

**AN EXAMINATION OF COMPLIANCE WITH THE INTER-COUNTRY
ADOPTION CONVENTION: EXPLORING SURROGACY IN ARMENIA
AS A FORM OF HUMAN TRAFFICKING^α**

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I. INTRODUCTION

Human trafficking (HT) is prohibited by international law (IL), and both Armenia and the United States (U.S.), as signatories to a body of international conventions prohibiting HT, must adhere to and enforce HT-related laws. The International Criminal Court (ICC) can also prosecute individuals accused of serious international criminal transgressions. Established during the summer of 2002, the subject matter jurisdiction of the ICC includes four categories of offenses: the crime of genocide, crimes against humanity, war crimes, and the crime of aggression.¹ Offenses involving HT that can be prosecuted under the “crimes against humanity” rubric include: enslavement,² deportation or forcible transfers of population,³ imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of IL,⁴ torture,⁵ and forced prostitution.⁶

There are three primary federal laws that criminalize HT in the United States: the Trafficking Victims Protection Act (TVPA),⁷ enacted in October 2000, and the Trafficking Victims Protection Reauthorization Acts (TVPRA) of 2003⁸ and 2005.⁹ These Acts create preventative measures against HT, provide for the prosecution of HT offenders, offer assistance to trafficking victims already in the United States, and require monitoring of international HT activity. The Hague Adoption Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption (“Adoption Convention” or “Convention”) established international standards of practice for inter-country adoptions. The United States signed the Adoption Convention in 1994, and the Convention entered into force in

¹ Rome Statute of the International Criminal Court art. 5(1), July 17, 1998, 2187 U.N.T.S. 90.

² *Id.* art. 7(1)(c).

³ *Id.* art. 7(1)(d).

⁴ *Id.* art. 7(1)(e).

⁵ *Id.* art. 7(1)(f).

⁶ Rome Statute of the International Criminal Court, *supra* note 1, art. 7(1)(g).

⁷ *See generally* Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified in scattered sections of 18 U.S.C. & 22 U.S.C.).

⁸ Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003) (codified in 18 U.S.C. § 1595, 22 U.S.C. 7109a).

⁹ Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. 109-164, 119 Stat. 3558 (2005) (codified in scattered sections of 18 U.S.C., 22 U.S.C., 42 U.S.C.).

April 2008. Armenia signed the Adoption Convention in 1997, and it entered into force that same year.

The purpose of this study is to examine the extent to which the United States and Armenia are compliant with the Adoption Convention and to determine whether a lack of compliance may contribute to HT violations. Part I of this article identifies HT-related obligations for the United States and Armenia under customary and conventional IL. Part II examines the Adoption Convention and the extent to which it has standardized inter-country adoptions and reduced HT. Part III first examines HT in Armenia, then examines surrogacy legislation adopted in Armenia on December 11, 2002. Part IV concludes that a variety of acts currently considered legal in both the United States and Armenia may amount to violations of both the Adoption Convention and HT-related laws.

II. HISTORY OF HUMAN TRAFFICKING UNDER INTERNATIONAL LAW

The terms “human trafficking” and “slavery” are interchangeable.¹⁰ Human trafficking involves the movement of people via violence, fraud, deception, or coercion. Generally, this movement is for the purpose of forced labor, slavery-like practices, or sexual exploitation, but the motive is ultimately irrelevant except as it helps establish the requisite *mens rea* under a criminal statute. The U.S. Department of States estimates that there are 27 million HT victims globally.¹¹

Both the Hague Conventions of 1899¹² and 1907¹³ incorporated protections from enslavement and forced labor into the international regulation of armed conflict. Developments in IL governing peacetime conduct paralleled the development of the law of war and gradually evolved to prevent governments from inflicting human degradations on their civilian populations during peacetime.¹⁴ This evolutionary process began in 1815 and continues to the present day. Slavery has thus become an international crime under both conventional and customary IL,¹⁵ along with violating “general principles of law.”¹⁶

¹⁰ U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 7 (2012), available at <http://www.state.gov/documents/organization/192587.pdf>.

¹¹ *Id.*

¹² See Convention with Respect to the Laws and Customs of War on Land (Hague, II), July 29, 1899, 32 Stat. 1803, T.S. No. 403.

¹³ Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539.

¹⁴ Ved P. Nanda & M. C. Bassiouni, *Slavery and Slave Trade: Steps Toward Eradication*, 12 SANTA CLARA L. REV. 424, 427 (1972).

¹⁵ Rome Statute of the International Criminal Court, *supra* note 1, art. 6(1)(g).

¹⁶ See generally M. Cherif Bassiouni, *A Functional Approach to “General Principles of International Law,”* 11 MICH. J. INT’L L. 768 (1990).

Although a number of societies have historically considered slavery morally repugnant, slavery has gradually evolved from a “moral” transgression into an international crime.¹⁷ In the nineteenth century, the first international slavery-related conventions attempted to abolish the slave trade, which, at that time, involved European countries exploiting native Africans.¹⁸ By the mid-nineteenth century, most European states had abolished slavery.¹⁹ The Emancipation Proclamation, announced by President Abraham Lincoln on September 22, 1862 and put into effect on January 1, 1863, freed slaves in U.S. territories that were not under the Union’s control. The Thirteenth Amendment permanently abolished slavery throughout the nation in December 1865.²⁰

Approximately eighty international instruments address slavery, slave-related practices, and forced labor.²¹ These instruments can be subdivided into four categories: 1) specific international instruments that have arisen under the law of peace; 2) general human rights instruments that touch upon the issue of slavery and its associated practices under the law of peace; 3) other international instruments that reference slavery and slave-related practices under the law of peace; and 4) those international instruments that address slavery and its related practices under the law of armed conflicts. Below is a summary of U.S. HT obligations under customary and conventional IL.

A. Customary International Law

Customary IL results from a general and consistent practice of States and stems from a sense of legal obligation.²² “Custom” is

something more than mere habit or usage; it is a usage felt by those who follow it to be an obligatory one. There must be present a feeling that, if the usage is departed from, some form of sanction probably, or . . . ought to, fall on the transgressor.²³

Under the Restatement, the best indications of customary IL are the judgments and opinions of international or national judicial and arbitral tribunals, the

¹⁷ See *History of Slavery*, HISTORY WORLD, <http://www.historyworld.net/wrldhis/plaintexthistories.asp?historyid=ac41> (last visited Oct. 23, 2014).

¹⁸ See *id.*

¹⁹ *Id.*

²⁰ U.S. CONST. amend. XIII, § 1.

²¹ See generally UNITED NATIONS ACTION FOR COOPERATION AGAINST TRAFFICKING IN PERSONS, <http://un-act.org/> (last visited Oct. 23, 2014).

²² RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES §102(2) (1987).

²³ JAMES LESLIE BRIERLY, *THE LAW OF NATIONS: AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE* 59 (Oxford Univ. 6th ed. 1963)

writings of scholars, and pronouncements by States articulating a rule of IL when such pronouncements are not seriously challenged by other States.²⁴

The prohibition against HT is a well-settled part of customary IL and thus is binding on all countries even if they are not signatories to a specific HT-related treaty. The United Nations High Commissioner for Refugees (UNHCR), for example, has taken the position that HT constitutes a form of persecution that merits refugee protection if the country of origin is unable or unwilling to offer protection against it.²⁵ Indeed, the UNCHR released detailed guidelines on how and when trafficked persons deserve asylum protections.²⁶

B. The 1904 International Agreement for the Suppression of the White Slave Traffic²⁷

The International Agreement for the Suppression of the White Slave Traffic was signed on May 18, 1904 and entered into force for the United States on June 6, 1908.²⁸ Articles 1, 2, and 3 require cooperation in the prosecution and punishment of the trafficking in white slaves.²⁹ Article 2 requires that signatory parties “have a watch kept, especially in railway stations, ports of embarkation, and en route, for persons in charge of women and girls destined for an immoral life.”³⁰ Article 3 requires States “to have the declarations taken of women or girls of foreign nationality who are prostitutes, in order to establish their identity and civil status, and to discover who has caused them to leave their country.”³¹ The information obtained must be communicated to the authorities of the country of origin of the women or girls, so that they might be eventually repatriated.

²⁴ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES §103 (1987).

²⁵ UNHCR, *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1978 Protocol Relating to the Status of Refugees*, UN Doc. HCR/GIP/02/01 (May 7, 2002).

²⁶ UNHCR, *Guidelines on International Protection: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked*, UN Doc. HCR/GIP/06/07 (Apr. 7, 2006).

²⁷ International Agreement for the Suppression of the “White Slave Traffic,” May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83.

²⁸ U.S. DEP’T OF STATE, TREATIES IN FORCE: A LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES IN FORCE ON JANUARY 1, 2007 (2007) available at <http://www.state.gov/documents/organization/89668.pdf> [hereinafter TREATIES IN FORCE].

²⁹ International Agreement for Suppression of “White Slave Traffic,” *supra* note 27, arts. 1-3.

³⁰ *Id.* art. 2.

³¹ *Id.* art. 3.

C. The 1926 Slavery Convention³²

The 1926 Slavery Convention, the first international instrument to formally define slavery, was adopted on September 25, 1926, and entered into force for the United States on March 21, 1929.³³ Article 2 of the Slavery Convention requires that States pledge to prevent and suppress the slave trade and bring about the complete abolition of slavery in all its forms.³⁴ Article 5 requires States “to take all necessary measures to prevent compulsory or forced labor from developing into conditions analogous to slavery.”³⁵

D. The 1948 Universal Declaration of Human Rights (UDHR)³⁶

The UDHR was adopted by the United Nations (U.N.) on December 10, 1948. The UDHR is not a binding treaty and thus has no signatories. Instead, having been ratified through a proclamation by the General Assembly (GA), it provides a normative basis for international human rights standards. Article 4 states that, “[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”³⁷ The Declaration is based on the “inherent dignity” of all people and affirms the equal rights of all men and women, in addition to affirming their right to freedom. The Declaration gives human rights precedence over the power of the State. While States are permitted to regulate rights, they are prohibited from violating them under the UDHR.

E. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery³⁸

The Convention was signed on September 7, 1956, and entered into force for the United States on December 6, 1967.³⁹ Signatories are required to “take all practicable and necessary legislative and other measures to bring about

³² Slavery Convention, Sept. 25, 1926, 46 Stat. 2183, 60 L.N.T.S. 253.

³³ TREATIES IN FORCE, *supra* note 28.

³⁴ Slavery Convention, *supra* note 32, art 2(b).

³⁵ International Agreement for the Suppression of the “White Slave Traffic,” *supra* note 27, art. 5.

³⁶ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

³⁷ *Id.* art. 4.

³⁸ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3201, 266 U.N.T.S. 3.

³⁹ TREATIES IN FORCE, *supra* note 28.

progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices. . . .”⁴⁰

F. The Abolition of Forced Labor Convention (AFLC)⁴¹

The AFLC was adopted on June 25, 1957, and entered into force for the United States on September 25, 1992.⁴² The Convention requires member states “to suppress and not to make use of any form of forced or compulsory labor as a means of political coercion or education”⁴³ Nor can they use it “as a punishment for holding or expressing views ideologically opposed to the established system; as a method of using labor for purposes of economic development; as a means of labor discipline; as a punishment for having participated in strikes; or as a means of racial, social, national, or religious discrimination.”⁴⁴ Article 2 requires signatories “to take effective measures to secure the immediate and complete abolition of forced or compulsory labor”⁴⁵

G. International Covenant on Civil and Political Rights (ICCPR)⁴⁶

The ICCPR was ratified on December 16, 1966, and entered into force for the United States on September 8, 1992. Article 8 of the ICCPR addresses HT and slavery. Specifically, Article 8 holds that, “[n]o one shall be held in slavery” and that “slavery and the slave-trade in all their forms shall be prohibited.”⁴⁷ Article 8(2) holds that “[n]o one shall be held in servitude”⁴⁸ and Article 8(3) holds that “[n]o one shall be required to perform forced or compulsory labor.”⁴⁹ Moreover, Article 2 of the ICCPR holds that States must ensure that “any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”⁵⁰

⁴⁰ *Id.* art. 1.

⁴¹ Convention Concerning the Abolition of Forced Labour, June 25, 1957, 320 U.N.T.S. 291.

⁴² TREATIES IN FORCE, *supra* note 28.

⁴³ Convention Concerning the Abolition of Forced Labour, *supra* note 41, art. 1(a).

⁴⁴ *Id.* art. 1(a)-(e).

⁴⁵ *Id.* art. 2.

⁴⁶ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

⁴⁷ *Id.* art. 8(1).

⁴⁸ *Id.* art. 8(2).

⁴⁹ *Id.* art. 8(3).

⁵⁰ *Id.* art. 2(3)(a).

H. Worst Forms of Child Labor Convention (WFCLC)⁵¹

The WFCLC was adopted on June 17, 1999, and entered into force for the United States on December 2, 2000.⁵² The WFCLC addresses the prohibition of and immediate action to eliminate the worst forms of child labor. The main objective of the Convention is to prohibit and eliminate illicit activities and other work hazardous and harmful to the health, safety, and morals of persons under the age of eighteen. These activities include child slavery and prostitution, the use of children in illicit activities (e.g., drug trafficking), and hazardous labor. In Article 1, signatory States pledge to take “immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor”⁵³ States “shall: 1) prevent the engagement of children in the worst forms of child labor; 2) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labor and for their rehabilitation and social integration; 3) ensure access to free basic education and vocational training for all children removed from the worst forms of child labor; 4) identify and reach out to children at special risk; and 5) take account of the special situation of girls.”⁵⁴

I. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (CRC)⁵⁵

The Convention on the Rights of the Child (CRC) requires States to take steps to prevent the abduction, sale, or trafficking of children for any purpose.⁵⁶ It also calls upon States to protect children from all forms of sexual exploitation and abuse.⁵⁷ The United States and Somalia are the only two countries that have not ratified the Convention. However, the United States did sign the Optional Protocol to the CRC in December 2002.⁵⁸ Built on a variety of legal systems and

⁵¹ Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999, 2133 U.N.T.S. 161, available at www.ilo.org/ilolex/cgi-lex/convde.pl?C182 [hereinafter Worst forms of Child Labour Convention].

⁵² TREATIES IN FORCE, *supra* note 28, at 104.

⁵³ Worst Forms of Child Labour Convention, *supra* note 51, art. 1.

⁵⁴ *Id.* art. 7(2).

⁵⁵ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, May 25, 2000, T.I.A.S. No. 13,095, 2171 U.N.T.S. 227 [hereinafter Optional Protocol].

⁵⁶ Convention on the Rights of the Child, G.A. Res. 44/25, art. 35, 44 U.N. GAOR Supp. No. 49, U.N. Doc. A/RES/44/49 (Nov. 20, 1989).

⁵⁷ *Id.* art. 35.

⁵⁸ See Status of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-c&chapter=4&lang=en#EndDec (last visited Oct. 23, 2014).

cultural traditions, the CRC is a universally agreed-to set of non-negotiable standards and obligations. These basic standards set minimum entitlements and freedoms founded on respect for the dignity and worth of each individual, regardless of race, color, gender, language, religion, origins, wealth, or birth status.

The Optional Protocol of the CRC is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural, economic, political, and social rights. Article 8 of the Optional Protocol requires States to adopt appropriate measures to protect the rights and interests of child victims. Specifically, they must: (1) recognize the vulnerability of child victims and adopt procedures to recognize their special needs, particularly as witnesses; (2) inform child victims of their rights, their roles and the scope, timing, and progress of the proceedings, and of the disposition of their cases; (3) allow the views, needs, and concerns of child victims to be presented and considered in proceedings where their personal interests are affected in a manner consistent with the procedural rules of national law; (4) provide appropriate support services to child victims throughout the legal process; (5) protect the privacy and identity of child victims; (6) provide for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; and (7) avoid unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.⁵⁹

J. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁶⁰

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires States to institute measures to suppress all forms of trafficking of women. It also calls upon States to prevent exploitative prostitution⁶¹ and to ensure healthy and safe working conditions for women.⁶² The United States, although a signatory to the Convention, is one of the few countries in the world not to have ratified it. The Convention has received periodic consideration by the Senate Committee on Foreign Relations. Most recently, it was recommended by the Committee for full Senate ratification in July 2002, subject to a series of reservations and declarations. The Congressional session ended that year without the Senate taking action.

⁵⁹ Optional Protocol, *supra* note 55 art. 8.

⁶⁰ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

⁶¹ *Id.* art. 6.

⁶² *Id.* art. 11.

K. Protocol to Suppress and Punish Trafficking in Persons⁶³

In November 2000, the U.N. General Assembly adopted the Protocol to Suppress and Punish Trafficking in Persons, Especially Women and Children, to supplement the Convention against Transnational Crime (the Trafficking Protocol). The protocol entered into force on December 25, 2003. The purposes of the Trafficking Protocol are: a) to prevent and combat trafficking in persons, paying particular attention to women and children; b) to protect and assist victims of trafficking with full respect for their human rights; and c) to promote cooperation among States to achieve those objectives.⁶⁴ The United States ratified the Trafficking Protocol on December 3, 2005.⁶⁵ The Trafficking Protocol lays out the first internationally accepted definition of trafficking as “the recruitment, transportation, transfer, harboring 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.”⁶⁶ Exploitation includes “the prostitution of others or sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁶⁷

Furthermore, the Trafficking Protocol clarifies that the consent of a person to trafficking is irrelevant if threats or use of force or other forms of coercion are used to obtain that consent. It also states that the recruitment, transportation, transfer, harboring, or receipt of a child under age eighteen for exploitation is trafficking even if it does not involve any of the means defined.⁶⁸ The Trafficking Protocol requires that countries facilitate the safe return of their trafficked nationals and residents.⁶⁹ It also requires the country that is returning a trafficked person to do so with due regard for the safety of the trafficked person.⁷⁰ The Trafficking Protocol mandates that governments strengthen border controls to detect and prevent trafficking.⁷¹ This includes training immigration and other law enforcement officials to prevent trafficking, to prosecute traffickers, and to protect the rights of trafficked persons.⁷²

⁶³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319 [hereinafter Trafficking Protocol].

⁶⁴ *Id.* art. 2.

⁶⁵ Trafficking Protocol, *supra* note 63.

⁶⁶ *Id.* art. 3(a).

⁶⁷ *Id.*

⁶⁸ *Id.* art. 3(c)-(d).

⁶⁹ *Id.* art. 8.

⁷⁰ Trafficking Protocol, *supra* note 63, art. 8.

⁷¹ *Id.* art. 11.

⁷² *Id.* art. 10.

Human rights organizations and experts have criticized the Trafficking Protocol for its relatively weak language on the rights and assistance needs of trafficked persons.⁷³ For example, the Trafficking Protocol requires a State Party to protect the confidentiality of trafficked persons *in appropriate cases and to the extent possible* under its domestic laws. It urges a State Party *to consider* implementing programs to address the physical, psychological, and social recovery of victims, particularly encouraging the provision of appropriate housing, counseling, medical care, material assistance and employment, as well as educational and training opportunities. It also *encourages States to endeavor* to address the physical safety of victims and *to consider* adopting measures to permit victims to remain temporarily or permanently in their territories. Finally, it notes that the return of trafficked persons *shall preferably be voluntary*. All of this language is non-mandatory, which reflects, in part, the fact that the Trafficking Protocol was negotiated under the auspices of the U.N. Crime Commission, a body whose mandate is grounded in law enforcement rather than human rights.⁷⁴

L. Trafficking Victims Protection Act

Estimates indicate that as many as 17,500 victims are trafficked into the United States each year.⁷⁵ The Trafficking Victims Protection Act (TVPA)⁷⁶ was enacted by the federal government in October 2000. Prior to its enactment, no comprehensive federal law existed in the United States to protect victims of HT or to prosecute their traffickers. Congress has since passed the TVPA Reauthorization Acts (TVPRA) of 2003⁷⁷ and 2005,⁷⁸ slightly amending the TVPA and reallocating funding to achieve the goals of the original TVPA. The TVPA and subsequent Reauthorization Acts are models for other countries because they address prevention, prosecution, and protection measures.⁷⁹ The prevention prong consists of grants for education, outreach, public awareness

⁷³ See generally ANN D. JORDAN, INT'L HUMAN RIGHTS LAW GRP., THE ANNOTATED GUIDE TO THE COMPLETE UN TRAFFICKING PROTOCOL (2002), available at http://lastradainternational.org/lisidocs/UN%20Trafficking%20Protocol_Ann%20Jordan.pdf.

⁷⁴ *Id.*

⁷⁵ CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, REPORT ON ACTIVITIES TO COMBAT HUMAN TRAFFICKING: FISCAL YEARS 2001-2005 9 (2006).

⁷⁶ Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified in scattered sections of 18 U.S.C. & 22 U.S.C.).

⁷⁷ Pub. L. No. 108-193, 117 Stat. 2875 (2003) (codified in 18 U.S.C. § 1595, 22 U.S.C. 7109a).

⁷⁸ Pub. L. 109-164, 119 Stat. 3558 (2005) (codified in scattered sections of 18 U.S.C., 22 U.S.C., 42 U.S.C.).

⁷⁹ See Kelly E. Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN'S L.J. 29, 44 (2001).

initiatives, and economic alternative programs overseas.⁸⁰ In fiscal year 2005, for example, the United States issued grants totaling \$95 million, funding 266 international anti-trafficking programs in 101 countries.⁸¹

The TVPA and TVPRA demand that countries receiving economic and security assistance from the United States submit an annual report assessing their efforts to combat trafficking.⁸² The Acts outline minimum standards for the elimination of trafficking in other nations,⁸³ offer assistance to foreign countries so that they can meet those standards,⁸⁴ and threaten action against foreign governments that fail to meet those standards.⁸⁵

Indicative of a congressional belief that ignorance and poverty are major factors contributing to the development of the HT industry, the TVPA calls for international initiatives to enhance economic opportunity for potential victims of trafficking as a method of deterring trafficking.⁸⁶ It also calls for the Executive Branch to establish and carry out programs to increase public awareness of the dangers of trafficking and the protections available to trafficking victims.⁸⁷ One way to achieve awareness is the establishment of programs that support the production of television and radio programming informing vulnerable populations of the dangers of trafficking.⁸⁸ In addition, Congress added an “escape clause” to the TVPRA, which allows a federal body that has entered into a contract with a private entity to terminate that contract if the private entity (or any party for which it is responsible) is discovered to have engaged in severe forms of HT, procured a commercial sex act during the period of time that the contract was in effect, or used forced labor in the performance of the contract.⁸⁹

The TVPA and TVPRA have strengthened the ability of federal agencies to prosecute and punish traffickers. The TVPA increased mandatory minimum sentences for “peonage,” “enticement into slavery,” and “sale into involuntary servitude” from ten to twenty years in prison.⁹⁰ The TVPA also provided for the criminal sanction of a life sentence for trafficking cases in which kidnapping,

⁸⁰ Pub. L. No. 106-386, § 106, 114 Stat. at 1474.

⁸¹ U.S. DEP’T OF JUSTICE, ATTORNEY GENERAL’S ANNUAL REPORT TO CONGRESS ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS: FISCAL YEAR 2005 21 (2006), available at <http://www.justice.gov/archive/ag/annualreports/tr2005/agreporhumantrafficking2005.pdf>.

⁸² Pub. L. No. 106-386, § 104(b), 114 Stat. at 1472.

⁸³ *Id.* § 108, 114 Stat. at 1480.

⁸⁴ *Id.* § 107, 114 Stat. at 1474.

⁸⁵ *Id.* § 110, 114 Stat. at 1482.

⁸⁶ *Id.* § 106(a), 114 Stat. at 1474.

⁸⁷ Pub. L. No. 106-386, § 106(b), 114 Stat. at 1474.

⁸⁸ Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 3(d), 117 Stat. 2875, 2876 (2003) (codified in 18 U.S.C. § 1595, 22 U.S.C. 7109a).

⁸⁹ *Id.* § 3(g), 117 Stat. at 2876.

⁹⁰ Pub. L. No. 106-386, § 112(a)(1)(A), 114 Stat. at 1487 (creating 18 U.S.C. 77 §§ 1581(a), 1583, 1584).

sexual abuse, or killing (or any attempt thereof) occurs.⁹¹ Because those three criminal provisions alone were insufficient to effectively prosecute human traffickers, Congress criminalized four additional offenses: (1) “forced labor”; (2) “trafficking with respect to peonage, slavery, involuntary servitude, or forced labor”; (3) “sex trafficking of children or by force, fraud, or coercion”; and (4) “unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor.”⁹² Additionally, Congress established a right held by a victim to mandatory restitution for any of the aforementioned offenses.⁹³

III. HAGUE ADOPTION CONVENTION ON THE PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTER-COUNTRY ADOPTION

The Hague Adoption Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption (Adoption Convention or Treaty)⁹⁴ concluded on May 29, 1993. Both the United States and Armenia are parties to the Adoption Convention,⁹⁵ obliging each to fulfill the spirit and purpose of the Treaty. The purpose of the Adoption Convention is “to establish safeguards to ensure that inter-country adoptions take place in the best interest of the child and with respect for his or her fundamental rights as recognized in international law”⁹⁶ and “to secure the recognition in Contracting States of adoptions made in accordance with the Convention.”⁹⁷ Recognizing the possibility, if not the probability, of abuse and/or corruption in the inter-country adoption realm (e.g., HT), the Adoption Convention created language that imposes duties on signatory States that should address this malfeasance. Specifically with respect to HT, the Convention established “a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children.”⁹⁸

To prevent HT-related abuses, the Convention implemented several important changes in the process of inter-country adoption between the United States and other signatory states. In the spirit of the Adoption Convention,

⁹¹ *Id.* § 112(a)(1)(A), 114 Stat. at 1487.

⁹² *Id.* § 112(a)(2), 114 Stat. at 1486-88 (creating 18 U.S.C. 77 §§ 1589-92).

⁹³ *Id.*, 114 Stat. at 1488 (amending 18 U.S.C. 77 § 1593).

⁹⁴ *See* Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption, May 29, 1993, 1870 U.N.T.S. 167, available at <http://www.hcch.net/upload/conventions/txt33en.pdf> [hereinafter Hague Adoption Convention].

⁹⁵ *See id.*

⁹⁶ *Id.* art. 1(c).

⁹⁷ *Id.* art. 1(c).

⁹⁸ *Id.* art. 1(b).

adoptions are to be “made in the best interests of the child and with respect for his or her fundamental rights,” while reducing the risk of child trafficking or other illicit activities that had previously plagued inter-country adoption in some countries.⁹⁹ In the context of inter-country adoptions, child trafficking or related illicit activities might include “child abduction, child stealing, buying and selling; improper financial gain and corruption; private adoption and falsification of documents; and circumventing adoption.”¹⁰⁰ It is important to note, however, that the Adoption Convention does not intend to prevent trafficking and other illicit activities directly.¹⁰¹ Rather, it is expected that “the observance of the Convention’s rules will bring about the avoidance of such abuses.”¹⁰²

First, one of the most significant rules of the Adoption Convention concerns the process of accreditation for adoption service providers (ASP), agencies that have been entrusted to facilitate inter-country adoptions. Previously, ASPs in the United States needed only to be licensed by the states in which they operated.

After ratification of the Adoption Convention, however, ASPs in the United States are now required to be accredited pursuant to the standards established by the federal government.¹⁰³ These heightened requirements were intended to ensure that only ASPs that were following professional standards could facilitate adoptions between the United States and other Adoption Convention countries. In the summer of 2006, the U.S. Department of State designated the Council on Accreditation and the Colorado Department of Human Services as accrediting entities with oversight from the Department.¹⁰⁴

The Convention further requires free and informed consent of the proper “persons, institutions, and authorities whose consent is necessary for adoption.”¹⁰⁵ Prior to giving consent, the parties must be counseled and fully informed about issues concerning the adoption,¹⁰⁶ and it must be ensured that the consent was not secured through payment or any other kind of compensation.¹⁰⁷ These requirements are fundamental “for an intercountry adoption regime that upholds

⁹⁹ Hague Adoption Convention, *supra* note 94, pmb1.

¹⁰⁰ BENYAM D. MEZMUR, “THE SINS OF THE ‘SAVIOURS’”: CHILD TRAFFICKING IN THE CONTEXT OF INTER-COUNTRY ADOPTION IN AFRICA 4 (2010), *available at* <http://www.hcch.net/upload/wop/adop2010id02e.pdf>.

¹⁰¹ *Id.*

¹⁰² G. PARRA-ARANGUREN, EXPLANATORY REPORT ON THE CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION para. 53 (1993).

¹⁰³ BUREAU OF CONSULAR AFFAIRS, U.S. DEP’T OF STATE, THE HAGUE CONVENTION ON INTERCOUNTRY ADOPTION: A GUIDE FOR PROSPECTIVE ADOPTIVE PARENT (2006) *available at* http://travel.state.gov/content/dam/aa/pdfs/PAP_Guide_1.pdf.

¹⁰⁴ *Id.*

¹⁰⁵ Hague Adoption Convention, *supra* note 94, art. 4(c)(1).

¹⁰⁶ *Id.* art. 4(c)(1).

¹⁰⁷ *Id.* art. 4(c)(3).

the best interests of the child, and prevents and combats child trafficking and abuses.”¹⁰⁸

A. Commentary on the Adoption Convention and HT

Some scholars argue that while the aforementioned adoption agency accreditation and consent rules are warranted, they may also have the effect of increasing restrictions, expenses, and delays on prospective adoptive parents before, during, and after the adoption process. For one, new regulations may lead to prospective adoptive parents seeking to adopt in non-Convention countries where the adoption requirements may be more relaxed and expenses lessened.¹⁰⁹ By 2008, almost half of the top “source” countries for international adoption—such as Belarus, Brazil, Ethiopia, Honduras, Peru, and Romania—had “at least temporarily halted adoptions or been prevented from sending children to the United States because of serious concerns about corruption and kidnapping.”¹¹⁰ Many top adoption countries such as Ethiopia and Liberia have not ratified the Convention.

The African Child Policy Forum (ACPF) expressed related concerns by noting the recent trend of adoptive parents flocking to non-Adoption Convention countries like Ethiopia and Liberia as adoptions in State Parties become more restrictive.¹¹¹ In fact, to date, less than one-third of African countries have ratified the Convention. The Executive Director of ACPF later declared that African adoption should be discouraged “at all costs” and that vulnerable children are becoming “commodities” from which fraudulent individuals or groups can make cash from foreign countries.¹¹² Coupled with a lack of regulation, the increase in adoption interest in many non-Hague countries in Africa could lead to increased opportunities for HT and other illicit activities.

Moreover, the ACPF identified other limitations to the Adoption Convention that further jeopardize the process of inter-country adoption even in African countries that have ratified the Adoption Convention. Because the Convention remains a private international law instrument, it cannot, for example, mitigate steps taken before a child enters the adoption system.¹¹³

¹⁰⁸ MEZMUR, *supra* note 100, at 15.

¹⁰⁹ Hilary Whiteman, *African Adoption Should be Discouraged “At All Costs,” Group Says*, CNN (May 31, 2012), <http://edition.cnn.com/2012/05/29/world/africa/africa-child-adoption> (last visited Aug. 15, 2013).

¹¹⁰ E. J. Graff, *The Lie We Love*, FOREIGN POL’Y, Nov.-Dec. 2008, at 59, 60, available at http://www.foreignpolicy.com/articles/2008/10/15/the_lie_we_love.

¹¹¹ See AFR. CHILD POLICY FORUM, AFRICA: THE NEW FRONTIER FOR INTERCOUNTRY ADOPTION 6 (2012), available at <http://resourcecentre.savethechildren.se/sites/default/files/documents/6524.pdf> [hereinafter ACPF].

¹¹² *Id.*

¹¹³ *Id.* at 11.

Currently, regulation of the Convention occurs through an authority within the contracting State dictating that “a contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.”¹¹⁴ However, scholars suggest that serious regulatory challenges such as birth registration affect the Central Authority and other parties involved in inter-country adoptions, especially in the poorest Convention countries. Moreover, while the Adoption Convention can attempt to reduce HT and try to eliminate “fears that corruption is destroying the fabric of inter-country adoption arrangements,” improvements are needed in the ability of these individual States to establish the proper infrastructure to live up to the spirit and letter of the Convention.¹¹⁵ To mitigate these concerns, some scholars favor the creation of a global agency that will be accountable for overseeing the processes of inter-country adoptions.¹¹⁶ This global authority would theoretically possess the resources and regulatory power that the central authorities of poor Convention States lack.

Other scholars suggest that regulatory challenges actually result from inherent weaknesses in the Adoption Convention itself. Again, the Adoption Convention does not intend to prevent trafficking and other illicit activities related to adoption directly, but rather aims to reduce such malefactions through observance to the spirit of its rules.¹¹⁷ Moreover, while most agree that some degree of regulation is necessary, “excessive regulation may deny or delay the chance of adoption to a child in great need while permissive regulation may expose the same child to the risk of inappropriate or exploitative adoption.”¹¹⁸

Consider, for example, the problem of regulating “improper financial gain” in inter-country adoptions in light of the Adoption Convention. Due to the large amount of money involved in most inter-country adoptions, prospective parents are often at risk of being financially exploited by those “facilitating” the adoption.¹¹⁹ Improper financial gain with respect to inter-country adoption was debated during the drafting of the CRC when it was suggested that all financial gain should be prohibited by parties during the inter-country adoption process, as “it was impossible to combat the existing market in child trafficking while simultaneously institutionalizing the market by permitting persons dealing with

¹¹⁴ Hague Adoption Convention, *supra* note 94, art. 6(1).

¹¹⁵ Sarah Dillon, *Making Legal Regimes for Intercountry Adoption Reflect Human Rights Principles: Transforming the United Nations Convention on the Rights of the Child with the Hague Convention on Intercountry Adoption*, 21 B.U. INT’L L.J. 179, 201 (2003).

¹¹⁶ *Id.* at 254.

¹¹⁷ *Id.* at 201.

¹¹⁸ SAVE THE CHILDREN, INTERNATIONAL ADOPTION 3 (2010), *available at* http://www.crin.org/docs/International%20Adoption%20FEBB%20edit%2018_01_10.pdf.

¹¹⁹ *Id.* at 2.

inter-country adoption to make a financial gain.”¹²⁰ This argument follows a similar logic to one made against legalizing prostitution, which explains the evidence that HT has been shown to increase in areas where prostitution has been legalized (such as Germany) due to the inherently clandestine nature of the prostitution market. Legalization is purported to legitimize formal criminals while expanding the illegal HT market sphere alongside the “legal” and often poorly regulated prostitution market.¹²¹ In the case of inter-country adoption, it is therefore suspected that individuals in some less regulated Convention countries that are involved in child trafficking may be incentivized by the Convention’s permission to allow financial gain from adoption.

The Adoption Convention states in Article 8 “that Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.”¹²² Article 32 reiterates that “[n]o one shall derive improper financial or other gain from an activity related to an inter-country adoption,”¹²³ while noting that “only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid,”¹²⁴ and that “the directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.”¹²⁵ The phrase “unreasonably high,” however, draws some questions as what may be considered “improper financial gain”; this can vary vastly from country to country depending on the standard legal costs of adoption and other related costs, such as translation.

The Convention, however, does not outline any consequences for breaching the “improper financial gain” prohibition, and scholars identify this as an inherent weakness in its construction. At the drafting of the Convention, delegates believed that prohibitions such as refusal of adoption would be too drastic. Nonetheless, “the Hague Convention only provides minimum standards and guidelines for States to abide by, and it is the responsibility of individual States to fill in the gaps left by the Hague Convention and afford children greater protection.”¹²⁶ For this reason, Bojorge concludes that “the Hague Convention has failed to establish, and provide, sufficient mechanisms to protect children’s rights and has not, therefore, achieved the best interests of children involved in

¹²⁰ Cecilia Bojorge, *Intercountry Adoptions: In the Best Interests of the Child?*, 2 QUEENSLAND U. TECH. L. & JUST. J. 266, 275 (2002), available at <https://lr.law.qut.edu.au/article/download/103/97>.

¹²¹ *Legalised Prostitution Increases Human Trafficking*, LONDON SCH. ECON. & POL. SCI. (Dec. 5, 2012), <http://www.lse.ac.uk/newsAndMedia/news/archives/2012/12/Legalised-prostitution-increases-human-trafficking.aspx>.

¹²² Hague Adoption Convention, *supra* note 94, art. 8.

¹²³ *Id.* art. 32(1).

¹²⁴ *Id.* art. 32(2).

¹²⁵ *Id.* art. 32(3).

¹²⁶ Bojorge, *supra* note 120, at 290.

inter-country adoptions.”¹²⁷ Due to the concerns outlined above—increases in bureaucracy, trends of rising adoptions in non-Convention countries correlated to increased risk of HT, lack of infrastructure or capacity for proper adoption regulation in poorer Convention countries, lack of a central governing mechanism to the Convention, and the omission of any guidance for coping with breaches—many scholars question the Adoption Convention’s ability to reduce HT and other illicit activities.

It is important to note that the lack of prosecutorial teeth in the Adoption Convention does not mean that transgressors cannot be held criminally responsible for their actions. If a violation of the Adoption Convention occurs that is perceived by prosecutorial authorities as a violation of criminal law, prospective adoptive parents could be prosecuted under a HT rubric. That is, various Conventions (e.g., the Adoption Convention, the TVPA, and State statutory law) could be utilized cooperatively to provide a prosecutorial mechanism for HT violators.

IV. HUMAN TRAFFICKING AND REPRODUCTIVE HEALTH IN ARMENIA

A. Human Trafficking in Armenia

One of the world’s largest and fastest growing criminal enterprises, the trafficking of human beings, is estimated to be worth \$32 billion annually.¹²⁸ Armenia is both a source and destination country for men, women, and children caught in labor and sex trafficking and is also a transit country for victims from Eastern Europe and Central Asia.¹²⁹ Russia is a common transit country for female victims from Armenia en route to Dubai.¹³⁰

Sex traffickers exploit women and young girls from Armenia both within the country and outside its borders—most notably in Russia, the United Arab Emirates (UAE), and Turkey.¹³¹ Victims of child abuse and orphans are also highly vulnerable to trafficking in Armenia. Russian women in Armenian nightclubs have also been noted as highly vulnerable to trafficking.¹³² In addition,

¹²⁷ *Id.* at 291.

¹²⁸ INTL’L LABOUR OFFICE, ILO ACTION AGAINST TRAFFICKING IN HUMAN BEINGS 1 (2008), available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_090356.pdf.

¹²⁹ U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 75 (2013), available at <http://www.state.gov/documents/organization/210738.pdf>.

¹³⁰ E.V. TIURUKANOVA, INST. FOR URBAN ECON., HUMAN TRAFFICKING IN THE RUSSIAN FEDERATION 38 (2006), available at [http://www.unicef.org/ceecis/Unicef_EnglishBook\(1\).pdf](http://www.unicef.org/ceecis/Unicef_EnglishBook(1).pdf)

¹³¹ U.S. DEP’T OF STATE, *supra* note 129, at 75.

¹³² *Id.*

many Armenians must migrate to find employment or higher wages and often find themselves in situations where they have become particularly vulnerable to exploitation by labor traffickers. Children have been subjected to forced labor within domestic work, agriculture, and construction as well as forced begging.¹³³

The Armenian government investigated twenty-two trafficking cases in 2012, prosecuting eighteen defendants for trafficking offenses with an average prison sentence of eight years. The prosecutions included one case of forced child begging.¹³⁴ While the government is taking strides towards eliminating HT, victim identification remains a major concern as well as judicial prejudice against victims of trafficking. We address these concerns below.

B. Human Trafficking: Legal Instruments in Armenia

As of June 2013, Armenia met the minimum requirements towards eliminating HT.¹³⁵ Armenia has several domestic legal instruments to combat trafficking. Between 2004 and 2006, the Armenian government implemented a National Action Plan (the Plan) combining efforts from the Ministry of Foreign Affairs, National Security, the Department of Migration and Refugees, the police force, and others. The Plan included such initiatives as establishing an anti-trafficking center, drafting legislative amendments, holding training seminars, and founding a rehabilitation center for victims.¹³⁶ The Plan has continued to be revised in two-year increments, with the 2013-2015 Plan approved in February 2013.¹³⁷

Article 32 of the Armenian Constitution declares that “everyone shall have the freedom to choose his/her occupation” and should have “fair remuneration in the amount no less than the minimum set by law.”¹³⁸ Child trafficking is prohibited under Article 168 of the 2003 Criminal Code of the Republic of Armenia.¹³⁹ Under the same code, Article 131 forbids kidnapping for “for the purpose of prostitution or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Armenia*, PROTECTION PROJECT, <http://www.protectionproject.org/wp-content/uploads/2010/09/Armenia.pdf> (last visited Sept. 24, 2014).

¹³⁷ Haykanush Chobanyan, *Human Trafficking in Armenia* 3 (CARIM East, Explanatory Note 13/58, 2013), available at http://www.carim-east.eu/media/exno/Explanatory%20Notes_2013-58.pdf.

¹³⁸ CONSTITUTION OF THE REPUBLIC OF ARMENIA July 5, 1995, art. 32, available at <http://www.parliament.am/parliament.php?id=constitution&lang=eng#>.

¹³⁹ CRIMINAL CODE art. 168 (Arm.), available at <http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng>.

human organs.”¹⁴⁰ Article 132 prohibits HT, specifically the “recruitment, transportation, transfer, harboring, or receipt of persons for the purpose of sexual exploitation or forced labor, by means of the threat or use of force, of fraud, of using the dependence, of blackmail, of threat of destruction or damage to property, if this was done for mercenary purposes.”¹⁴¹ Article 261 criminalizes inciting someone into “involvement into prostitution, by violence or use of violence, abuse of dependent position, by threat to destroy, steal or damage property, or dissemination of defamatory information about a person or close relatives, or by deception.”¹⁴²

In 2007, former Armenian President Robert Kocharyan signed into law the Anti-Trafficking on Air Act, which included several measures targeted to prevent trafficking of victims on planes departing from Armenia. The Act required brochures to be included on flights as well as in-flight announcements.¹⁴³ In addition to these domestic measures, Armenia has ratified several international conventions regarding trafficking and forced labor. Within the last decade, these have included the Protocol to Prevent, Suppress and Punish Trafficking in Persons (ratified in 2003), the Forced Labor Convention (ratified in 2004), the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (ratified in 2005), the Worst Forms of Child Labor Convention (ratified in 2006), and, in 2006, the Adoption Convention.¹⁴⁴

Armenia has also engaged in dialogue with neighboring countries to find solutions to fighting transnational HT. The Moscow Sexual Assault Recovery Centre, for example, developed an anti-trafficking information forum among Armenia, Ukraine, Russia, Uzbekistan, and Kyrgyzstan in 2004-05.¹⁴⁵ Moreover, several non-governmental organizations work within Armenia to combat trafficking. The United Methodist Committee on Relief (UMCOR), for example, received a \$90,000 grant in 2008 from the U.S. State Department to continue its work.¹⁴⁶ The Armenian government has maintained strong ties with NGOs, both collaborating with and dedicating significant funds to HT prevention activities.

¹⁴⁰ *Id.* art. 131.

¹⁴¹ *Id.* art. 132.

¹⁴² *Id.* art. 261.

¹⁴³ *Armenia*, *supra* note 136.

¹⁴⁴ See United Nations Dep’t of Pub. Info., *UN Treaties, Conventions, Protocols Armenia is a Signatory*, U. MINN. HUM. RTS. LIBR., http://www1.umn.edu/humanrts/research/armenia/Full%20list_UN_treaties_Eng.pdf (last visited Sept. 24, 2014).

¹⁴⁵ TIURUKANOVA, *supra* note 130, at 65.

¹⁴⁶ See Nicholas Jaeger, *Successful Reintegration Takes Care*, HUMAN TRAFFICKING SEARCH (Oct. 20, 2014), <http://humantraffickingsearch.net/wp/successful-reintegration-takes-care/>.

C. Surrogacy

International commercial surrogacy is a growing business. Despite the fact that many countries restrict or prohibit surrogacy, the market is now estimated to generate an annual six billion U.S. dollars worldwide.¹⁴⁷ The global surrogacy market has engendered new and complex legal questions and ethical dilemmas regarding the responsibilities of the state, the contracting parents, and their gestational surrogates, as well as the agencies that broker surrogacy contracts.¹⁴⁸ Since the 1980s, the use of surrogacy has risen steadily in the United States, driven both by advances in Assisted Reproductive Technologies (ART) and by growing societal acceptance of nontraditional family structures.¹⁴⁹

Because gestational surrogacy is a relatively new sphere of human activity and is usually based on a significant financial contract, many view the possibility of corruption as high, especially considering the legal and regulatory confusion surrounding surrogacy. Quite unlike many countries, the United States has no national policy regulating surrogacy; rather, it has a patchwork of varying state laws, with some states allowing surrogacy under certain conditions and restrictions, while other states prohibit it altogether.¹⁵⁰ Transnational surrogacy has led to a rise in reproductive tourism, whereby “consumers” of surrogacies can search for the best market price. However, there is also no set of legal mechanisms embedded in international law (such as the Adoption Convention) to govern transnational surrogacy arrangements, putting transnational surrogacy at risk of grave corruption and exploitation.¹⁵¹

The term “reproductive trafficking” is now widely used to describe such instances of criminal activity in the wide range of reproductive services now available. The international community moreover faces many ethical questions that arise when ART contracts form between mainly wealthy couples and women surrogates (both domestically and internationally) for whom social and economic hardship has compelled them to offer their reproductive “work” in exchange for significant financial compensation.

This inherent imbalance of power and money embedded in many surrogacy arrangements has led scholars to ask whether reproductive rights are in

¹⁴⁷ Seema Mohapatra, *Stateless Babies & Adoption Scams: A Bioethical Analysis of International Commercial Surrogacy*, 30 BERKELEY J. INT’L L. 2, 413 (2012).

¹⁴⁸ FRANCE WINDDANCE TWINE, *OUTSOURCING THE WOMB: RACE, CLASS AND GESTATIONAL SURROGACY IN A GLOBAL MARKET* 48 (2011).

¹⁴⁹ Joanna L. Grossman, *A Matter of Contract: The Wisconsin Supreme Court Rules Traditional Surrogacy Agreements Are Enforceable*, VERDICT (Aug. 6, 2013), <http://verdict.justia.com/2013/08/06/a-matter-of-contract-the-wisconsin-supreme-court-rules-traditional-surrogacy-agreements-are-enforceable>.

¹⁵⁰ Mark Hansen, *As Surrogacy Becomes More Popular, Legal Problems Proliferate*, A.B.A. J. (Mar. 1, 2011, 11:40 AM), http://www.abajournal.com/magazine/article/as_surrogacy_becomes_more_popular_legal_problems_proliferate/.

¹⁵¹ *Id.*

fact privileges for the few rather than rights for all, as under the current international surrogacy network.¹⁵² Moreover, excluding cases such as those in Israel, where there is an established, state-controlled regulatory body for surrogacy, the United States and many countries allow surrogacy on a free-market system in which babies born of surrogacy have seemingly become market commodities that are “out of reach of a vast majority of people who have fertility problems.”¹⁵³

In some cases, the lack of legal protections and regulations or lack of enforcement of existing regulations across the transnational surrogacy network has led to serious cases of HT, especially in situations where the agency booking the surrogacy exploits the economic or social disadvantage or lack of legal knowledge on the part of the women presenting themselves for surrogacy. Therefore, some countries such as the Netherlands actively seek to restrict commercial surrogacy, allowing it in rare cases but criminalizing “behavior that promotes supply and demand in relation to surrogacy.”¹⁵⁴

D. Adoption and Surrogacy in Armenia

Adoptions from Armenia by U.S. citizens decreased considerably when the Adoption Convention requirements took effect in 2006, mirroring a decrease in international adoptions generally. U.S. adoptions in Armenia were relatively stable through the early 2000s, reaching a high of forty-six consummated adoptions in 2006. Since 2006, however, U.S. adoptions have decreased by nearly 60%. The nineteen adoptions in 2012 is the second lowest total since 2009 (there were eighteen adoptions in 2010). While the Adoption Convention is not an experimental stimulus per se, these data suggest that the Adoption Convention has had a significant (both practical and statistical) effect on the quantity of adoptions by U.S. citizens from Armenia.

Surrogacy in Armenia, on the other hand, is steadily growing in numbers and is permissible for both heterosexual and same-sex couples. The cost is estimated to be approximately \$60,000. The surrogacy legal framework in Armenia is as follows:

- (a) The Armenia Reproductive Rights Law (2002) controls the surrogacy process for local and international patients, although Armenia and any international parties would necessarily have to be

¹⁵² TWINE, *supra* note 148, at 49.

¹⁵³ *Id.* at 48-49.

¹⁵⁴ BUREAU OF THE DUTCH NAT'L RAPPOREUR ON TRAFFICKING IN HUMAN BEINGS, HUMAN TRAFFICKING FOR THE PURPOSE OF THE REMOVAL OF ORGANS AND FORCED COMMERCIAL SURROGACY 17 (2012), available at http://www.nationaalrapporteur.nl/Images/human-trafficking-for-the-purpose-of-the-removal-of-organs-and-forced-commercial-surrogacy_tcm63-466532.pdf.

- compliant with any international Conventions to which their countries are a party;
- (b) to avoid any intricacies, detailed legal contracts between the parties are required;
 - (c) contracts with surrogate mothers permit the child to be handed over immediately to the intended parents at birth;
 - (d) the surrogate mother is banned from engaging in sexual activity during the pregnancy term; and,
 - (e) the surrogate mother is to remain anonymous and may not meet the intended parents.¹⁵⁵

The key question for legal scholars and practitioners in the international human rights field is whether HT-related laws and regulations are being compromised in the international adoption and surrogacy arena. The data overwhelmingly indicate that international adoptions have decreased—globally and in Armenia specifically—during the past decade. While it would be tempting to suggest that such a decline is due to a decrease in the physical availability of orphaned children, this is likely not the case. The decline is likely not due to fewer children available for adoption (i.e., supply) or less interest from prospective parents (i.e., demand). Rather, we believe it is almost certainly due to rising regulations and growing sentiment in countries against sending orphans abroad.

V. CONCLUSION

The summary of the existing international HT-related legislation suggests that the global community is dedicated to combating human trafficking. More than eighty international HT-related conventions have been authored to date. Those conventions and instruments to which the United States is obliged establish general guidelines for combating the HT problem and for addressing the complex needs of HT victims. While the HT legislation in the United States is relatively new, three pieces of legislation have been authored during the past eight years, a fact that overwhelmingly suggests that the U.S. government recognizes the importance of combating HT and its effects on victims. Parallel legislation suggests an equal level of HT-related concerns in Armenia.

The purpose of this article was to examine HT concerns in the context of international adoptions and surrogacy in Armenia. The data are disconcerting. As the stringent requirements of the Adoption Convention took effect in Armenia in 2006, adoptions of orphaned Armenian children by U.S. citizens decreased

¹⁵⁵ See INFORMATION FROM THE GOVERNMENT OF THE REPUBLIC OF ARMENIA ON THE CHILDREN'S RIGHT TO HEALTH (HRC RESOLUTION 19/37), available at <http://www.ohchr.org/Documents/Issues/Children/Study/RightHealth/Armenia.pdf> (last visited Oct. 23, 2014).

considerably. This is a reasonable reaction to more stringent administrative and legal requirements. Longer waiting times, increased agency costs, and more rigid oversight by U.S. government officials in Armenia should, and likely did, serve as a natural deterrent to adoptions in Armenia by U.S. citizens.

The key issue, however, is what alternatives will be available to U.S. citizens if adopting in Armenia is no longer a viable option. Adoption in States that are not Party States to the Convention is certainly an option. For those prospective adoptive parents who want to raise a child from Armenia, surrogacy would be a natural alternative. The legal issue then is whether surrogacy in Armenia conforms to global HT regulations.

There are no official data on the type and quantity of surrogacies in Armenia. Unquestionably, social science studies are needed to investigate a plethora of questions including how surrogate mothers are contacted by prospective parents, the nature and quantity of their compensation, the frequency of contact, the entities involved in the transaction, and the extent to which surrogates are pressured into the transaction. The answers to these questions would help illuminate the extent to which, first, surrogacy has supplanted adoptions in Armenia as the primary mode for U.S. citizens to become parents of Armenian children, and second, whether the Adoption Convention and other HT prohibitions are being compromised in Armenia.

