

Responding to Human Trafficking: The Progress and Challenges

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The United States has led global efforts to address trafficking in persons (TIP), sometimes referred to as “human trafficking” or “modern slavery.” Beginning in the late 1990s, efforts by the U.S. government and U.S. non-governmental organizations (NGOs) helped place the issue on the world’s agenda. In 2000, the United States played a major role in the development of the anti-TIP “Palermo Protocol” addition to the U.N. Convention on Transnational Organized Crime in Palermo Italy. Also in 2000, the United States passed its own major anti-TIP law, the Trafficking Victims Protection Act (TVPA). This sweeping law included sections that enhanced U.S. domestic efforts against trafficking, authorized foreign assistance funding to help other countries develop anti-TIP programs, and established an annual report that assesses the actions taken by individual governments around the world to combat trafficking. The TVPA was reauthorized and amended in 2003, 2005, and 2008 to continue efforts and to make them more effective. In all these international and domestic efforts, U.S. anti-TIP policy has centered on the three “Ps” of Prevention, Protection of victims, and Prosecution of traffickers. Recently, U.S. officials have spoken of a fourth P, Partnership, to stress that efforts must be coordinated among governments, but also across governments, businesses, and the private sector. Going forward, the United States should add a fifth P to its TIP policies--Perseverance. Trafficking is a complex issue affected by many factors of supply and demand globally, so it will take time for governmental efforts to have a significant impact. The United States must maintain the positive steps it has taken and look to further sharpen policies over the long-term.

There are some definitional disputes on how to count TIP victims and TIP is an unreported illegal enterprise, therefore there are disagreements over the exact number of trafficking victims. Some estimates have come down in recent years, but the numbers are still

high. Official U.S. estimates are that 2 to 4 million people are trafficked annually, with roughly 17,000 coming to the United States. The International Labor Organization (ILO) estimates trafficking generates profits as high as \$32 billion annually, which places it near drug and arms smuggling as major sources of international criminal profits. The general pattern is that people from poorer areas are coerced, abducted, bought, or deceived by traffickers who bring them to richer areas. Therefore, TIP is truly a global problem with the vast majority of countries in all regions of the world involved either as sources, transit points, or end locations.

TIP did not receive major world attention until the 1990s. At that point, factors such as the increasingly interconnected world economy, the rise of transnational crime networks, and poverty and poor law enforcement in many developing countries and former communist bloc countries were exacerbating the problem. Concurrently, many women's groups, religious groups, celebrities, and key politicians focused new attention on the issue. With the encouragement of the United States and several other countries, U.N. members adopted the Palermo Protocol. The Palermo Protocol defines TIP as:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The Protocol requires countries to establish comprehensive programs to prevent and combat trafficking and it encourages countries to establish measures to aid the recovery of victims. As of 2012, there are 150 state parties to the Protocol. This also means that there are more than 40 members of the U.N. that have not agreed to the Protocol. In line with the Protocol, over half the countries of the world have passed new trafficking laws in the last decade. The U.N. has tried to

assist countries through research projects, technical assistance, and funding. In 2007, several U.N. agencies combined to launch the U.N. Global Initiative to Fight Trafficking (UNGIFT), which coordinates both state and non-state actors in forums and policy initiatives. The United States has supported and funded U.N. efforts, but, as on many other issues, has chosen to establish its own programs as well.

The U.S. definition of TIP under TVPA is similar to Palermo, but focuses only on “severe forms of human trafficking” and more narrowly defines the means involved. The TVPA makes mention of forced labor, but more U.S. focus historically has gone to cases tied to sexual exploitation. Under the TVPA, the United States has tried to improve its domestic TIP policies. One area of focus has been increased prosecution of traffickers. The TVPA was the first law to criminalize sex and labor trafficking in America. In its first years, though, prosecutions did not greatly increase, showing that creating law is easier than effective implementation. In subsequent years, the criminal justice response has been made more effective by increased training of police and other first responders who come in contact with victims, development of new state and local laws and enforcement, and modification of the law itself by lessening the culpability standard for several sexual trafficking crimes from “knowingly” violating standards to just “disregarding” them, and by adding a trafficking conspiracy offense. A second area of focus has been increasing assistance for victims. One barrier to victim assistance is that trafficked prostitutes and other laborers often are treated as criminals rather than victims, so they fear cooperation with authorities will lead to jail and deportation. Refocusing prosecution efforts on the traffickers has somewhat lessened this problem. In addition, the United States moved to assure victims of better legal representation and to create a system of “T” visas that allows victims who meet certain criteria and cooperate with law enforcement to settle in the United

States. These efforts aid the victims, and increase the likelihood of creating cooperative witnesses, which improves prosecution rates. Additionally, the government and private groups have expanded programs for healthcare, psychological counseling, job training, shelters, and resettlement assistance. In recent years, roughly \$20 million has been authorized annually for domestic TIP programs, but actually even more money is spent if one considers federal, state, and local policing efforts that come under broader budget lines.

The TVPA also authorizes funds for the Department of State, U.S. Agency for International Development, and the Department of Labor to assist foreign countries in their efforts to combat TIP. Between fiscal years 2005 and 2010, a total of \$493 million was provided to a variety of foreign governments, NGOs, international organizations, and researchers. In 2011, the United States supported programs in 70 countries. Some of the money supports technical assistance and training programs for governments as they develop and implement new TIP laws. Other money goes to victim aid projects, which historically have tended to get limited international attention. Funds also support public awareness campaigns, consisting of workshops, billboards, videos and other means used to try to alert potential victims and other members of society to the dangers of TIP and to rally their support for government programs. Most of the individual grants are for \$500,000 or less, but in countries with strained budgetary resources, many of the programs would not occur without outside funding.

The TVPA also mandates an annual State Department report that provides a narrative of actions taken and places countries into one of four tiers based on their governmental efforts to combat TIP. Countries are judged on a series of criteria covering prevention, protection of victims, and prosecution. Tier 1 countries fully comply with TVPA's minimum standards. Tier 2 countries are not in compliance, but are making significant efforts to improve. Tier 2 Watch

List countries are not in compliance, are making efforts, but have a high number of victims or have failed to provide evidence of recent significant efforts. Tier 3 countries do not comply with standards and are not making significant efforts to do so. Tier placement can be adjusted based on the extent of trafficking in the country, the level of government complicity in trafficking, and the government's available resources. Under the 2008 law, any country that would be on the Tier 2 Watch List for three consecutive years must be downgraded to Tier 3. The automatic downgrade can be waived by the Secretary of State if the country has a written plan that would represent significant improvements. Tier 3 countries can be sanctioned by the United States by the withholding of non-humanitarian, non-trade related foreign assistance and funding for government educational and cultural exchange programs, and can face U.S. opposition of funding from the International Monetary Fund and the World Bank. These sanctions can be waived if the President determines that aid would promote the purpose of the TVPA or overall U.S. national interests. In 2012, 33 countries (18%) were Tier 1, 93 countries (50%) were Tier 2, 42 (23%) were Tier 2 Watch List and 17 (9%) were Tier 3. Countries do move up and down over time, but there is a good deal of overall consistency year to year.

In its first year, the TIP report was judged by an NGO expert as “a slight and somewhat confused document.”¹ Over time, it has become much more detailed and well researched, and become more respected by both NGOs and governments. Its annual June release brings renewed attention to TIP and new pressures for further policy progress. The TIP report has been criticized as reflecting U.S. biases by some who would prefer a report issued by the United Nations or a neutral third party, but reports from those other sources can be just as politically shaped and lack the detail of U.S. reports. Some foreign governments criticize the report's judgments, but their criticism at least shows that most foreign governments do pay attention to

the report. It is difficult to prove the impact of the Report on foreign government behavior, but steps taken by countries as diverse as Turkey, Israel, Nigeria and Malaysia appear to have occurred in response to rankings and criticisms included in the report.

As the United States moves forward with TIP policy, it has past successes to build on, so should continue the main strands of its policies, but always look for ways to improve them. To date, TIP policies have had strong bipartisan support across three administrations, but continuity is never assured as new Presidents and Congressmen come to office. It is therefore crucial that TIP policy was institutionalized under the TVPA with the creation of a State Department Office to Combat and Monitor Trafficking in Persons, focused offices within the Departments of Labor and Justice, and interagency coordination in the Senior Policy Operating Group and President's Interagency Task Force. TIP policy has also been institutionalized within many state and local agencies. These various actors must continue their work and they must continue to be funded at adequate levels despite pressures to reduce overall government spending. Additionally, with so many actors involved, it is important that policies remain well coordinated and any overlapping missions and redundancies be eliminated.

More specifically, the United States should maintain its efforts to put in place strong laws backed by prosecutions. Federal prosecutions have increased in recent years, but there has not been a steady upturn and there are still relatively few convictions in relation to the number of investigations and, even more so, to the estimated number of trafficking victims. The TVPA could be further amended to aid prosecutors by lowering the culpability standards for forced labor crimes. The Department of Justice and others should continue to train officers at all levels. Prosecution, though, is not the only goal. As the NGO End Child Prostitution and Trafficking noted, there were almost three times as many prostituted children arrested as were offered

assistance in 2008 and 2009.ⁱⁱ In addition to overall efforts to build victim assistance, there should be further consideration of the law on “T” visas. Originally, there was a fear that “T” visas might lead to fraud or a flood of immigrants, so the TVPA put a cap of 5,000 approvals per year and established tough requirements that adult applicants show they were victims of trafficking, were in the United States because of trafficking, would suffer extreme hardship if removed from the United States, and would cooperate with law enforcement in prosecuting traffickers. In 2008, the requirement of cooperating in prosecution was dropped for those unable to cooperate “due to physical or psychological trauma.” Still, the overall requirements are difficult to meet, so they discourage some victims from coming to law enforcement for fear of deportation and they give victims little time to consider their options at a time when they are already recovering from a great trauma. Additionally, total approvals have never been close to the cap, but if they did rise, the cap would become an arbitrary limit on victim rights, so should be removed.

Internationally, some progress has been made, but still less than 20 percent of countries are Tier 1, so much work remains. The United States can help others partly by modeling good behavior. Starting in 2010, there has been an entry about the United States in the annual U.S. TIP report that notes both successful actions taken by the United States, and areas where it can improve. This honesty may encourage others to be more open to constructivism criticism. Also, in 2002, President Bush issued National Security Directive 22, which included zero tolerance for trafficking by any U.S. contractor. There were reports that contractors in Afghanistan and Iraq may have had issues, so the United States should reaffirm and enforce its commitment. The United States also should maintain foreign aid funding to assist others in combat trafficking. In FY2012, the main State Department program directly focused on trafficking received 518

proposals requesting a total of \$281 million, but had only \$18.7 million to disperse. Clearly, the United States needs to strengthen the idea of partnerships to encourage allies, international organizations, private agencies and businesses to carry more of the financial burden.

For countries that have made less progress on TIP, the main U.S. weapons remain criticism and diplomacy. The TIP reports are the starting point, so they must be as detailed and fair as possible, even though government auditors have identified the report as one of the most costly reports the State Department completes. The fact that U.S. enemies such as North Korea, Venezuela, Iran, and Cuba consistently are judged Tier 3, but U.S. friends and more strategically important countries receive higher rankings means that every effort must be made to avoid political bias. There also should be clarity of the exact criteria used to judge countries and how various factors combine to produce a single Tier score. Interested countries should be brought into dialogues on the exact reasons for their ranking and what they could do to improve. In judging countries, the criteria must meet the wording of the TVPA, but the reports should note compliance with international standards from Palermo and other international treaties. The TIP reports bring annual focus, but the U.S. must work with its allies year round and in multiple bilateral and multilateral forums to encourage less compliant countries. There also should be recognition that the threat of sanctions is often a hollow. In FY2012, 14 of 17 Tier 3 countries received full or partial national interest waivers of sanctions, and many others received waivers which kept them from even dropping to Tier 3. The failure of the United States to fully apply sanctions for human rights issues is quite typical under a number of laws because sanctions are considered a blunt tool for pushing action on a specific issue and can lead to political backlash from the sanctioned country. In egregious cases sanctions should be employed, but the main leverage comes from labeling and embarrassing countries. If the United States acknowledges

that it is unlikely to apply sanctions, State Department officials might be more willing to accurately place countries in Tier 3.

Trafficking does not get the headlines of other issues, but it is a major assault on human dignity. Despite impressive focus and development of new programs, trafficking remains a global problem. The United States must recognize that despite its past actions, much hard work remains. For the United States and other countries focused on the issue, it is often easier to make bold statements, sign international agreements and even create new laws than it is to actually implement efficient and effective long-term policies. The United States must therefore maintain its own programs focused on prevention, protection, and prosecution and partner with other interested countries. The United States must lead allies to push less interested countries toward compliance. Finally, the United States must remember that change takes time and so it needs to persevere to achieve long-term results.

Realistically, even with time, no U.S. or global policies will ever completely eradicate TIP, but even small statistical improvements mean bringing human dignity and betterment to specific victims, so the United States must continue to pursue the five “Ps”--prevent, protect, prosecute, partner, and persevere.

ⁱ Anne T. Gallagher, “Improving Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the U.S. Trafficking in Persons Reports,” *Human Rights Review* 12 (2011): 384.

ⁱⁱ Mark P. Lagon “The Global Abolition of Human Trafficking: The Indispensable Role of the United States,” *Georgetown Journal of International Affairs* 12 (Winter/Spring 2011): 93.

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