Northwestern Journal of International Human Rights

Volume 4 | Issue 3 Article 5

Spring 2006

Significant Steps or Empty Rhetoric? Current Efforts by the United States to Combat Sexual Trafficking near Military Bases

Brian Parsons

Follow this and additional works at: http://scholarlycommons.law.northwestern.edu/njihr

Recommended Citation

Brian Parsons, *Significant Steps or Empty Rhetoric? Current Efforts by the United States to Combat Sexual Trafficking near Military Bases*, 4 Nw. J. Int'l Hum. Rts. 567 (2006).
http://scholarlycommons.law.northwestern.edu/njihr/vol4/iss3/5

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Northwestern Journal of International Human Rights by an authorized administrator of Northwestern University School of Law Scholarly Commons.

Copyright 2006 by Northwestern University School of Law
Volume 4, Issue 3 (Spring 2006)
Northwestern Journal of International Human Rights

Significant Steps or Empty Rhetoric?

Current Efforts by the United States to Combat Sexual Trafficking near Military Bases

Brian Parsons*

I. INTRODUCTION

> "The policy of the United States is to attack vigorously the worldwide problem of trafficking in persons, using law enforcement efforts, diplomacy, and all other appropriate tools."
>
> – National Security Presidential Directive (NSPD-22) dated December 16, 2002
>
> "It is the policy of the Department of Defense that trafficking in persons will not be facilitated in any way by the activities of our Service members, civilian employees, indirect hires, or DoD contract personnel."
>
> – Deputy Secretary of Defense Paul Wolfowitz Memorandum dated January 30, 2004
>
> "No leader in this department should turn a blind eye to this issue."
>
> – Secretary of Defense Donald Rumsfeld Memorandum dated September 16, 2004

¶1 Trafficking in persons has emerged as one of the most serious problems facing the world today. Somewhere between 600,000 and 800,000 people are trafficked each year across international borders.[1] Most of the people trafficked are women and children and these numbers do not reflect the millions of people who are trafficked within their own countries.[2] Sex trafficking often takes hold in poverty-stricken countries where there are

---

* J.D. Candidate, 2006, Northwestern University School of Law; B.A. in Communication, 2002, Saint Louis University. I would like to thank Professor Douglas Cassel, Maureen T. Walsh, Sarah Mendelson, and LCDR Jim Carsten for all of the insight and advice they provided to me during the writing of this article. I would particularly like to thank my wife, Joey, for all of her advice, criticism, love, and most of all patience.

[1] U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT 6 (June 2005), *available at* http://www.state.gov/documents/organization/47255.pdf.

[2] *Id.*

few opportunities for women to advance coupled with inadequate laws to prosecute traffickers.[3]

¶2 Historically, many of the victims of sex trafficking include women who are forced to work as prostitutes in areas surrounding military bases.[4] Areas near U.S. military bases are no exception, as brothels and massage parlors spring up to meet demand. In fact, the United States has consistently allowed and, in some cases, even implicitly encouraged the development of brothels near military bases to satisfy the sexual desires of Americans serving there.[5] Recently, as the list of offenses alleged to have been committed at Abu Ghraib seemingly increases by the day, new reports indicate a possible prostitution ring involving members of military police units having sex with Iraqi prostitutes.[6] These incidents undermine and contradict efforts of the United States to lead the world in the fight against human trafficking.

¶3 In addition, creating a demand for trafficked women in the areas surrounding U.S. military bases may be making the jobs of servicemen more difficult. Trafficking in persons is currently the third most profitable form of trafficking worldwide, accounting for 9.5 billion U.S. dollars of annual revenue for organized crime each year.[7] When U.S. forces are stationed abroad, one of their primary purposes is to combat organized crime and help enforce the rule of law. However, the money spent on prostitutes by servicemen near U.S. military bases often ends up in the hands of the criminals who are responsible for sexual trafficking.[8] By spending money on prostitutes, the servicemen are helping to finance the criminal elements they are supposed to be stopping. In fact, these activities may actually be creating a new market for trafficked women and providing a more fertile ground for criminal activity. These actions frustrate the very purpose of a military presence and in the end may do more harm than good.

¶4 In essence, sex trafficking near military bases boils down to a supply and demand issue. While initiatives such as the United Nations Protocol on Trafficking in Persons and the Trafficking Victims Prevention Act[9] may be useful in persuading countries to combat trafficking within their own borders, the host country alone has the power to influence the supply of trafficked women available near military bases. But no matter how hard a country attempts to limit the influx of trafficked women into their country, as long as U.S. military bases are creating a strong demand for prostitution and trafficked women, organized crime will find a way to meet that demand. This is not a unique problem of the United States and its military. As long as there have been armies and wars, there have been prostitutes near military bases to service the sexual demands of

---

[3] Susan Tiefenbrun, *The Saga of Susannah A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107, 111 (2002).

[4] Isabelle Talleyrand, Comment, *Military Prostitution: How the Authorities Worldwide Aid and Abet International Trafficking in Women*, 27 SYRACUSE J. INT'L L. & COM. 151, 152 (2000).

[5] *Id.* at 154-56; Emily Nyen Chang, Comment, *Engagement Abroad: Enlisted Men, U.S. Military Policy and the Sex Industry* 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 621 (2001).

[6] Greg Miller, *Alcohol Cited as Problem at Prison; Officials at Abu Ghraib tried to rein in the illicit behavior before abuse of inmates surfaced*, L.A. TIMES, June 13, 2004, at A1.

[7] TRAFFICKING IN PERSONS REPORT , *supra* note 1, at 13-14.

[8] *Id.*; Tiefenbrun, *supra* note 3, at 136.

[9] These will be discussed *infra* Part II.

soldiers.[10] But, while the United States pledges to combat trafficking worldwide, these actions threaten the credibility of the United States and help to fund organized crime.[11]

¶5 In recent years, the United States has taken steps on the international stage to combat sexual trafficking. In his address to the United Nations General Assembly in 2003, President Bush called human trafficking "a special evil in the abuse and exploitation of the most innocent and vulnerable."[12] More recently, the United States co-sponsored a new "zero-tolerance" policy towards trafficking activities that was adopted by the twenty-six allies of the North Atlantic Treaty Organization (NATO) and twenty additional states in the Euro-Atlantic Partnership Council (EAPC).[13] However, the activities of the U.S. military and civilian contractors near U.S. military bases that contribute to the problem of trafficking make overall U.S. efforts in this area seem somewhat hypocritical.

¶6 To deal with this problem, on December 16, 2002, President Bush issued a national security presidential directive establishing a zero-tolerance policy towards United States involvement in trafficking activities abroad.[14] On January 30, 2004, Deputy Defense Secretary Paul Wolfowitz issued a memo outlining the zero-tolerance policy for the Department of Defense.[15] Additionally, on September 16, 2004, Defense Secretary Donald Rumsfeld issued a memo to augment the memo of Deputy Defense Secretary Wolfowitz, stating his commitment to taking "every step possible to combat Trafficking in Persons."[16] However, questions remain as to whether some of the actions taken by the U.S. government to combat trafficking live up to this aggressive rhetoric.

¶7 This paper will examine the legal steps being taken by the United States to combat the sexual trafficking that tends to flourish near U.S. military bases. Part II will discuss the history of the U.S. military and its complicit relationship with prostitution near its military bases. This section will also explore international efforts to combat trafficking and will explain why these efforts are insufficient. Finally, Part II will examine the

---

[10] *Enforcing U.S. Policies Against Trafficking in Persons: How is the U.S. Military Doing?: Hearing Before the U.S. Comm'n on Security and Cooperation in Europe and the House Armed Services Comm.*, 108th Cong. 2 (2004) [hereinafter *Hearings*] (testimony of Rep. Christopher Smith, Chairman, U.S. Comm'n on Security and Cooperation in Europe), *available at* http://www.csce.gov/index.cfm?Fuseaction=UserGroups.Home&ContentRecord_id=287&ContentType=B&UserGroup_id=69&Subaction=Hearings&CFID=18547223&CFTOKEN=84789441.

[11] TRAFFICKING IN PERSONS REPORT , *supra* note 1, at 13-14; Tiefenbrun, *supra* note 3, at 136.

[12] President's Address to the United Nations General Assembly, 39 WEEKLY COMP. PRES. DOC. 1256, 1259 (September 23, 2003).

[13] *U.S., Norwegian Envoys to NATO Brief on Anti-Trafficking Policy; NATO, EPAC should take steps to implement zero tolerance policy, Burns says*, FED. INFO. AND NEWS DISPATCH, July 9, 2004 [hereinafter *NATO anti-trafficking policy*].

[14] Press Release, White House Office of the Press Secretary, Trafficking in Persons National Security Presidential Directive (Feb. 25, 2003) [hereinafter Trafficking Press Release], http://www.whitehouse.gov/news/releases/2003/02/20030225.html; *Hearings*, *supra* note 10, at 3 (testimony of Rep. Christopher Smith, Chairman, U.S. Comm'n on Security and Cooperation in Europe); DEPARTMENT OF DEFENSE, OFFICE OF THE INSPECTOR GENERAL, ASSESSMENT OF DOD EFFORTS TO COMBAT TRAFFICKING IN PERSONS: PHASE II – BOSNIA-HERZEGOVINA AND KOSOVO 5 n.2 (2003) [hereinafter PHASE II REPORT], *available at* http://www.dodig.osd.mil/fo/foia/HT-Phase_II.pdf.

[15] Memorandum from Deputy Defense Secretary Paul Wolfowitz, to Secretaries of the Military Departments and the members of the Department of Defense (Jan. 30, 2004) [hereinafter Wolfowitz memo] (on file with author).

[16] Memorandum from Defense Secretary Donald Rumsfeld, to Secretaries of the Military Departments and the members of the Department of Defense (Sept. 16, 2004) [hereinafter Rumsfeld memo] (on file with author).

recent events that led to the United States' aggressive stance toward trafficking in general and, more specifically, sexual trafficking near military bases. Part III will focus on two legal avenues proposed by the United States to combat sexual trafficking. First, a recent change to the Manual for Courts-Martial (MCM) specifically prohibits the soliciting of prostitutes by all military personnel.[17] Second, the Military Extraterritorial Jurisdiction Act of 2000 may allow civilian contractors that are involved in trafficking activities abroad to be prosecuted in the United States.[18] Part IV will examine some of the weaknesses of these and other measures and offer suggestions on ways to combat sexual trafficking near military bases more effectively.

II. HISTORY

A. The Relationship Between the United States Military and Prostitution

¶8 Some of the first documented cases of an ongoing U.S. military connection to prostitution occurred on bases near the Mexican border and in the Philippines in the early 1900s.[19] The primary concern of the military became the threat of soldiers contracting a venereal disease (VD) from the prostitutes.[20] To protect against this, the military began to require that local prostitutes be inspected by military doctors every week or two.[21] Rather than attempt to end the practice altogether by prohibiting the activity, the military instead chose merely to screen the prostitutes for the servicemen to make sure that they were not carrying a disease.

¶9 In the early to mid 1900s, however, some government officials began efforts to end the practice of prostitution near military bases.[22] One of the main reasons for this was that venereal disease proved to be a severe problem for the military.[23] To combat the spread of disease, local governments and the military increased the policing of red-light districts.[24] In addition, during World War I soldiers could be court-martialed or have their pay withheld if they contracted a VD as a result of visiting a prostitute.[25] Combating prostitution once again came into focus around WWII. For example, the House of

---

[17] Exec. Order No. 13,387, 70 Fed. Reg. 60,697, 60,701 (Oct. 18, 2005).

[18] Military Extraterritorial Jurisdiction Act, 18 U.S.C. §§ 3261-3267 (2000); Glenn R. Schmitt, *Closing the Gap in Criminal Jurisdiction Over Civilians Accompanying the Armed Forces Abroad – A First Person Account of the Creation of the Military Extraterritorial Jurisdiction Act of 2000*, 51 CATH. U. L. REV. 55, 56 (2001).

[19] ALLAN M. BRANDT, NO MAGIC BULLET: A SOCIAL HISTORY OF VENEREAL DISEASE IN THE UNITED STATES SINCE 1880, 53-56 (1985); Saundra Pollock Sturdevant & Brenda Stolzfus, *Disparate Threads of the Whole: An Interpretive Essay*, *in* LET THE GOOD TIMES ROLL 300, 303 (1992).

[20] BRANDT, *supra* note 19, at 54. Even at the time, this was not a new phenomenon. A legend in military circles tells a story of Napolean who was decorating a soldier for bravery and inquired about his health. When asked whether he had ever contracted gonorrhea, the soldier said, "Yes sir; 100 times." Napolean said, "Were you cured?" And the soldier replied, "I was cured 99 times; every time but the first time." See *To Prohibit Prostitution Within Reasonable Distance of Military and Naval Establishments: Hearing on H.R. 2475 Before the House Comm. on Military Affairs*, 77th Cong. 16 (1941) [hereinafter *Hearing on H.R. 2475*] (statement of Hon. Fiorello H. LaGuardia, Mayor, New York City).

[21] BRANDT, *supra* note 19, at 54, Sturdevent & Stolzfus, *supra* note 19.

[22] BRANDT, *supra* note 19, at 52.

[23] *Id*. at 36 (noting that in 1909 venereal disease accounted for over one-third of all days lost by Army personnel).

[24] *Id*. at 53-57.

[25] Nancy K. Ota, *Flying Buttresses*, 49 DEPAUL L. REV. 693, 706 (2000).

Representatives held hearings in 1945 to discuss permanently extending an earlier act that prohibited prostitution in and around military and naval establishments.[26] Even then, however, one of the main motivations for ending this practice was "maintaining the health of the young boys."[27]

¶10 Despite these and other efforts, the assumption that men "required the sexual use of women's bodies" remained, and by the time of the Vietnam War the military for the most part relented in order to "keep the troops contented and satisfied."[28] For example, the United States began stationing troops in Korea in 1955, and during the next forty years over one million Korean women served as sex providers for the U.S. military.[29] During this time, the United States also signed "Rest and Relaxation" (R&R) agreements with the Philippines and Thailand.[30] Pursuant to these agreements, the governments of these countries were obligated to provide R&R centers, commonly known as Intoxication and Intercourse by the troops, for U.S. military personnel.[31]

¶11 Many of these practices have continued to the present day. In 1997, a sting operation uncovered a prostitution ring operating in Texas near a military base.[32] Recent reports indicate that U.S. soldiers near Abu Ghraib solicited sex from Iraqi prostitutes.[33] Nearly every military base both at home and abroad is surrounded by a thriving sex industry.[34] Although the military generally does not take on as active of a role in providing military doctors to check prostitutes, it often expects that the host country will monitor them.[35] However, U.S. Army officials in Korea are continuing to check the health records, including AIDS test results, of night club workers who work near U.S. military bases.[36] These foreign entertainers are required to complete health exams every three months, and the entertainers feel that these practices run counter to the army's campaign against human trafficking and prostitution.[37] If certain establishments have prostitutes with known sexually transmitted diseases, the military will place them off limits for both military personnel and civilians at the base.[38] Overall, there exists an extensive problem of both patronization of brothels by servicemen and indirect control of brothel management by military officials.[39]

---

[26] *Hearing on H.R. 2475*, *supra* note 20.

[27] *Id*. at 5.

[28] SUSAN BROWNMILLER, AGAINST OUR WILL: MEN, WOMEN AND RAPE 93-94 (1975).

[29] KATHARINE H.S. MOON, SEX AMONG ALLIES: MILITARY PROSTITUTION IN U.S.-KOREA RELATIONS 1 (1997).

[30] RITA NAKASHIMA BROCK & SUSAN BROOKS THISTLEWAITE, CASTING STONES: PROSTITUTION AND LIBERATION IN ASIA AND THE UNITED STATES 5, 116-118 (1996).

[31] *Id*. at 5.

[32] *Texas Prostitution Sting Snags War Games Troops*, N.Y. TIMES, April 22, 1997.

[33] Miller, *supra* note 6.

[34] *See* Chang, *supra* note 5, at 631.

[35] *Id*. at 632.

[36] Seth Robinson, *Examination of S. Korean Nightclub Workers' Health Records Stirs Debate*, STARS AND STRIPES, Nov. 28, 2004, http://www.estripes.com/article.asp?section=104&article=24839&archive=true.

[37] *Id*.

[38] Chang, *supra* note 5, at 632.

[39] *Id*. at 621; Talleyrand, *supra* note 4.

B. International Efforts and Their Inadequacies

¶12 Although the international community has taken steps to combat trafficking, these efforts have had little success in curbing the practice near military bases. One of the biggest steps began in 1998, when the United Nations General Assembly established a committee to negotiate an international convention against transnational organized crime.[40] After two years of work, the General Assembly adopted the UN Convention Against Transnational Organized Crime along with two additional optional protocols.[41] One of the optional protocols was the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.[42] One hundred twenty-five states signed the convention when it was opened for signature and eighty-one states additionally signed the supplemental protocol on trafficking in persons.[43] The optional protocol on trafficking in persons officially went into force on December 25, 2003; to date, 117 states are signatories and ninety-five have ratified the protocol.[44] The protocol defines "trafficking in persons" 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 of 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.[45]

¶13 As a ratifying member of the protocol, member states are required to comply with a number of responsibilities. For example, member states are required to enact legislative measures that criminalize acts of trafficking as defined in the statute,[46] provide assistance and protection to victims of trafficking in persons,[47] and set up programs to aid in the prevention of trafficking,[48] including training sessions for law enforcement and other

---

[40] G.A. Res. 111, U.N. GAOR 3rd Comm., 53rd Sess., 85th plen. mtg., Agenda Item 101, U.N. Doc. A/53/PV.85 (1998); *Contemporary Practice of the United States Relating to International Law*, 95 AM. J. INT'L L. 387, 407 (Sean D. Murphy ed., 2001) [hereinafter Murphy].

[41] GA Res. 25, U.N. GAOR, 55th Sess., Agenda Item 105, U.N. Doc. A/55/383 (2000); Murphy, *supra* note 40.

[42] GA Res. 25, U.N. GAOR, 55th Sess., Annex II, Agenda Item 105, at 31, U.N. Doc. A/55/383 (2000) [hereinafter Protocol on Trafficking], *available at* http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf.

[43] Murphy, *supra* note 40, at 407-08.

[44] The protocol went into force in accordance with article 17, which provided it go into effect 90 days after the fourtieth state had ratified it. *See* http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html [hereinafter Signatories] (last visited Jan. 14, 2006).

[45] Protocol on Trafficking, *supra* note 42, at 2, Article 3(a).

[46] *Id*. at 3, Article 5.

[47] *Id*., Article 6.

[48] *Id*. at 5, Article 9.

relevant officials.[49] Some of the countries in which the United States has a military presence, such as South Korea, are merely signatories to the protocol and have not yet ratified it.[50] However, many countries in which the U.S. has a military presence, such as Bosnia and Herzegovina, have signed and ratified the protocol.[51] Bosnia is a prime example of an area where the conditions of the optional protocol on trafficking in persons are in dire need of implementation, as a recent study showed that 90 percent of people from whom sexual services are purchased in Bosnia are victims of trafficking.[52] A 2002 report on the region showed that the Bosnian government failed to make serious efforts to enforce laws that criminalize trafficking or enact measures to support victims of trafficking.[53]

¶14 In addition, authorities in places like Bosnia and Herzegovina may encounter difficulties implementing all of the conditions of the protocol due to the questionable status of foreign peacekeepers serving there. In general, U.S. bases in foreign countries and the personnel stationed there are governed by Status of Forces Agreements (SOFA).[54] SOFA's are bilateral agreements between sovereign nations that cover topics such as how to deal with U.S. personnel who commit crimes in host countries.[55] U.S. forces serving in Bosnia and Herzegovina are serving as NATO forces and are governed by the SOFA of the Dayton Peace Accords.[56] While all forces enjoy functional immunity for acts committed while carrying out their official duties under the Dayton Peace Accords, only military personnel are under the exclusive jurisdiction of their respective nations.[57] Civilian contractors, on the other hand, are open to prosecution by host countries for any other crimes committed in that country, including criminal activities involving trafficking.[58]

¶15 Unfortunately, the Bosnian government has continually granted civilian contractors the same status as military personnel and refused to prosecute them under any circumstances because of a supposed lack of jurisdiction.[59] The chief of police of a village near a peacekeeping establishment expressed his frustration when he said, "We couldn't bring charges. . .under Annex IA of [the Dayton Agreement]. . .When we find a foreigner is involved, this is the biggest problem for us. We can't do anything against them - they are above the law."[60] Even when the host country does assert that it retains jurisdiction to prosecute these civilians, the country often lacks either the resources or the

---

[49] *Id*. at 6, Article 10.

[50] Signatories, *supra* note 44.

[51] *Id*.

[52] *NATO anti-trafficking policy*, *supra* note 13.

[53] Martina E. Vandenberg, *Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution*, 14 HUM. RTS. WATCH NO. 9 (D) 1, 21-22 (2002), http://www.hrw.org/reports/2002/bosnia/Bosnia1102.pdf.

[54] Gwyn Kirk & Carolyn Bowen Francis, *Redefining Security: Women Challenge U.S. Military Policy and Practice in East Asia*, 15 BERKELEY WOMEN'S L.J. 229, 250 (2000).

[55] *Id*.

[56] Republic of Bosnia and Herzegovina-Federation of Bosnia and Herzegovina: Dayton Agreement on Implementing the Federation of Bosnia and Herzegovina, Nov. 21, 1995, 35 I.L.M. 170 (1996), *available at* http://www.state.gov/www/regions/eur/bosnia/bosagree.html; PHASE II REPORT, *supra* note 14, at 14.

[57] Vandenberg, *supra* note 53, at 46-47.

[58] *Id*.

[59] *Id*. at 47-48.

[60] *Hearings*, *supra* note 10, at 126 (prepared statement of Martina E. Vandenberg, Attorney, Jenner & Block).

political will to do so.[61] Additionally, when investigations do occur, contract employees are typically repatriated almost immediately to the United States to avoid testifying and facing criminal charges.[62]

¶16 As long as countries that have ratified the UN protocol on trafficking in persons actually fulfill their obligations under it, the protocol should have a dramatic impact on trafficking overall. Criminalizing trafficking, protecting the victims, and educating law enforcement will work to limit the supply of trafficked women near U.S. military bases. However, as is the case in Bosnia and Herzegovina, efforts to comply with the protocol face an uphill battle. Additionally, problems remain with regard to both the legal status of military personnel and civilian contractors and the lack of political will to prosecute Americans. In any event, international efforts in this area are just one part of dealing with the problem of trafficking. To successfully combat trafficking near military bases, the U.S. must somehow deal with the fact that their military bases create a huge demand for trafficked women. Until this demand is extinguished or at least lessened considerably, there will continue to be an influx of trafficked women to the areas surrounding U.S. military bases.

C. Recent domestic developments in the fight against trafficking

¶17 In the fall of 2000, Congress overwhelmingly voted in favor of legislation to toughen laws against trafficking in persons.[63] On October 28, President Clinton signed into law the Trafficking Victims Protection Act (TVPA) of 2000.[64] The Act defines sex trafficking as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act."[65] The purposes of the Act are to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims."[66] Generally, the Act aims to fulfill these purposes in much the same way as the optional protocol on trafficking in persons, through the "three P's" of prevention, protection, and prosecution.[67] The Act aims to prevent trafficking by encouraging international cooperation and by imposing economic sanctions on countries that fail to meet its minimum criteria.[68] The Act also aims to protect victims of trafficking who assist authorities in prosecuting traffickers by allowing them to be eligible for temporary residency in the United States.[69] Finally, the Act attempts to prosecute traffickers by imposing harsher sentences under new criminal charges.[70]

---

[61] Vandenberg, *supra* note 53, at 46; P.W. Singer, *War, Profits and the Vacuum of Law: Privatized Military Firms and International Law*, 42 COLUM. J. TRANSNAT'L L. 521, 535 (2004).

[62] PHASE II REPORT , *supra* note 14, at 22.

[63] 371 to 1 in the House, 95 to 0 in the Senate. 146 CONG. REC. H9047-48 (daily ed. Oct. 6, 2000); 146 CONG. REC. S10228 (daily ed. Oct. 11, 2000).

[64] Trafficking Victims Protection Act, 22 U.S.C. §§ 7101-7110 (2000).

[65] 22 U.S.C. § 7102.

[66] 22 U.S.C. § 7101.

[67] TRAFFICKING IN PERSONS REPORT , *supra* note 1, at 5; Kara C. Ryf, Comment, *The First Modern Anti-Slavery Act: The Trafficking Victims Protection Act of 2000*, 34 CASE W. RES. J. INT'L L. 45, 53 (2002).

[68] 22 U.S.C. § 7104.

[69] 22 U.S.C. § 7105.

[70] 22 U.S.C. § 7109.

¶18 The responsibility for carrying out many of these new policies falls on a new Interagency Task Force required by the Act.[71] The task force is chaired by the Secretary of State and is created to "monitor and combat trafficking."[72] Among its many responsibilities, the Act requires the task force to measure foreign government efforts to end severe forms of trafficking that occur within their countries.[73] The results of this research are published by the State Department in an annual Trafficking in Persons Report.[74] This report details the efforts of foreign countries to combat trafficking and assigns them to one of three tiers based on their level of compliance with the minimum standards for the elimination of trafficking in persons.[75] This information is then used to help determine if countries will be subject to the non-humanitarian, non-trade-related economic sanctions that may be implemented against any country with a poor record of compliance.[76]

¶19 After the passage of the Act, stories began to circulate that caused the United States to turn a more watchful eye to the possible trafficking activities that were being perpetrated by their own military personnel abroad. For example, in an investigation from 1999-2001, Human Rights Watch found evidence of widespread trafficking in Bosnia and Herzegovina.[77] Particularly disturbing was the fact that members of the United Nations International Police Task Force engaged in trafficking activities themselves.[78] Since they enjoy immunity from prosecution under the Dayton Peace Agreement, the only sanctions U.N. officials could bring against them were removal from service and repatriation.[79] In addition, there were at least eight cases of U.S. contractors who allegedly purchased trafficked women to work as their personal servants.[80] Human Rights Watch discovered that none of the contractors faced any criminal penalties upon returning to the United States.[81]

¶20 In the spring of 2002, Fox News reporter Tom Merriman of Ohio aired a segment on the activities of U.S. servicemen in South Korea.[82] The broadcast showed scenes taken by a hidden camera in which servicemen from the base were socializing with women in bars while military courtesy patrols stood watch nearby.[83] Most of the women were Filipino or Russian women who had been lured there by the promise of good jobs, but instead were forced to work as bar hosts and prostitutes.[84] The tapes helped to bring to light the key role that servicemen played in the trafficking of women to South Korea. As political scientist Katharine Moon explains, servicemen "are the demand and women

---

[71] 22 U.S.C. § 7103.
[72] 22 U.S.C. § 7103.
[73] TRAFFICKING IN PERSONS REPORT , *supra* note 1, at 5.
[74] *Id.*
[75] *Id.* at 25.
[76] *Id.* at 31.
[77] Vandenberg, *supra* note 53, at 4.
[78] *Id.* at 49-54.
[79] *Id.* at 47.
[80] *Hearings*, *supra* note 10, at 30 (testimony of Martina E. Vandenberg, Attorney, Jenner & Block).
[81] Vandenberg, *supra* note 53, at 67.
[82] Mary Jacoby, *Does U.S. Abet Korean Sex Trade?*, ST. PETERSBURG TIMES, Dec. 9, 2002, *available at* http://www.sptimes.com/2002/12/09/Worldandnation/Does_US_abet_Korean_s.shtml.
[83] *Id.*
[84] *Id.*

are the supply."[85] This not uncommon situation demonstrated that U.S. military bases create a large demand for prostitutes and trafficked women throughout the world.

¶21 These revelations sparked a wave of actions by various representatives of the U.S. government. Twelve members of Congress, led by U.S. Representative Christopher Smith, called for an investigation by the Inspector General of the Department of Defense to look into the allegations by Fox News regarding South Korea.[86] Additionally, on February 13, 2002, President Bush signed Executive Order 13257, which established the Cabinet-level Interagency Task Force to Monitor and Combat Trafficking in Persons that was specified in the TVPA.[87] President Bush next issued a national security presidential directive, NSPD-22, which established a "zero-tolerance" policy for U.S. government employees and contracted personnel representing the U.S. abroad who engage in trafficking activities.[88] NSPD-22 specifically states that the "policy of the United States is to attack vigorously the worldwide problem of trafficking in persons, using law enforcement efforts, diplomacy, and all other appropriate tools."[89] NSPD-22 also directs all relevant federal agencies to "strengthen their collective efforts, capabilities, and coordination to support the policy to combat trafficking in persons."[90] Finally, the Directive states that "our policy is based on an abolitionist approach to trafficking in persons, and our efforts must involve a comprehensive attack on such trafficking, which is a modern day form of slavery."[91]

¶22 In 2003, the Department of Defense Inspector General released two reports that documented its investigations of Korea and Bosnia and Herzegovina that had been called for by Rep. Smith. These reports verified some of the earlier stories about military personnel engaging in activities that promoted and facilitated trafficking activities near U.S. bases, but also trumpeted the steps that had been taken to stop these activities and even announced that United States Forces Korea (USFK) "has set the example for other overseas commanders who may encounter the impact of human trafficking."[92] On July 10, 2003, the Inspector General released the first report, "Assessment of DoD Efforts to Combat Trafficking in Persons, Phase 1 – United States Forces Korea."[93] One of the main prongs of their assessment examined the demand side of trafficking through "the adequacy of ongoing programs sponsored by USFK to curb Service member use of off-base establishments that may traffic in persons."[94] Efforts to reduce Service member demand in this area focused on: "(1) educating Service members on national policy regarding human trafficking, on the requirement for exemplary conduct by all Service members, and on the illegality of prostitution under Korean law and USFK regulations,

---

[85] *Id.*

[86] *Hearings*, *supra* note 10, at 3 (testimony of Rep. Christopher Smith, Chairman, U.S. Comm'n on Security and Cooperation in Europe).

[87] Trafficking Press Release, *supra* note 14.

[88] PHASE II REPORT , *supra* note 14, at 5 n.2.

[89] *Id.* at 14.

[90] *Id.*

[91] *Id.*

[92] DEPARTMENT OF DEFENSE, OFFICE OF THE INSPECTOR GENERAL, ASSESSMENT OF DOD EFFORTS TO COMBAT TRAFFICKING IN PERSONS: PHASE I – UNITED STATES FORCES KOREA 14 (2003) [hereinafter PHASE I REPORT], *available at* http://www.dodig.osd.mil/fo/foia/H03L88433128PhaseI.PDF; PHASE II REPORT , *supra* note 14.

[93] PHASE I REPORT , *supra* note 92.

[94] *Id.* at 6.

and (2) improving on-base recreational facilities so those facilities become viable alternatives to off-base entertainment attractions."[95] The Inspector General found that USFK had "embraced" their recommendations to bolster the educational efforts and that efforts to improve on-base recreational activities were "sufficient."[96]

¶23 On December 8, 2003 the Inspector General released the second part of the report entitled "Assessment of DoD Efforts to Combat Trafficking in Persons, Phase II – Bosnia-Herzegovina and Kosovo".[97] The Inspector General again reported "generally favorable findings" on the actions of U.S. Service members, but admitted that they contributed to the human trafficking problem "at some, undefined level."[98] In addition, there was also evidence of "some level of DoD contractor involvement" in trafficking activities.[99] One of the recommendations made by the report called on the Department of Defense to establish a policy on human trafficking that encourages commanders to:

> 1. educate service members on human trafficking issues,
>
> 2. increase law enforcement efforts as needed to place offending entertainment establishments off limits,
>
> 3. incorporate anti-human trafficking provisions in overseas contracts, and
>
> 4. examine human trafficking matters as part of established IG inspection activities.[100]

¶24 As these reports by the Department of Defense came out, tough talk by the United States continued. On September 23, 2003, President Bush called on the United Nations General Assembly to "show new energy in fighting back an old evil."[101] Later that year, the Trafficking Victims Protection Reauthorization Act of 2003 was signed into law.[102] Among other things, the Act created a "Special Watch List" of Tier 2 countries that should receive special scrutiny in addition to a requirement that countries provide data on trafficking-related activities in order to be considered for Tier 1 status.[103]

¶25 Only months later, Deputy Secretary of Defense Paul Wolfowitz issued a memorandum implementing the President's new zero-tolerance policy throughout the Department of Defense.[104] This memo echoed the four main objectives that had been called for by the Inspector General to help the Department of Defense combat trafficking in persons. In summary, these objectives stated the need to:

---

[95] *Id.*
[96] *Id.* at 8-9.
[97] PHASE II REPORT , *supra* note 14.
[98] *Id.* at 2.
[99] *Id.*
[100] *Id.* at 26.
[101] President's Address, *supra* note 12, at 1259.
[102] Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-93, 117 Stat. 2875 (2003).
[103] TRAFFICKING IN PERSONS REPORT , *supra* note 1, at 26, 34.
[104] Wolfowitz memo, *supra* note 15.

> 1. educate Service members and civilians about trafficking and the expectations of their actions in regard to it
>
> 2. deny access to establishments involved in trafficking activities
>
> 3. incorporate provisions that impose penalties on contractor employees who participate in trafficking activities
>
> 4. evaluate efforts to combat trafficking with the Inspector General.[105]

Finally, on September 16, 2004, Secretary Rumsfeld issued a statement reiterating the commitment to the zero-tolerance policy outlined by the Deputy Secretary of Defense and calling on the leaders in the department to never "turn a blind eye to this issue."[106]

¶26 Amidst all of the strongly-worded statements by the government, the question begs to be asked: What steps is the government taking to implement the objectives of the Department of Defense? And as the proliferation of sex trafficking near United States military bases continues to be a black eye on the legitimacy of our efforts to combat trafficking worldwide, what initiatives are being carried out to stop these trafficking activities by U.S. citizens?

III. CURRENT LEGAL EFFORTS

¶27 As is evidenced by the stories in South Korea and in Bosnia and Herzegovina, in order to combat trafficking near U.S. military bases the actions of both military servicemen and civilian contractors must be dealt with. Legally, the United States military members are governed by the Uniform Code of Military Justice (UCMJ). Unfortunately, the legal status of the civilian contractors who work alongside servicemen is not as clearly defined.

A. The Uniform Code of Military Justice

¶28 All servicemen in the United States military are subject to the rules and regulations of the UCMJ. The UCMJ is enacted by Congress and is essentially a complete set of criminal laws.[107] The UCMJ is implemented through Executive Orders of the President which form a comprehensive set of laws known as the Manual for Courts-Martial (MCM).[108] On the subject of prostitution, the Manual for Courts-Martial until recently provided in relevant part in paragraph 97b, Part IV, that:

> (1) Prostitution.

---

[105] *Id.*

[106] Rumsfeld memo, *supra* note 16.

[107] The Uniform Code of Military Justice, 10 U.S.C. §§ 801-946 (West 1998 & Supp. 2004); The Military Justice System, http://sja.hqmc.usmc.mil/JAM/MJFACTSHTS.htm(last visited Jan. 19, 2006).

[108] The Military Justice System, *supra* note 107.

> (a) That the accused had sexual intercourse with another person not the accused's spouse;
>
> (b) That the accused did so for the purpose of receiving money or other compensation
>
> (2) Pandering by compelling, inducing, enticing, or procuring act of prostitution.
>
> (a) That the accused compelled, induced, enticed, or procured a certain person to engage in an act of sexual intercourse for hire and reward with a person to be directed to said person by the accused.
>
> (3) Pandering by arranging or receiving consideration for arranging for sexual intercourse or sodomy.
>
> (a) That the accused arranged for, or received valuable consideration for arranging for, a certain person to engage in sexual intercourse or sodomy with another person.[109]

¶29 Military personnel can also be prosecuted for soliciting or patronizing a prostitute under the General Article of 134 of the UCMJ.[110] Article 134 allows the military to prosecute servicemen and women for acts that are not specifically enumerated in either the UCMJ or MCM.[111] In part, Article 134 provides that all disorders that are "to the prejudice of good order and discipline in the armed forces" or are "conduct of a nature to bring discredit upon the armed forces" are to be punished by the discretion of the court according to the "nature and degree of the offense."[112]

¶30 In *United States v. Miller*, the Court considered whether soliciting a prostitute in fact fell within the MCM under the purview of pandering, which would incur the stiffer penalties of section (2).[113] The government argued that the wording of paragraph 97b(2)(a) uses only the term "a person" to describe the individual with whom the prostitute has sexual intercourse.[114] However, paragraph 97b(3)(a) specifically uses the term "another person" to identify the same relationship.[115] Since section (2) did not specifically require that the sexual intercourse be directed to "another person" the government contended that a serviceman who solicited a prostitute to have sex with him would fall within the definition. The Court disagreed and ruled that the ambiguity of

---

[109] MANUAL FOR COURTS-MARTIAL, UNITED STATES, Part IV, Section XI, Article 134, paragraph 97(b) (2002).

[110] Memorandum from Charles S. Abell, Principle Deputy of the Under Secretary of Defense, to the General Counsel of the Department of Defense (April 13, 2004) (on file with author); Uniform Code of Military Justice, 10 U.S.C. § 934 (2004).

[111] 10 U.S.C. § 934.

[112] 10 U.S.C. § 934.

[113] United States v. Miller, 47 M.J. 352, 356 (C.A.A.F. 1997).

[114] *Id.*

[115] *Id.*

section (2) required them to rule in favor of the appellant and agreed that the crime of pandering required a third party.[116]

¶31 However, the Court upheld the appellant's conviction for solicitation. The lower court found that Miller's actions violated the General Article of 134 under the UCMJ because "asking others to engage in sex for compensation is prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces."[117] Therefore, although soliciting a prostitute was not found to be a punishable offense under the MCM, it would still seem that no further action would be required by the government since the act of soliciting a prostitute has been deemed to be covered under Article 134 of the UCMJ.

¶32 In the Inspector General's report for the Department of Defense, the Inspector General stated that the investigation "found potential weaknesses on the part of U.S. military leadership in the Balkans in addressing human trafficking issues . . . . There are no specific prohibitions on patronizing prostitutes or engaging in other activities that may directly support human trafficking."[118] Additionally, the report stated that "[b]ecause there is no military standard that directly addresses patronization of prostitutes and other activities associated with human trafficking, criminal prosecution of these activities under military law is rendered more difficult."[119] In light of these findings, against the backdrop of a tradition of allowing and even encouraging the solicitation of prostitutes by military personnel, and with the knowledge that the decision in *Miller* left few if any alternatives, the government proposed changes to the MCM making soliciting a prostitute a specific offense. Although the Department of Defense realized that this activity remained chargeable under Article 134 of the UCMJ, as Principal Deputy Undersecretary of Defense Charles Abell testified, the Department hoped that "this change will make the offense visible, observable. It will raise command attention, and it will make it more visible to the Service member who might be tempted."[120]

¶33 In response to these needs, the Department of Defense proposed to insert the following language in the Manual for Court-Martial:

> (2) Patronizing a Prostitute
>
> (a) That the accused had sexual intercourse with another person not the accused's spouse;
>
> (b) That the accused compelled, induced, enticed, or procured such person to engage in acts of sexual intercourse in exchange for money or other compensation.[121]

---

[116] *Id.* at 356-57.
[117] United States v. Miller, 44 M.J. 549, 556 (A.F. Ct. Crim. App. 1996).
[118] PHASE II REPORT , *supra* note 14, at 2.
[119] *Id.* at 25.
[120] *Hearings*, *supra* note 10, at 10 (testimony of the Honorable Charles S. Abell, Principal Deputy Undersecretary of Defense for Personnel and Readiness).
[121] Notice of Proposed Changes to the Manual for Courts-Martial, 69 Fed. Reg. 55,600, 55,603-04 (proposed Sept. 15, 2004).

These proposed changes were adopted by Executive Order 13,387 on October 18, 2005.[122] It is still too early to tell what impact these recent changes will have on the conduct of servicemen.

B. Military Extraterritorial Jurisdiction Act of 2000

¶34 Even if these changes significantly curb the solicitation of trafficked women by servicemen, the issue of how to deal with civilian contractors who reside at military bases and contribute to the problem of trafficking must also be addressed. Civilians who accompany the military overseas are not subject to military jurisdiction, except during times of war.[123] When civilians accompanying the Armed Forces overseas commit serious offenses and the host country fails to exercise jurisdiction, a "jurisdiction gap" is created where these civilians face no consequences for their actions.[124] However, one law that could be used to prosecute civilian contractors involved in trafficking near military bases is the Military Extraterritorial Jurisdiction Act of 2000 (MEJA).[125] This law expands the jurisdiction of the United States and has received national attention recently as a possible means of prosecuting civilian contractors who are involved in the abuse of Iraqi prisoners, such as those at Abu Ghraib.[126]

¶35 Due to the lack of jurisdiction over civilians serving overseas and the fact that many foreign governments neglect to prosecute offenders, the unfortunate result is that people who commit crimes while accompanying the Armed Forces overseas often go unpunished.[127] After many years of effort, Congress attempted to deal with this problem by enacting the Military Extraterritorial Jurisdiction Act of 2000.[128] The MEJA extends federal jurisdiction to include citizens who accompany the U.S. Armed Forces abroad.[129] Specifically, the MEJA extends the jurisdiction of federal courts to cover felony level offenses (punishable by more than one year in prison) that would apply under federal law if the offense had occurred within the territories of the United States.[130] The MEJA also continues to respect SOFAs in that it does not allow prosecution under the Act if a foreign government has prosecuted or is prosecuting the person.[131]

¶36 However, one of the major loopholes still existing after the passage of the MEJA is that it covers only a limited class of civilians. Specifically, the MEJA permits prosecution of civilians "employed by or accompanying" American Armed Forces.[132] On its face, the statute would appear to cover all civilian contractors who are "employed by" or "accompany" the Armed Forces abroad. However, the definitions given by the statute limit the term "employed by" to include only civilian employees, contractors and

---

[122] Exec. Order No. 13,387, 70 Fed. Reg. 60,697, 60,701 (Oct. 18, 2005).
[123] *See* Reid v. Covert, 354 U.S. 1, 33-34 (1957).
[124] Andrew Fallon & Captain Theresa Keene, *Closing the Legal Loophole? Practical Implications of the Military Extraterritorial Jurisdiction Act of 2000*, 51 A. F. L. REV. 271 (2001).
[125] Military Extraterritorial Jurisdiction Act, 18 U.S.C. §§ 3261-3267 (2000).
[126] *Prosecuting Abuse of Prisoners*, BALT. SUN, May 29, 2004, at 4A.
[127] Schmitt, *supra* note 18, at 76.
[128] 18 U.S.C. §§ 3261-3267.
[129] 18 U.S.C. § 3261.
[130] 18 U.S.C. § 3261.
[131] 18 U.S.C. § 3261.
[132] 18 U.S.C. § 3261.

subcontractors employed by the Department of Defense.[133] In addition, the term "accompanying" is limited to include only the dependents of members of the Armed Forces, civilian personnel and contractors.[134] This limitation means that any civilian contractor working for another government agency such as the Department of State would be immune from prosecution.[135] Given its narrow scope, it appears unlikely that the MEJA will be able to end the contributions to trafficking by civilians accompanying the U.S. military abroad.

¶37 There have been discussions about ways to fix this shortcoming of the MEJA. For example, in May of 2004 a bill was introduced in the House of Representatives that would extend the jurisdiction of the MEJA.[136] Specifically, the amendment would expand the jurisdiction of the MEJA to cover civilian contractors who commit federal offenses "while supporting the mission of the Department of Defense overseas."[137] In theory, this would provide a broader scope to the law because contractors who work for the United States and support the mission of the Department of Defense would now be subject to prosecution under the MEJA. However, at this point civilian contractors still enjoy almost unlimited immunity for their actions at U.S. military bases.

IV. WEAKNESSES OF THE PROPOSED CHANGES

¶38 In its fight to combat human trafficking, the U.S. government has continually made aggressive statements about its commitment to stopping this international problem. Although actions have been taken to make soliciting a prostitute a specific chargeable offense for servicemen, more steps need to be taken to ensure that servicemen are not contributing to the demand-side of the problem of sexual trafficking. Further, the scope of the MEJA is insufficient to effectively deal with the issue of civilian contractors who participate in trafficking activities. Even an expansion of the scope of the MEJA to cover all contractors who engage in specific trafficking activities would do nothing to deal with contractors who create a demand for trafficked women by merely patronizing prostitutes. The following section will explore some of the weaknesses that need to be addressed to stop the flow of trafficked women to areas near military bases and will offer suggestions on how to deal with this problem more effectively in the future.

A. Military

¶39 In the Phase 1 report by the Inspector General of the Department of Defense, the assessment examined two main programs implemented by the United States Forces Korea (USFK) to curb the use of off-base prostitution establishments that often have links to trafficking activities. These programs focus on two areas: (1) "educating Service members" on the issues associated with human trafficking and the national policy

---

[133] 18 U.S.C. § 3267.
[134] 18 U.S.C. § 3267.
[135] *Hearings*, *supra* note 10, at 128 (prepared statement of Martina E. Vandenberg, Attorney, Jenner & Block).
[136] MEJA Clarification Act, H.R. 4390, 108th Cong. (2004).
[137] H.R. 4390.

regarding it, and (2) improving recreational facilities so that they become "viable alternatives to off-base entertainment attractions."[138]

¶40 The U.S. has taken several steps to educate their service members about human trafficking. For example, the Department of Defense has developed a core training module for all military and contractor personnel deployed overseas.[139] The module will be used to educate Department of Defense members about the nature of trafficking, the Department's policy on trafficking, and the provisions available to implement this policy.[140] The training will be available to all service members electronically through the Joint Knowledge Development and Distribution Capability System.[141] In addition, the actions of the USFK in this area may serve as a model for how to educate forces stationed at other military bases around the globe. USFK has developed a human trafficking and prostitution core curriculum that begins within the very first week of in-processing at the base.[142] This training continues during other collective and leadership training opportunities and is reinforced through the widespread dissemination of the Command's zero-tolerance message through the newspaper, radio and television.[143]

¶41 Even as the U.S. attempts to educate the Service members about the detrimental effects of human trafficking, the general attitude that many servicemen hold towards prostitutes may be the most significant obstacle the U.S. will face. The U.S. military has a long history of allowing and even encouraging soldiers serving abroad to patronize prostitutes.[144] Now that the military has recognized that these activities often support sexual trafficking and help to undermine their mission, it has taken steps to stop this practice. Encouraging reports out of Korea indicate that the United States has prosecuted nearly 400 U.S. Service members stationed in Korea for actions relating to prostitution during 2004 and more than 800 areas known for ties to prostitution have been designated as off-limits to soldiers.[145] However, after allowing this activity to continue for so long, the military will likely encounter great difficulty changing a culture that has historically permitted soldiers to patronize prostitutes.

¶42 For example, troops stationed in countries where prostitution is not illegal are already voicing their displeasure over the recent changes to the MCM.[146] Some, such as Army Sgt. Adam Z. Pastor, who serves on a German base that is situated near a thriving red light district, expressed a belief that not all instances of prostitution are linked with sex trafficking when he stated that "[i]t would be different if it were some third-world country that had no jobs and no opportunity, and women were forced into it."[147] Even

---

[138] PHASE I REPORT , *supra* note 92, at 6.

[139] *Hearings*, *supra* note 10, at 54 (prepared statement of the Honorable Charles S. Abell, Principal Deputy under Secretary of Defense for Personnel and Readiness).

[140] *Id.*

[141] *Id.*

[142] *Id.* at 113 (prepared statement of General Leon J. LaPorte, Commander, United States Forces Korea).

[143] *Id.* at 114.

[144] Chang, *supra* note 5.

[145] Joseph Giordono, *USFK Committed to Zero Tolerance on Prostitution Crimes, LaPorte Warns*, STARS AND STRIPES, Nov. 8, 2004, *available at* http://www.estripes.com/article.asp?section=104&article=24489&archive=true.

[146] Jessica Inigo, *Troops Say Proposed UCMJ Changes Unfair in Prostitution-Legal Germany*, STARS AND STRIPES, Oct. 19, 2004, *available at* http://www.estripes.com/article.asp?section=104&article=23729&archive=true.

[147] *Id.*

some soldiers who do not visit prostitutes themselves assert that "[i]t's none of [the military's] business what soldiers do off base. If a soldier wants to have sex with a prostitute and ruin his life that's his problem, not the military's."[148] Unfortunately, these opinions merely serve to highlight the lack of understanding by servicemen about the extent of the problem of human trafficking. Although they may not think that any of these women were "forced into it," the Organization for Security and Cooperation in Europe has reported that the majority of women "trafficked for the sex industry are trafficked to large cities, vacation and tourist areas, and areas near military bases in Europe."[149]

¶43 This attitude towards the act of patronizing a prostitute could also hinder enforcement of the proposed changes. Military officers who have been consistently lax in cracking down on soldiers who solicit prostitutes will more than likely continue to do so. Further, it may not be very likely that soldiers who are brought up on charges will face the maximum penalty of a dishonorable discharge.[150] Military courts that require a two-thirds vote or greater for a court-martial likely would give great weight to whether the offense was committed in a country where prostitution is legal.[151]

¶44 There is also evidence that the current organizational culture of the military may be responsible for a less than comprehensive effort to implement the zero-tolerance policy promulgated by the Department of Defense. Department of Defense officials who worked closely with the reports on trafficking questioned the veracity of these reports, commenting that those responsible for the Phase 2 report would "wash this report; they are washing the Korea report."[152] Similarly disturbing is the methodology employed by the Inspector General investigators doing research for these reports. For example, meetings on the bases would typically begin with closed-ended questions such as "Do you have any problems with trafficking here?"[153] The person being interviewed would unsurprisingly answer that there was no trafficking problem, creating a situation in which evidence of trafficking would literally have to "fall in the laps" of the inspectors for them to have any chance of uncovering it.[154] These problems highlight a larger cultural reality of the military, which makes strong statements about fighting trafficking while at the same time downplaying the significance of the problem.

¶45 To combat this, the government should continue to follow the first objective laid out by the Department of Defense that expressed a desire to educate "all Service members and DoD civilians serving overseas on the worldwide trafficking menace."[155] As it stands now, the practice of soliciting a prostitute has been so common for so long that aggressive attempts to stop solicitation likely will encounter strong resistance. The best way to alleviate this resistance is to first thoroughly educate all members of the Armed Forces about the realities of human trafficking and to explain that their money is

---

[148] Andrew Petty, *U.S. Forces Also Crack Down on Prostitution*, KOREA HERALD, Oct. 18, 2004.
[149] PHASE II REPORT , *supra* note 14, at 16.
[150] Petty, *supra* note 148.
[151] *Id.*
[152] *Hearings*, *supra* note 10, at 122 (prepared statement of Dr. Sarah E. Mendelson, Senior Fellow, Center for Strategic and International Studies).
[153] *Id.*
[154] *Id.*
[155] Wolfowitz memo, *supra* note 15.

funding criminal elements when they visit a prostitute.[156] Current efforts, such as the training module that has been released by the Department of Defense, fail "to engage the audience with the kind of personal case studies or discussions that can shake callous attitudes toward prostitutes and inspire investigators to treat trafficking as the outrageous human rights violation that it is."[157] The efforts of the USFK may be able to be used as a model, as all Department of Defense personnel arriving in Korea receive training on the "harmful and dehumanizing practice of human trafficking and [the] policy of zero-tolerance."[158] Only as these education programs continue to be implemented will a true policy of zero-tolerance be allowed to take hold in the military.

¶46 In addition, pursuant to the recommendations of the Inspector General of the Department of Defense, the U.S. military has taken steps to not only educate its personnel on trafficking, but to furnish viable on-site alternatives to leaving the base and potentially visiting prostitutes. Again, the USFK has attempted to set an example by supporting quality of life initiatives that make available various athletic, educational, spiritual, and recreational activities for the personnel.[159] For example, these initiatives include "expanded evening and weekend education programs, free internet access for on-line education and e-university programs, installation-sponsored band concerts, late-night sports leagues and tournaments, expanded chaplains' activities, and increased operating hours for athletic and dining facilities . . . ."[160] While proposed in good faith, these measures sound somewhat akin to high school parents and faculty hosting a post-prom party to offer an alternative so that the students do not drink. Where the overall demand for prostitutes creates a readily available supply to satisfy their sexual desires, the availability of pick-up basketball games and prayer services probably will not have much of an effect.

B. Civilian Contractors

¶47 Even if the government is able to get a handle on the servicemen who contribute to the spread of sexual trafficking, given the increasing number of civilians who work alongside the military it is imperative that steps be taken to cease their involvement in sexual trafficking as well. The increase in the number of civilians who work with the military as private contractors has been necessitated by the fact that the U.S. military has shrunk from 2.1 million to 1.4 million active troops since the end of the Cold War.[161] Pentagon officials now say that they would not be able to carry on a war without the assistance of private contractors.[162] In Iraq alone, U.S. authorities and independent

---

[156] TRAFFICKING IN PERSONS REPORT , *supra* note 1, at 13-14.

[157] *Hearings*, *supra* note 10, at 129 (prepared statement of Dr. Sarah E. Mendelson, Senior Fellow, Center for Strategic and International Studies) (criticizing the reliance of the program on its lecture format with PowerPoint slides).

[158] *Hearings*, *supra* note 10, at 11 (testimony of General Leon J. LaPorte, Commander, United States Forces Korea).

[159] *Id*. at 12.

[160] *Id*. at 114 (prepared statement of General Laporte).

[161] Barry Yeoman, *Dirty Warriors: How South African Hit Men, Serbian Paramilitaries, and Other Human Rights Violators Became Guns for Hire for Military Contractors in Iraq*, MOTHER JONES, Nov./Dec. 2004, at 30.

[162] *Id*.

experts say that the war has created 20,000 military jobs for private contractors.[163] In fact, the United States does not have an accurate total of how many civilian contractors it employs and has stationed around the world.[164] In March 2002, then Secretary of the Army Thomas E. White issued a memo ordering the service to gather information on its contractor workforce, including the total number of contract workers on the payroll.[165] Despite this order and the fact that this information would seemingly be important to know, Army officials indicate that as of 2004 no data had been collected.[166]

¶48 Regardless of the actual number of civilian contractors, the Office of the Inspector General confirmed that contractors contribute to the trafficking problem in its 2003 report, which stated that "DOD contractor employees may have more than a limited role in trafficking . . . ."[167] Again, one of the main problems that will be encountered with civilian contractors will be enforcement. In Bosnia, although there were several reports of U.S. contractors actually purchasing women as chattel, there was no indication that U.S. investigators even interviewed the trafficked victims.[168] Instead of encouraging contractors who observed acts of trafficking to come forward with their stories, one contractor who reported that eight of his colleagues had purchased women in 1999 and 2000 was fired.[169] To date, not a single contractor has been prosecuted using the MEJA.[170] Recently, in a case that could potentially open the door to holding contractors accountable, the government did indict a CIA contractor for allegedly beating a prisoner to death with a flashlight in Afghanistan.[171] Still, there is little evidence that the government intends to back up its strong words by actually prosecuting civilians thought to be involved in acts of trafficking.

¶49 Another problem is the limited jurisdiction that is available under the MEJA. Currently, only contractors who work for the Department of Defense can be prosecuted under MEJA.[172] Therefore, contractors working for any other U.S. department are immune from prosecution. Even the proposed changes to the MEJA would do little to "close this jurisdictional gap" because the amended MEJA would still require a nexus to the Department of Defense to assert jurisdiction.[173] Further, since only one person has been prosecuted under the MEJA, a lot of uncertainty exists about how it should be used. The MEJA is a statute "that requires uniform implementation rules, and those still don't exist."[174] The lack of regulations that accompanied the MEJA have in many ways left it

---

[163] *Id.*

[164] Jason Peckenpaugh, *Army Contractor Count Stymied by Red Tape*, June 3, 2004, http://www.govexec.com/dailyfed/0604/060304p1.htm.

[165] *Id.*

[166] *Id.*

[167] PHASE II REPORT , *supra* note 14, at 25.

[168] *Hearings*, *supra* note 10, at 127 (prepared statement of Martina E. Vandenberg, Attorney, Jenner & Block).

[169] *Id.* at 126.

[170] A search of legal databases revealed that only one person has ever been prosecuted under the MEJA. *See also* David Rosenzweig, *Air Force Wife Guilty in Spouse's Fatal Stabbing; A Moreno Valley Woman is Convicted in the 2003 Slaying on a Military Base in Turkey*, L.A. TIMES, Oct. 16, 2004 at B3.

[171] Yeoman, *supra* note 161.

[172] Military Extraterritorial Jurisdiction Act, 18 U.S.C. § 3267 (2000).

[173] *Hearings*, *supra* note 10, at 32 (testimony of Martina E. Vandenberg, Attorney, Jenner & Block).

[174] *Prosecuting Abuse of Prisoners*, *supra* note 126.

"dead on arrival."[175] After four years, the Department of Defense did finally propose regulations that would implement the MEJA.[176] However, Rep. David Price, the author of a proposed amendment to the MEJA,[177] admits that: "For all the good it's done, MEJA may as well not exist."[178]

¶50 Finally, the third objective of the Department of Defense's efforts to combat trafficking states that it will incorporate provisions into overseas service contracts that "prohibit any activities on the part of contractor employees that support or promote trafficking in persons."[179] Although it is required by NSPD-22 and the Trafficking Victims Protection Reauthorization Act, the Department of Defense has not changed its existing contracts to require that contractors not engage in trafficking.[180] Nor has it incorporated a new clause into the Defense Federal Acquisition Regulations Supplement that would at least incorporate it into future contracts.[181] Without a threat of losing their contracts or any form of punishment, contractors lack any real motivation to hold their employees accountable.

¶51 In fact, the failure of the United States to hold contractors accountable for their actions extends to the character of the personnel that are employed by these contractors. Many companies who serve as contractors for the United States have recruited former police officers and soldiers who themselves engaged in human rights violations from regimes "such as apartheid South Africa, Augusto Pinochet's Chile, and Slobodan Milosevic's Yugoslavia."[182] One Italian diplomat explains that "[e]veryone [] knows that hundreds of men wanted for crimes against humanity have left the country to take jobs [with U.S. contractors] in Iraq."[183] The lack of control the U.S. chooses to exercise over whom contractors hire and the actions their employees take while they serve contributes to more human right violations, whether it is prisoner abuse in Iraq or complicity with trafficking activities near U.S. military bases.

¶52 Even if the United States is able to get a handle on the small percentage of contractors that actively engage in trafficking activities, it will do little to slow the influx of trafficked women to areas near military bases if contractors are still creating a large demand for prostitutes. The MEJA only applies to offenses that are punishable by more than one year in prison,[184] and the act of soliciting a prostitute by a contractor is not a serious enough offense to invoke MEJA jurisdiction. Only through implementing

---

[175] *Id.*

[176] *Hearings*, *supra* note 10, at 55 (prepared statement of the Honorable Charles S. Abell, Principal Deputy Undersecretary of Defense for Personnel and Readiness) (The proposed regulations would be a new Part 153 to title 32, Code of Federal Regulations. "On June 29, 2004, the Deputy Secretary of Defense forwarded the proposed regulations to the Chairmen and Ranking Members of the Senate and House Judiciary Committees for their statutory 90-day review opportunity before they can be implemented").

[177] H.R. 4390, *supra* note 136.

[178] Yeoman, *supra* note 161.

[179] Wolfowitz memo, *supra* note 15.

[180] *Hearings*, *supra* note 10, at 129 (prepared statement of Martina E. Vandenberg, Attorney, Jenner & Block). However, some Department of Defense contractors have had new clauses incorporated into their contracts. For an example of a sample human trafficking and prostitution clause, *see* PHASE II REPORT , *supra* note 14, Attachment B.

[181] *Hearings*, *supra* note 10, at 129 (prepared statement of Martina E. Vandenberg, Attorney, Jenner & Block).

[182] Yeoman, *supra* note 161.

[183] *Id.*

[184] Military Extraterritorial Jurisdiction Act, 18 U.S.C. § 3267 (2000).

provisions into overseas contracts which prohibit activities that promote trafficking will the Department of Defense be able to eliminate the high demand for trafficked women near its military bases.

C. Recommendations

¶53 Trafficking in persons continues to be a pervasive problem worldwide. The majority of trafficking involves women and children used for sexual exploitation. From the many memoranda and directives stating the United States' strong stance against trafficking, it appears that, if nothing else, there is a growing awareness of the nature of the problem. However, until the United States takes the necessary steps to stop the proliferation of sexual trafficking that occurs near its own military bases, such strong words will ring hollow to the world. In the past, pressure has been applied on the military to stop the practice of patronizing prostitutes to avoid contracting diseases or for moral reasons. However, these efforts were aimed at protecting U.S. soldiers rather than the victims of sexual trafficking. Today, it is more important than ever to take practical steps to discourage the practice as most of the money that is made from the sex industry ends up in the hands of criminals and sometimes even possible terrorists.[185] In fact, the sex trafficking industry is slowly overtaking drug trafficking as the industry of choice for international organized crime groups.[186] The fact that these profits end up funding organized crime and terrorists undermines the purpose of the occupation.

¶54 The United States must not only make efforts to help limit the supply of trafficked women; more importantly, it must seek to decrease the demand for prostitutes in the areas around military bases. In order to stop military personnel from visiting prostitutes, they must first be thoroughly educated about the effects of sex trafficking. This education must be vivid and personal. The situations exposed must be relevant to the soldier's current occupation. Otherwise it will be close to impossible to effectively implement and enforce recent changes that would prohibit the solicitation of prostitutes under the MCM.

¶55 The issue of civilian contractors poses a potentially even larger hurdle as the regulations related to contractors are weak or altogether nonexistent. Civilian contractors continue to make up more and more of the U.S. workforce at military bases and the military is becoming increasingly dependent upon their services. Currently, the MEJA is insufficient to prohibit contractors from engaging in trafficking activities, and the laws that are applicable are rarely enforced. The U.S. needs to implement aggressive policies that will not only stop civilian contractors from engaging in trafficking activities, but will also prohibit them from soliciting a prostitute which contributes to the demand for sexual trafficking. Otherwise, sex trafficking will continue to flourish near military bases to satisfy the demand for prostitutes from civilian contractors who face no threat of discipline for their actions.

¶56 If the United States and the Department of Defense are committed to stopping the spread of sexual trafficking near military bases, they will have to go beyond previous efforts that have only begun to address this issue. Thus far, legal efforts to control both soldiers and civilian contractors have been insufficient to stop the behavior that persists.

---

[185] Rick Maze, *DoD Targets Prostitution; Proposed Changes Specify Punishments for Sex Offenses*, ARMY TIMES, Oct. 4, 2004, at 28.

[186] Tiefenbrun, *supra* note 3, at 140.

Stronger legal initiative must be coupled with an overall change in military culture. The alternative of issuing bold statements against trafficking without taking any real action will allow the continued exploitation of women as slaves, destabilize regions already hostile to U.S. occupation, and sabotage U.S. efforts to lead the world in the fight against human trafficking.