>103</sup> In 2007, the HSTC reviewed thousands of intelligence reports, both classified and unclassified, and thousands of cables to develop leads, and circulated the information regarding the identification of major international trafficking networks.<sup>104</sup> This review of law enforcement data and intelligence helped to identify trafficking victims and assisted in coordinating international efforts to disrupt trafficking networks.<sup>105</sup> However, the HSTC has faced cooperation problems between agencies and departments relating to staffing, funding, and information sharing.<sup>106</sup> In response, Congress signed the Implementing Recommendation of the 9/11 Commission Act of 2007 into law on August 3, 2007 to try to remedy these issues.<sup>107</sup> This Act demonstrates that the United States government has begun to address the link between trafficking and terrorism, but a considerable amount of work lies ahead.

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102. ATTORNEY GENERAL’S REPORT, *supra* note 27, at 24.

103. *Id.*

104. *Id.* at 25 (explaining that in 2007, the HSTC “distributed 1600 cables, 800 unclassified reports, over 50 Homeland Intelligence Reports, and 12 new strategic intelligence assessments (several of which impacted trafficking).” *Id.*

105. *Id.* The role of the HSTC in coordinating international efforts has been described as follows:

The HSTC is the official point of contact for INTERPOL on trafficking matters, and sits on the Steering Committee of the INTERPOL Working Group on Trafficking in Human Beings. Additionally, the HSTC has direct ties and meets regularly with international organizations such as EUROPOL, FRONTEX, SOCA (The Serious and Organized Crime Agency of the United Kingdom) and the United Nations Office of Drugs and Crime (UNODC) Anti-Human Trafficking Unit. HSTC staff is part of a UNODC working group drafting and recommending law enforcement TIP training programs for developing countries.

*Id.*

106. *See Hearing, supra* note 96, at 4 (statement of Katherine Harris, member of U.S. House of Representatives).

107. Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, 121 Stat. 266 (2007). In this act, Congress tried to address the issues that the HSTC was facing by: (1) directing the Secretary of the Department of Homeland Security (DHS) to nominate a United States government employee to direct the HSTC; (2) specifying that the HSTC be staffed by at least forty full-time staff, including personnel on detail from particular agencies and offices within DHS, and other departments, agencies, or entities; (3) listing areas of expertise within which to hire detailees; (4) directing the Secretary of DHS to provide funding and administrative support for the HSTC; and (5) mandating that the Secretary of Homeland Security provide incentives for service in certain positions and provide enhanced promotion for service at the HSTC. *Id.* § 721, 121 Stat. 346-48.

### C. Funding the Enemy

One does not need to write a check to al-Qaeda to sponsor terrorism. Indeed, it could be argued that any activity that profits terrorist organizations is sponsorship. This support is primarily seen with the buying and selling of contraband, particularly drugs, weapons, and humans.<sup>108</sup> It is estimated that millions of dollars are filtered from the drug trade to fund terrorist organizations.<sup>109</sup> Accordingly, one of these organizations could make several times over what it takes to carry out a major terrorist operation with human trafficking. Thus, every time an American spends a dollar on a trafficked service, he or she is potentially funding the enemy.

Beyond this direct link is the fact that every dollar used for trafficking prevention is a dollar that could have been used on other national security initiatives. Although the United States has enormous national security resources, they are not unlimited, as can be seen from the current wars in Iraq and Afghanistan. The United States is spending its national treasury and resources on investigating these crimes, protecting the victims, and punishing criminals, when it could be using this money on improved body armor for soldiers, a new aircraft carrier, or a new super computer to crack codes at the NSA.<sup>110</sup>

### D. Importing Crime

Most crimes, on some level, depress a community, yet some crimes are so penetrating they not only depress an individual or a community, but they start to break down the fabric of society. Trafficking of humans is a crime that, by its very nature, breeds more crime. Indeed, every time a trafficked person is brought into the United States, a crime has been committed. However, unlike a single instance of armed robbery, which molests the rights of an individual once (and maybe again through the memory of the tragic event), every time a sex slave is forced to have sex or a trafficked worker is forced to work, another crime is committed. When a trafficked individual is beaten to comply

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108. See US 'Seizes al-Qaeda Drugs Ship,' BBC NEWS (Dec. 19, 2003) [http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle\\_east/3335183.stm](http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle_east/3335183.stm).

109. Ted Galen Carpenter, *How Washington Funded the Taliban*, CATO INSTITUTE (Aug. 2, 2002), [http://www.cato.org/pub\\_display.php?pub\\_id=3556](http://www.cato.org/pub_display.php?pub_id=3556).

110. See, e.g., Susan W. Tiefenbrun, *Sex Slavery in the United States and the Law Enacted to Stop it Here and Abroad*, 11 WM. & MARY J. WOMEN & L. 317, 356 (2005).

[I]n 2001, [Office of Refugee Resettlement] awarded over \$1.25 million to eight organizations throughout the United States. The purpose of the grants was to provide NGOs with the financial resources to assist trafficking victims with the following services: case management, temporary housing, special mental health needs such as trauma counseling, legal assistance referrals, and cultural orientation.

with his handler's demand, a crime is committed. Indeed, every second an individual is being held against his or her will a crime is being committed. This same argument could be made for any random kidnapping,<sup>111</sup> however, in contrast to the random kidnapping, human trafficking is systematic with the criminal infrastructure built to support the activity (although systematic kidnapping does occur in other countries). There is a point where the collective starts to corrode.

An example of the corrosion is seen in the drug trade, which is recognized by many as a national security threat.<sup>112</sup> Just as the availability of drugs gives the collective an opportunity to self-destruct, the accessibility of trafficked victims to Americans presents opportunities to break the law. This citizen corruption is especially evident with service members.<sup>113</sup> The issue with service members created such a problem that in 2002 President Bush issued orders that implemented a zero-tolerance policy for activities of government employees and contractors that support human trafficking.<sup>114</sup>

It is important to note that this article does not contend that the availability of trafficked services is an excuse for an individual to partake. To the contrary, anybody that supports trafficking, either by helping smugglers or visiting a brothel where trafficked victims are being exploited, should be punished to the fullest extent of the law. In addition, the quasi-victimless crime of drug abuse should not be confused with the victim-based crime of patronizing the trafficking industry. Rather, the point is to assert that when there are more opportunities to commit crimes, more crimes are typically committed.

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111. The authors of this article would argue that cases where the fear of being kidnapped forces a whole community to change their daily activities are national security threats (for example, a college campus with a serial rapist on the loose).

112. DRUGS AND DRUG POLICY IN AMERICA: A DOCUMENTARY HISTORY 307 (Steven R. Belenko ed., Greenwood Press 2000).

113. See Jorene Soto, "We're Here to Protect Democracy. We're Not Here to Practice It:" *The U.S. Military's Involvement in Trafficking in Persons and Suggestions for the Future*, 13 *CARDOZO J.L. & GENDER* 561, 563-67 (2007).

Throughout the world, trafficking in persons—a modern-day type of slavery in which people, especially women and children, are sold into forced labor and sexual servitude has become more and more prevalent. Demand is what drives severe forms of trafficking in persons, and the United States military's presence in overseas operations has fueled that demand for decades. Historically, the United States military has accepted, encouraged, and even aided severe forms of trafficking in persons. Currently, there are brothels in proximity to nearly every United States military base, and there is significant evidence to indicate that many of the prostitutes in the brothels are victims of severe forms of trafficking. Moreover, there is evidence indicating that American military personnel know that the prostitutes in the brothels are victims of severe forms of trafficking but continue to patronize the brothels anyway.

*Id.* at 561-62 (footnotes omitted).

114. Maureen T. Walsh, *Helsinki Commission, House Armed Services Committee Examine Trafficking in Persons*, *HELSINKI COMM'N DIGEST*, Dec. 15, 2004, available at [http://www.csce.gov/index.cfm?Fuseaction=UserGroups.Home&ContentRecord\\_id=93&ContentType=G&ContentRecordType=G&UserGroup\\_id=10&Subaction=ByDate&CFID=23951294&CFTOKEN=65708733](http://www.csce.gov/index.cfm?Fuseaction=UserGroups.Home&ContentRecord_id=93&ContentType=G&ContentRecordType=G&UserGroup_id=10&Subaction=ByDate&CFID=23951294&CFTOKEN=65708733).

Lastly, since we define a national security concern as one that threatens the American way of life, when the government's efforts to combat the illicit activity of human trafficking negatively impacts Americans, it raises a national security concern by default. To be sure, the measures taken to combat human trafficking have had a negative impact on the legitimate activities of Americans and those visiting this country.<sup>115</sup> These measures include heightened visa requirements and enhanced screenings, which encumber Americans at the United States border.<sup>116</sup> By themselves, these heightened measures do not seem to threaten the American way of life to a point that constitutes a national security threat. They could be seen as nothing more than an inconvenience; however, when one combines these "inconveniences" with the methodical cruelty that trafficking imports into this country, the sum of the parts amounts to an assault on the American way of life.

#### *E. Trafficking Disease*

Health and security are inextricably linked. From a historical perspective, countries have understood the link between security and the health of its citizens and armies.<sup>117</sup> Today, health and security have taken on a slightly different connotation. If another country was plotting to use a biological or chemical weapon against the United States, no one would dispute that it would be a national security issue. Indeed, some would argue that this type of threat is our greatest national security concern.<sup>118</sup>

In 2008, approximately 33,400,000 people worldwide were living with human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS),<sup>119</sup> including about one million people in the U.S., as of 2003.<sup>120</sup> The World Health Organization (WHO) estimated that 340 million people were infected with a sexually transmitted disease (STD) in 1999

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115. See Corinne Lewis, *UNHCR's Contribution to the Development of International Refugee Law: Its Foundations and Evolution*, 17 INT'L J. REFUGEE L. 67, 77 (2005).

116. See Smiley D. Julve, *Reported Cases of Pinay Trafficking Down in HK* (Aug. 2, 2008), <http://www.gmanews.tv/story/104596/reported-cases-of-pinay-trafficking-down-in-hk>; Press Release, U.S. Department of Homeland Security, *Progress in Implementing New Security Measures Along the Southwest Border* (Aug. 30, 2010), [http://www.dhs.gov/ynews/releases/pr\\_1283203926494.shtm](http://www.dhs.gov/ynews/releases/pr_1283203926494.shtm) (discussing that one of the security measures implemented to combat human trafficking is increased screening and security for Northbound and Southbound traffic).

117. See BAKER, *supra* note 30, at 285.

118. *Id.* at 280 (stating that "[t]he threat of a WMD attack is our greatest security threat").

119. *Worldwide – HIV & AIDS Statistics*, AVERT.ORG, <http://www.avert.org/worldstats.htm> (last visited Oct. 3, 2010).

120. Center for Disease Control and Prevention, U.S. Department of Health and Human Services, *World AIDS Day – December 1, 2007*, 56 MORBIDITY & MORTALITY WKLY. REP. 1233, 1233 (2007), available at <http://www.cdc.gov/MMWR/PDF/WK/MM5647.pdf>.

alone.<sup>121</sup> To emphasize this staggering security crisis, consider that the United States lost 47,359 brave service men and women in actual combat in the ten-year long Vietnam War.<sup>122</sup> Currently, approximately 5,500 people worldwide die every day from AIDS.<sup>123</sup> The United States would have had to fight a Vietnam-scale war for each year for forty-three years to reach the current annual world death rate that AIDS reaps. Although military interventions are connected to valid security threats, we need to begin treating the AIDS and STD epidemics as security threats because they are killing and infecting people around the world every single day.

In Africa, AIDS threatens to undermine the stability of the state and its economic capacity. In turn, these states are fertile ground for the nurture of local and international sources of terrorism.<sup>124</sup> The prominence of this concern is apparent, as the U.S. established a full combatant command in Africa (AFRICOM).<sup>125</sup> A combatant command reports directly to the President and the Secretary of Defense.<sup>126</sup> There are six geographic area commands in addition to another four subject matter commands, such as Special Operations Command (SOCOM).<sup>127</sup> The establishment of AFRICOM is evidence of the increased U.S. interest in Africa. Ryan Henry, who is the former Principal Deputy Under Secretary of Defense for Policy, stated that

“The United States, as a full government, recognizes the emergence of the African continent and the nations (that) compose it . . . as key players on the global scene, something that will continue to rise in significance through this century . . . . The Department of Defense, as part of the rest of the U.S. government, is organizing themselves for the emergence of this new center.”<sup>128</sup>

Because of the security implications, the United States has formally “declared AIDS a national and global security threat, marking the first time that the National Security Council had become involved in fighting an

121. *STD Statistics Worldwide*, AVERT.ORG, <http://www.avert.org/std-statistics.htm> (last updated July 6, 2010).

122. *Vietnam War Statistics*, MOBILE RIVERINE FORCE ASSOCIATION, <http://www.mrfa.org/vnstats.htm> (last visited Oct. 24, 2010).

123. United States Agency for International Development (USAID), *HIV/AIDS: Frequently Asked Questions*, [http://www.usaid.gov/our\\_work/global\\_health/aids/News/aidsfaq.html](http://www.usaid.gov/our_work/global_health/aids/News/aidsfaq.html) (last updated Dec. 29, 2009).

124. See Garry W. Jenkins, *Soft Power, Strategic Security, and International Philanthropy*, 85 N.C. L. REV. 773, 776-78 (2007).

125. Sara Wood, *Africa Command Geared Toward Stability*, NAVY SUPPLY CORPS NEWSLETTER, May/June 2007, at 44, 44, available at <https://www.navsup.navy.mil/site/scnewsletter/2007/may-jun/MJ07.pdf> (“The main goal of the new U.S. command in Africa will be to develop a stable environment on the continent to promote civil society and improved quality of life for the people there . . .”).

126. BAKER, *supra* note 30, at 230-32.

127. U.S. Dep’t of Defense, *Unified Combatant Commands*, <http://www.defense.gov/orgchart/#45> (last visited Oct. 28, 2010).

128. Wood, *supra* note 125, at 44 (quoting Ryan Henry, Principal Undersecretary of Defense for Policy).

infectious disease.”<sup>129</sup> Former Secretary Powell summed up this issue by stating that “HIV doesn't just destroy immune systems; it also undermines the social, economic and political systems that underpin entire nations and regions.”<sup>130</sup>

More than a human tragedy, these diseases wreak havoc on economies. For instance, in Sub-Sahara Africa—based on current infection rates—over 12% of the work force will be lost due to AIDS by 2015.<sup>131</sup> The most affected country, Zimbabwe, will lose upward of 40% of its workforce by 2015.<sup>132</sup> It is estimated that the cost to treat and prevent HIV will be twenty-three billion dollars by 2010.<sup>133</sup>

With this staggering loss of life and the tremendous treatment costs that take much-needed funds from other national programs, comes increased poverty. The downward spiral is apparent; with increased poverty comes more disease, thus the greater probability of a state becoming dysfunctional and providing another foothold for terrorist activities. It is well established that AIDS and STDs are indeed a national security threat. The remaining question is how human trafficking pertains to this discussion.

The connection between these diseases and human trafficking is not AIDS itself; rather it is how people are contracting AIDS and other STDs. Specifically, sex trafficking plays a major role in spreading AIDS.<sup>134</sup> In 2005, the United Nations Joint Programme on HIV/AIDS (UNAIDS) reported that “[a]cross Asia, the epidemics are propelled by combinations of injecting drug use and commercial sex.”<sup>135</sup> Women in prostitution, including those who have been sex trafficked, have an increased chance of carrying HIV or AIDS.<sup>136</sup> For example, HIV prevalence among female prostitutes in Nepal is 20%.<sup>137</sup> In South Africa, the number reaches 70.4%.<sup>138</sup> Furthermore, according to the World Congress Against Commercial Sexual Exploitation of Children, between “50-90% of children rescued from brothels in parts of Southeast Asia

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129. Michael Pates & Jason Johnson, *HIV/AIDS, National Security, and Global Stability*, HUM. RTS., Fall 2004, at 14, 14.

130. *Id.*

131. *AIDS to Deplete Work Force*, FIN24.COM (July 11, 2004), [http://www.fin24.com/articles/default/display\\_article.aspx?Nav=ns&ArticleID=151825\\_1556035](http://www.fin24.com/articles/default/display_article.aspx?Nav=ns&ArticleID=151825_1556035).

132. *Id.*

133. Cheryl Smith, *Is Africa Losing its Workforce to AIDS?*, INDEPENDENT ONLINE TECHNOLOGY (Oct. 31, 2006), [http://www.ioltechnology.co.za/article\\_page.php?iSection?Id=1595&iArticleId=3514273](http://www.ioltechnology.co.za/article_page.php?iSection?Id=1595&iArticleId=3514273).

134. STATE DEPARTMENT REPORT, *supra* note 16, at 49.

135. JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS & WORLD HEALTH ORG., AIDS EPIDEMIC UPDATE: SPECIAL REPORT ON HIV PREVENTION 5 (2005), available at [http://www.unaids.org/epi/2005/doc/EPIupdate2005\\_pdf\\_en/epi-update2005\\_en.pdf](http://www.unaids.org/epi/2005/doc/EPIupdate2005_pdf_en/epi-update2005_en.pdf).

136. STATE DEPARTMENT REPORT, *supra* note 16, at 49.

137. *Id.*

138. *Id.*

are infected with HIV.”<sup>139</sup> In addition, during fiscal year 2007, the State Department’s Office to Monitor and Combat Trafficking in Persons provided funding for a study by Harvard University’s School of Public Health that showed the health consequences of human trafficking.<sup>140</sup> This study found that 38% of women who were trafficked from Nepal to India were infected with HIV.<sup>141</sup> This study also showed that the HIV infection rate was 60% among girls who were prostituted before they turned fifteen years old.<sup>142</sup>

Hence, reducing the spread of AIDS by eradicating sex trafficking is a national security issue.<sup>143</sup> In fact, more than a mere concern, this challenge is fast becoming a national security imperative.<sup>144</sup>

#### IV. RECOMMENDATIONS

##### *A. Proper Labeling and Education*

Before steps can be taken to reduce the national security threat of human trafficking, the crime must be unequivocally recognized as a national security threat by all. The Department of Justice and Department of State recognize this as a national security threat,<sup>145</sup> yet there are those in the State Department that still believe making trafficking a matter of national security diminishes the recommended victim-centered approach.<sup>146</sup> It is undisputed that human trafficking is a victim-based crime, as stated by Congress in the purpose section of the TPVA: “[t]he purposes of this chapter are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children . . . .”<sup>147</sup> All members of the trafficking-prevention community must appreciate this fact as well as recognize the link between trafficking and national security.

Recognizing this link does not diminish a victim-centered approach. The argument that it does ignores the very practical reason for making human trafficking a national security issue: money. The United States has spent over

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139. Brian M. Willis & Barry S. Levy, *Child Prostitution: Global Health Burden, Research Needs, and Interventions*, THE LANCET, Apr. 20, 2002, at 1417, 1418, available at [http://www.popcenter.org/problems/trafficked\\_women/PDFs/Willis&Levy\\_2002.pdf](http://www.popcenter.org/problems/trafficked_women/PDFs/Willis&Levy_2002.pdf) (footnote omitted).

140. Jay G. Silverman et al., *HIV Prevalence and Predictors of Infection in Sex-Trafficked Nepalese Girls and Women*, 298 JAMA 536, 542 (2007).

141. *Id.* at 538.

142. *Id.* at 539.

143. Pates & Johnson, *supra* note 129, at 14.

144. *Id.*

145. See Robert J. Moosy, Jr., Dir. of Human Trafficking Prosecution Unit, Criminal Sec., Civil Rights Div., U.S. Dep’t of Justice, Lecture at the Georgetown Law Center’s 2008 Human Trafficking Course (Jan. 31, 2008) (on file with author).

146. Laura J. Lederer, Vice President for Policy and Planning, Global Centurion, Lecture at the Georgetown Law Center’s 2008 Human Trafficking Course (Feb. 14, 2008) (on file with author).

147. 22 U.S.C. § 7101(a) (2000). The statute goes on to say that in addition to protecting victims the TPVA is designed “to ensure just and effective punishment of traffickers.” *Id.*

forty-three billion dollars just on spy satellites in a single year because security is the predominate issue in the United States' national dialogue.<sup>148</sup> Hence, it is well reasoned that the more money a government or non-governmental agency uses to combat trafficking the more successful they will be. Therefore, the question should not be whether labeling trafficking a national security threat will take away from the "victim focus," but rather how we can effectively stop it. If nothing commands the nation's attention like the words "national security" then by all means it should be labeled a national security threat. After all, if you can protect more victims because you have more resources, then the "focus" is still on the victim.

In addition to proper labeling, the United States has to depart from the top-down approach of trafficking enforcement. Specifically, in the United States "only a few highly ranked agency officials seem to understand how to recognize a victim of trafficking or what should be done with her when she is found."<sup>149</sup> Because of their status as senior officials, their theoretical knowledge is of little use because they are unlikely "to encounter a trafficked person or a trafficker, and they have succeeded neither in transferring their knowledge to the field nor, and most importantly, in giving permission to and encouraging front-line personnel to make such a call on their own."<sup>150</sup> Thus, the expertise of dealing both with victims of human trafficking and perpetrators of human trafficking should occur at the level of those who have direct involvement with, and first-hand knowledge of, human trafficking. To that end, two changes must occur: (1) state and local entities in the United States must play a larger role in the fight to combat trafficking in persons and (2) border agents and lower-level immigration officials must receive better training. With regards to the AIDS issue, the United States must get more serious about abandoning the artificial distinction that AIDS is only a medical problem. As discussed, the turmoil that AIDS is causing in Africa alone is enough to justify urgent action to combat human trafficking because of its ties to the spread of AIDS.<sup>151</sup>

### B. One Voice

The United States has a "Drug Czar,"<sup>152</sup> a "Terrorism Czar,"<sup>153</sup> an "AIDS Czar,"<sup>154</sup> and now even a "Car Czar."<sup>155</sup> Yet, despite the strong rhetoric that

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148. Mark Mazzetti, *\$43.5 Billion Spying Budget for Year, Not Including Military*, N.Y. TIMES (Oct. 31, 2007), available at <http://www.nytimes.com/2007/10/31/Washington/31intel.html?ref=us>; BAKER, *supra* note 30, at 13 (stating that "[t]here is no more important assertion of policy validation than an assertion of national security").

149. Haynes, *supra* note 1, at 365.

150. *Id.*

151. See discussion *infra* Part III.E.

152. Joshua Peck, Note, *Last Resort: The Threat of Federal Steroid Legislation—Is the Proposed Legislation Constitutional?*, 75 FORDHAM L. REV. 1777, 1790 (2006).



the United States is also fighting a war against human trafficking, there is no human trafficking czar, a person who can pose the government's agenda and plan of attack so the nation acts with one voice and one fist.

This issue has been identified in the DOJ's official assessment of United States' efforts to combat trafficking and the evaluation found that one of the biggest failings in combating trafficking was poor information sharing.<sup>156</sup> This problem exists despite the 2002 DOJ initiative to open a Migrant Smuggling and Trafficking in Persons Coordination Center, which has a mission to work with and educate the CIA, DOS, FBI, and the DHS about trafficking.<sup>157</sup> With respect to national security, those who focus on catching traffickers must connect with those who focus on national security protection.

### *C. Identify the Root of Trafficking*

If trafficking can be stopped the national security threat it poses will conclude as well. The key to stopping trafficking, in the authors' opinion, is to understand where it comes from. Responders must understand the reason people become victims, which usually occurs because of a combination of extreme poverty and the unstable country's inability to protect its citizens.<sup>158</sup> Hence, law enforcement must not only go after the traffickers but also those that allow this business to thrive.

President Bush summed this up by saying we need to understand that ending "this abuse requires going after the criminal gangs who supply the sexual predators. But we cannot put them out of business until and unless we deal with the problem of demand . . . so that's why we are going after the unscrupulous adults who prey on the young and the innocent."<sup>159</sup> President (then Senator) Obama has also recognized the scourge this particular crime

153. See David Barnhizer, *Waking from Sustainability's "Impossible Dream": The Decisionmaking Realities of Business and Government*, 18 GEO. INT'L ENVTL. L. REV. 595, 657 (2006).

154. Mary Patricia Byrn, *From Right to Wrong: A Critique of the 2000 Uniform Parentage Act*, 16 UCLA WOMEN'S L.J. 163, 192 n.156 (2007).

155. Jonathan Martin, *Ron Bloom to Replace Steve Rattner as Car Czar*, POLITICO (July, 13, 2009), available at <http://www.politico.com/news/stories/0709/24876.html>.

156. See DOJ REPORT, *supra* note 24, at 34.

157. See Tiefenbrun, *supra* note 110, at 349.

In June 2002, the DoJ opened the Migrant Smuggling and Trafficking in Persons Coordination Center. The Center is located in the Civil Rights Division. Its purpose is to work with the DoS, the CIA, the FBI, the INS, the National Security Agency (NSA), the Coast Guard, and others in an effort to convert intelligence information about trafficking in persons and about alien smuggling activity in order to provide effective law enforcement.

*Id.*

158. See D. Marianne Blair, *Safeguarding the Interests of Children in Intercountry Adoption: Assessing the Gatekeepers*, 34 CAP. U. L. REV. 349, 357-74 (2005).

159. Press Release, The White House, Office of the Press Secretary, President Announces Initiatives to Combat Human Trafficking (July 16, 2004), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2004/07/20040716-11.html>.

has on the American way of life, stating that “it is a debasement of our common humanity.”<sup>160</sup>

#### V. CONCLUSION

September 11, 2001 has brought with it a new era of looking at every issue from a national security angle. Many crimes that were considered only harmful to the target group of people (women or children) are now being seen as crimes that impact entire nations, and human trafficking is one of these crimes.<sup>161</sup> The connection between trafficking and national security is not as obvious as smuggling WMDs into the United States, but it represents a serious risk to the standard of living and way of life of the American people, and thus represents a serious national security threat.

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160. C-SPAN Interview, *supra* note 4.

161. See Mohamed Y. Mattar, *Incorporating the Five Basic Elements of a Model Antitrafficking in Persons Legislation in Domestic Laws: From the United Nations Protocol to the European Convention*, 14 TUL. J. INT'L & COMP. L. 357, 419 (2006).