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Introduction to Special Symposium Feature: Successes and Failures in International Human Trafficking Law

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INTRODUCTION

*Bridgette A. Carr**

The Essays in this issue of the *Michigan Journal of International Law* showcase the results of an important and historic symposium held at the University of Michigan Law School in February 2011. Acknowledging the ten-year anniversary of both the international Protocol to Prevent, Suppress, and Punish Trafficking in Persons (Trafficking Protocol),¹ and the Trafficking Victims Protection Act (TVPA) in the United States,² the conference brought together an extraordinary group of legal scholars, government officials, and practitioners to examine the successes and failures in international human trafficking law.³ The need to evaluate both the successes and failures in antitrafficking law is evident in the existence of the laws themselves. This symposium focused on evaluations of the contemporary attempts to end modern-day slavery because historical approaches to combating slavery by simply relying on legal prohibitions have proven ineffective and insufficient.

Absent an eradication of human trafficking, how does one define success in international human trafficking law? How can and does the international legal community identify and respond to failures? In the international human trafficking field these inquiries can be especially difficult since “international scrutiny of the implementation of the Trafficking Protocol’s core obligations remains predictably unsatisfactory.”⁴ Without effective evaluation of the core obligations of the Trafficking Protocol at the international level, the *Trafficking in Persons Report (TIP Report)*—an annual review by the U.S. Department of State of the United States’ and other nation’s efforts to combat trafficking within their own borders—has become the dominant tool for monitoring a nation’s antitrafficking activities. Since the *TIP Report* is guided by criteria set forth in the TVPA, the U.S. approach to human trafficking is at the forefront of many international human trafficking law discussions.

As the international human trafficking law regime continues past its first decade and into its adolescence, reflection and evaluation must continue.

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1. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319 (entered into force Dec. 25, 2003) [hereinafter Trafficking Protocol].

2. Trafficking Victims Protection Act of 2000 [TVPA], Pub. L. No. 106-386, div. A, 114 Stat. 1464, 1466 (2000) (codified at 22 U.S.C. §§ 7101–12).

3. *Successes and Failures in International Human Trafficking Law*, MICH. J. INT’L L., <http://students.law.umich.edu/mjil/symposia/2011/> (last visited Oct. 25, 2011).

4. Anne T. Gallagher, *Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway*, 49 VA. J. INT’L L. 789, 826 (2009).

The difficulties in identifying successes and failures must not prevent the types of analysis exhibited in the Essays that follow. These pieces allow readers to explore a variety of perspectives on the state of international human trafficking law in its first decade. From the multi-instrument approach of the European Union to unique and innovative national attempts to combat human trafficking, the Essays provide crucial guideposts that illustrate both how far the antitrafficking movement has come and how much work must still be done.

In the keynote address, Ambassador Luis CdeBaca critiques the “synonym by paragraph”⁵ approach used historically by scholars and decision makers to describe the variety of ways in which individuals are compelled into service. For Ambassador CdeBaca, one of the successes of international human trafficking law is that the use of the umbrella term “human trafficking” is beginning to eliminate artificial distinctions between compelled service in the commercial sex industry and other industries. The Ambassador calls for moving the legal focus away from identifying the type of compelled service provided and on to the act of compulsion as a crucial step that must be taken in order for the antitrafficking movement to be successful. To be effective, he thinks antitrafficking legal processes based on victim choices and actions must be replaced with legal approaches focused on the behaviors and actions of the person compelling service and denying the victim his or her freedom. Finally, the Ambassador acknowledges the limitations of legal statutes in the antitrafficking fight and calls for victim-centered programs and policies that enable victims’ voices to be heard and their best interests respected.

Professor Jonathan Todres’s Essay puts the failure of international human trafficking law squarely on its locus within the broader international law framework. He argues that many of the failures in combatting human trafficking are due to a decision made at the “design stage”⁶ to locate the Trafficking Protocol within a criminal law framework. To meet the prevention and victim-centered protection goals of the Trafficking Protocol he suggests looking to other perspectives such as human rights, public health, and development models for guidance.

Saadiya Chaudary’s contribution lays out the evolution of antitrafficking legislation and judicial decisions in European law. She highlights the need for trafficking cases to be seen within a human rights framework in order to adequately protect the rights of trafficking victims. Specifically she analyzes the jurisprudence of the European Court of Human Rights (ECtHR) on Anti-

5. Luis CdeBaca, Ambassador-at-Large, Office to Monitor and Combat Trafficking in Pers., U.S. Dep’t of State, Keynote Address at the Michigan Journal of International Law Symposium: Successes and Failures in International Human Trafficking Law (Feb. 5, 2011), in 33 MICH. J. INT’L L. 37, 42–43 (2011) (noting circular use of terms such as enslavement, servitude, practices similar to slavery, forced labor, and bonded labor).

6. Jonathan Todres, *Widening Our Lens: Incorporating Essential Perspectives in the Fight Against Human Trafficking*, 33 MICH. J. INT’L L. 53, 55 (2011).

cle 4 of the European Convention on Human Rights.⁷ She argues that, based on recent ECtHR cases, human trafficking must be included within a nation's Article 4 obligations, and therefore, the victim-based protection provisions within the Council of Europe Convention on Action Against Trafficking in Human Beings (European Trafficking Convention)⁸ must apply in all European national courts regardless of whether the nation has incorporated the convention's provisions domestically. Her Essay illustrates the crucial role individual human trafficking cases can have in defining the obligations of nations when such cases are viewed within the context of international law's prohibitions on slavery.

Dr. Mohamed Mattar's Essay focuses on the successes and failures of human trafficking legislation in the Arab World. He highlights how many countries in the Arab World are shifting their antitrafficking focus from simply criminalizing just the act of human trafficking to also protecting and supporting victims of human trafficking. His thorough analysis of Arab human trafficking laws reveals a number of innovative approaches, especially Syria's law, which prosecutes individuals who create the demand for human trafficking victims.⁹ Dr. Mattar ends his Essay with a call for an expansion of the role of civil society in the fight against human trafficking and for legislation that moves beyond simple antitrafficking laws and toward legislation that addresses and combats the root causes of human trafficking.

Finally, Max Waltman's piece highlights the importance and influence of innovative national-level antitrafficking laws in the international fight against human trafficking. Sweden enacted a prostitution law criminalizing only those who purchase sex and "not those being bought."¹⁰ He explains the Swedish approach as being based in an understanding of gender inequality, finding that in an unequal world a law focusing on purchasers—who are predominantly men—combined with no criminalization against the people being bought—who are mostly women—is required to effectively combat sex trafficking. He analyzes the available data to show the effectiveness of the Swedish law and discusses the detrimental impact of a post-implementation judicial decision that significantly lowered the penalties for purchasers.

7. Saadiya Chaudary, *Trafficking in Europe: An Analysis of the Effectiveness of European Law*, 33 MICH. J. INT'L L. 77, 84 (2011). Article 4 provides that "[n]o one shall be held in slavery or servitude" or "be required to perform forced or compulsory labour." European Convention for the Protection of Human Rights and Fundamental Freedoms arts. 4(1), 4(2), *opened for signature* Nov. 4, 1950, C.E.T.S. No. 005 (entered into force Sept. 3, 1953; amended June 1, 2010).

8. Council of Europe Convention on Action Against Trafficking in Human Beings, *opened for signature* May 16, 2005, C.E.T.S. No. 197 (entered into force Feb. 1, 2008), *available at* <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>.

9. Mohamed Y. Mattar, *Human Rights Legislation in the Arab World: The Case of Human Trafficking*, 33 MICH. J. INT'L L. 101, 116 (2011).

10. Max Waltman, *Prohibiting Sex Purchasing and Ending Trafficking: The Swedish Prostitution Law*, 33 MICH. J. INT'L L. 133, 135 (2011).

The editors of the *Michigan Journal of International Law* have thus provided crucial perspectives on the state of international human trafficking law. Increasing protection for victims, decreasing demand for exploitative products and services, and utilizing a variety of approaches and disciplines to combat human trafficking will be critical in the second decade of the Trafficking Protocol and the TVPA. One can only hope that this symposium will be the first of many forums that invite us to reflect on international law's successes and failures in eradicating human trafficking.