

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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HISTORICAL EVOLUTION OF INTERNATIONAL TRAFFICKING LAW: PRE-2000 INFLUENCES ON THE DEVELOPMENT OF THE TRAFFICKING PROTOCOL

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Abstract

Often equated with modern-day slavery, human trafficking stems from a range of human rights violations associated with issues such as poverty, lack of education, and scarce resources. The exponential increase in global trafficking has prompted the international community to urgently implement measures to combat it. Over the past century, concerted efforts have been made to address human trafficking, culminating in the adoption of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, in 2000. This development has been influenced by various early international laws, ranging from - slavery, prostitution, labour, and human rights. This paper examines the evolution of international law on trafficking prior to 2000 and the adoption of the Trafficking Protocol. It evaluates the international frameworks on slavery, prostitution, and human rights to assess the impact on the Trafficking Protocol. The analysis highlights a tendency to view human trafficking mainly through law enforcement and immigration control, neglecting the vital need to protect the human rights of trafficked individuals.

Human Trafficking, Trafficking Protocol, Slavery, Human Rights, Crime Based Approach

I. Introduction

Human trafficking is a nuanced and intricate issue tied to economic, social, and demographic conditions in both source and destination nations. It epitomizes contemporary slavery, stemming from violations of human rights exacerbated by “poverty”, “lack of education”, and “inadequate resources.” While historically linked primarily to prostitution and the sex industry, contemporary discourse recognizes trafficking’s diverse manifestations, encompassing exploitation in domestic labour, industrial settings, begging, marriage, adoption processes, organ trafficking, and other contexts.

The rapid growth of international trafficking has spurred global efforts over the past century. The latest tool adopted to combat this global menace is the “Protocol to Prevent, Suppress, and Punish Trafficking in Person, especially Women, and Children, 2000”¹ (hereinafter as The Trafficking Protocol). It serves as the inaugural comprehensive international instrument addressing every form of trafficking and provides the universally agreed definition of “trafficking in person.” This term highlights how trafficking now encompasses various forms beyond mere “sexual exploitation”, including the trafficking of children for domestic work, hazardous occupations, and other purposes.

This paper delves into the historical evolution of international laws pertaining to trafficking before the year 2000 and the subsequent enactment of the Trafficking Protocol. The analysis focuses on various international instruments related to “slavery,” “prostitution,” “human rights” to elucidate the impact of the Trafficking Protocol’s development. The examination indicates that the issue of trafficking in persons has predominantly been treated as a matter of law enforcement, border control, and immigration, with limited emphasis on safeguarding the human rights of the trafficked victims. The argument posited in the paper is that human trafficking, particularly concerning women and children, constitutes a contemporary form of slavery. To effectively address the multifaceted nature of this problem, the paper contends that a comprehensive, multi-sectoral approach is necessary. It asserts that trafficking involves a myriad of human rights violations and, therefore, requires a perspective rooted in human rights principles for effective eradication. In essence, the paper advocates for a human rights approach that prioritizes both law enforcement measures and the protection of the human rights of trafficking victims.

The global endeavors to combat human trafficking have a rich history. The existing national and international framework has been shaped by convergence of four key areas of international law: “human rights”, “prostitution”, “labour”, and “slavery.” This article examines these legal instruments, analyzing their impact and paving the way to the adoption of The Trafficking Protocol. By delving into these domains, the article aims to unravel the influences shaping contemporary approach to human trafficking at global stage.

¹ The Protocol to Prevent, Suppress, Punish Trafficking in Person, especially Women and Children, 2000 (adopted on 15 November 2000, came into force on 25 December 2003).

II. Early Anti-Prostitution Conventions

The origins of the movement against the trafficking of women can be discerned in the latter part of the 19th and early 20th centuries, primarily within the contexts of Europe.² In this period, British grassroots organizations, including moral reformers, abolitionists, and feminist groups, led a push to condemn and eradicate state-regulated prostitution across Europe.³ Concerns about the coerced recruitment of Caucasian women propelled the abolitionist movement known as “white slavery.” This movement brought attention to cases where women were kept in captivity against their will, young girls were mysteriously drugged and abducted, and innocent, unsuspecting immigrants vanished, only to be coerced into lives of prostitution and exploitation.⁴

During this era, “white slavery” referred to the trafficking of women for sexual exploitation, distinct from historical contexts like “female sexual slavery” and “subjugation of Africans.”⁵ Although initially focused on protecting white women, the movement did acknowledge the vulnerability of women of all ethnicities to trafficking, reflecting abolitionist ideals that transcended racial boundaries.⁶

In the early 20th century, four distinct international conventions pertaining to “traffic” of women and girls focusing on “white slavery” were enacted. **“International Agreement for the Suppression of White Slave Traffic, 1904”**⁷ concluded in Paris, specifically targeted situations where women were coerced or deceived into engaging in prostitution abroad.⁸ It required states “to appoint authorities to coordinate information on such procurement, emphasizing monitoring and the need to keep a watchful eye⁹ on the issue.” **“International**

² Anne T. Gallagher, *International Law of Human Trafficking* 55 (Cambridge University Press, USA, 2010).

³ Penelope Saunders, Gretchen Soderlund, “Threat or Opportunity? Sexuality, Gender and the Ebb and Flow of Trafficking as Discourse” 22(3-4) *Canadian Woman Studies* 16-24 (2003).

⁴ Marlene D. Beckman, “The White Slave Traffic Act: The Historical Impact of a Criminal Law Policy on Women”, *George Town Law Journal* 72 (1984).

⁵ M.A. Irwin, “White Slavery as a Metaphor: Anatomy of Moral Panic” V *Ex-Post Facto: The History Journal* (1997).

⁶ *Supra* note 2 at 56.

⁷ International Agreement for the Suppression of the White Slave Traffic 1904 (adopted on 4 May 1904, came into force on 18 July 1905).

⁸ *Id.*, art.1. provides “Each of the contracting Government undertakes to establish or name some authority charged with the coordination of all information relative to procuring of women and girls for immoral purpose abroad; this authority shall be empowered to correspond direct with the similar department established in each of the other contracting States.”

⁹ *Id.*, art.2. provides “Each of the Governments undertakes to have a watch kept, especially in railway stations, ports of embarkation, and en route, for persons in charge of women and girls detained for an immoral life, With this object instructions shall be given to the officials, and all other qualified persons, to obtain, within legal limits, all information likely to lead to the detection of criminal traffic.”

Convention for the Suppression of the Traffic in Women and Children, 1910¹⁰ expanded its scope to punish those “procuring” or “seducing” underage girls for immoral purposes across borders regardless of their consent. It shifted its focus towards criminalization and prosecution rather than addressing social issues¹¹ and differentiated between child and adult victims. It classified young victims as girls under the age of 21 and maintained that the “means” by which they were trafficked were irrelevant. Adult victims require proof of coercion to establish being trafficked. Nevertheless; both agreements have faced criticism, pointing to possible racial biases as they fail to offer adequate safeguards for women and girls other than whites.¹² This underscores apprehensions regarding the impartial enforcement of these agreements and emphasizes the urgency of rectifying such biases in endeavors aimed at combating human trafficking. **“The International Convention for the Suppression of Traffic in Women and Children, 1921”**¹³ conveyed under the patronage of the League of Nations, introduced “immoral trafficking” for both sexes and rose the minimum age for underage girls to 21, recognizing their increased vulnerability.¹⁴ The treaty also emphasized on regulating immigration, emigration and penalizing traffickers to address human trafficking comprehensively¹⁵, stressing the need for an inclusive approach to combat the clandestine trade in women and children.

Further the **1933**¹⁶ Convention represented a significant step forward in the global fight against human trafficking. It expanded the definition of trafficking to encompass immoral and sexually explicit purposes beyond just prostitution. Notably, the exclusion of “consent” meant that forced or coerced actions were no longer required criteria for identifying trafficking, especially in cross-border situations involving minors and adults alike. Like previous agreements, this convention required participating states to safeguard victims and improve systems for sharing information.

During this period, efforts to combat trafficking and prostitution focused primarily on the

¹⁰International Convention for the Suppression of the White Slave Traffic 1910 (adopted on 4 May 1910, came into force on 8 August, 1912).

¹¹ *Supra* note 2 at 57.

¹²Tom Obotaka, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach* (Matrinus Nijhoff Publishers, The Netherlands, 2006).

¹³The International Convention for the Suppression of Traffic in Women and Children 1921(adopted on 30 September, came into force on 15 June 1922).

¹⁴ *Id.*,art.5.

¹⁵ *Supra* note 12 at 13.

¹⁶The International Convention for the Suppression of the Traffic in Women of Full Age 1933 (adopted on 11 October 1933, came into force on 24 August 1934).

supply side, neglecting the demand side and failing to address root causes effectively.¹⁷ Initially targeting “white slave traffic” for immigration control, approaches shifted towards law enforcement over time. This trend continues in modern international frameworks, often neglecting victims’ rights by labeling them as “immoral” individuals, thereby justifying their mistreatment despite enduring exploitation and severe human rights abuses.

Nonetheless, the agreements forged during this era, exemplified by the 1933 convention, represented pioneering international efforts in confronting human trafficking. They inaugurated the onset of the contemporary anti-trafficking initiative.

Furthermore, the General Assembly streamlined previous conventions by ratifying the **“Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1949”**¹⁸ (hereinafter the 1949 Convention), focusing on penalizing trafficking and solicitation for prostitution. It underscores the enforcement and punishment notwithstanding of the victim’s age or consent, denouncing these practices as inconsistent with human dignity and detrimental to individuals, families, and communities.¹⁹ While focusing on trafficking for prostitution, it pertains to genders, encompassing women and men alike.²⁰

A pivotal aspect of the convention lies in its comprehensive framework, which prominently underscores cross-border cooperation and coordination²¹ highlighting internal collaboration of anti-trafficking.²² It encourages joint initiatives, information sharing, and the establishment of dedicated anti-trafficking unit. Additionally, the 1949 Convention mandates the state parties to deploy an array of preventive measures, including providing governmental and “private educational, health, social, economic, and other services.”²³ It also advocates improving immigration and emigration policies to shield individuals from becoming ensnared in trafficking schemes.²⁴ Regarding repatriation, it stresses legal compliance, respects individual preferences, and ensures prosecution is not compromised.²⁵ Further, calls for sharing

¹⁷C.C Jones-Pauly, “Report of Anti-Human Trafficking Laws in Six Countries and Compliance with the International Convention against Trafficking” (1996).

¹⁸Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949 (adopted on 2 December, came into force 25 July 1951).

¹⁹ *Id.*, Preamble.

²⁰ *Supra* note 12 at 17.

²¹ *Supra* note 18, art.13.

²² *Id.*, art.14.

²³ *Supra* note 18, art.16.

²⁴ *Id.*, art.17.

²⁵ *Id.*, art.19 (1).

repatriation costs between the victim's state of residence and origin if needed.²⁶

Despite strong political support from many nations and civil society groups, the 1949 Convention faces significant criticism. It operates as more anti-prostitution than anti-trafficking instrument, lacking a clear definition of trafficking and equating it with prostitution. Consequently, it overlooks the myriad end purposes for which trafficking may occur.²⁷ Moreover, the agreement does not address modern instances of "sexual exploitation" and offers no safeguards against the forced or fraudulent entry of people into professions other than prostitution.²⁸ Moreover, it is contended that notwithstanding its gender-neutral language, the Convention disproportionately affects women.²⁹

The Convention law enforcement focus undermines its effectiveness in safeguarding human rights, lacking a rights-based approach and failing to empower victims adequately.³⁰ Moreover, critics argue that its narrow scope and emphasis on prohibiting prostitution, rather than protecting trafficked individuals' rights, has sparked debate about its ability to address contemporary trafficking comprehensively.³¹ Its emphasis on prohibiting prostitution rather than safeguarding the human rights of trafficked individuals has been considered ineffective in fulfilling its intended role as a human rights convention.

Recognizing its limitations, the obsolescence of the 1949 Convention led to deliberations for the Trafficking Protocol and spurred the adoption of the "1979 Convention on the Elimination of All Forms of Discrimination against Women"³², which expanded the scope of trafficking to include forced labor and marriages.

²⁶ *Id.*, art.19.

²⁷ Gunjun Kinnu, *From Bondage to Freedom: An Analysis of International Legal Regime on Human Trafficking*, (National Human Rights Commission, 1st edn., 2006).

²⁸ Laura Reanda, "Prostitution as a Human Right Question," 13 *Human Rights Quarterly* 202-208 (1999).

²⁹ Global Alliance against Trafficking in Women, *Human Rights and Trafficking in Persons- A Handbook* 23 (Global Alliance against Trafficking in Women, Bangkok, Thailand, 2001).

³⁰ Ms. Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence against Women on Integration of Human Rights of Women and the Gender Perspective* UN Doc E/CN.4/2000/68 (29 February 2000).

³¹ M. Dottridge, "International Instruments against Traffic in Persons – When the "Excellent" is the Enemy of the Good", available at: <https://imadr.org/wordpress/wp-content/uploads/2013/01/T2-1.-NGO-consultation-1999.06.pdf> (last visited on January 15, 2024).

³² The Convention on the Elimination of All Forms of Discrimination against Women 1979 (adopted on 18 December 1971, came into force on 3 September, 1981).

III. International Human Rights Instruments Addressing Human Trafficking

International legal instruments, grounded in the human rights paradigm, address human trafficking as a severe defilement of human rights and dignity. These laws provide a framework for nations to “prevent”, “protect” and “assist victims”, and “prosecute” traffickers. This section will explore key human rights instruments crucial in addressing the complexities of trafficking.

1948 marked the adoption of “**Universal Declaration of Human Rights**” (UDHR) by the General Assembly sets a global standard for human rights protection. Article 4 specifically prohibits slavery and the slave trade.³³ This provision is interpreted to include the prohibition of human trafficking, covering exploitation for “forced labour”, “sexual exploitation”, and “organ removal.” “**International Convention on Civil and Political Rights**”³⁴ (ICCPR) guarantees non-discriminatory civil and political rights, including life, liberty, security³⁵, freedom of thought, conscience, religion³⁶, movement³⁷, and freedom from torture, slavery, and forced labor.³⁸ It prohibits imprisonment for inability to fulfill a contract or retroactive punishment.³⁹ Article 8 bans slavery⁴⁰, while Article 24 addresses children’s rights.⁴¹ The ICCPR is crucial for combating trafficking, safeguarding victims’ human rights, and holding states accountable. “**International Convention on Economic, Social and Cultural Rights**” (ICESCR)⁴² outlines “economic, social, and cultural rights.” It highlights the interdependence

³³ United Nations Declaration on Human Rights, art.4.

³⁴The International Convention on Civil and Political Rights, 1966 (adopted on 19 Dec 1966, came into force on 23 March 1976).

³⁵ *Id.*,art.9.

³⁶ *Id.*,art.18 (1).

³⁷*Id.*,art.12.

³⁸*Id.*,art.7.

³⁹*Id.*,art.11.

⁴⁰*Id.*,art.8. Provides “No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude. (a) No one shall be required to perform forced or compulsory labour, (o) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court. (c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include: (i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention; (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors; (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community; (iv) Any work or service which forms part of normal civil obligations.”

⁴¹*Id.*,art.24.

⁴² International Covenant on Economic, Social, and Cultural Rights (adopted on 16 December 1966, came into force on 3 January 1976).

of all human rights and the need for their progressive realization. It mandates protecting children from economic exploitation and establishing a minimum employment age.⁴³ While it lacks explicit anti-trafficking provisions it emphasizes safeguarding vulnerable groups from discrimination and exploitation. Thus, the ICESCR is crucial in combating trafficking by promoting development and ensuring rights.

“Convention on the Elimination of all Forms of Discrimination against Women, 1979”⁴⁴ (CEDAW) is often hailed as the “International Bill of Women’s Rights”, consists of a preamble and 30 articles defining and addressing discrimination against women. It imposes imperative on state parties to take “all appropriate measures” to combat women trafficking and exploitation in prostitution, yet ambiguity in what constitutes “appropriate measures” complicates enforcement. The lack of a clear definition for “all forms of traffic” further exacerbates this dilemma.

Nevertheless, contention arises regarding the interpretation of the phrase “all forms of traffic” within the context of CEDAW. It is argued that this phrase has been construed to extend the ban outlined in the 1949 Convention to encompass trafficking beyond the realm of prostitution, including coerced labor and forced marriages.⁴⁵ Such an interpretation expansively broadens the scope of the convention, highlighting the imperative for state parties to diligently combat trafficking in all its manifestations. Further, the CEDAW committee, under Article 17, aligns with this view⁴⁶, defining gender-based violence as discrimination against women⁴⁷ and identifying trafficking to factors like poverty, unemployment, and armed conflict.⁴⁸

CEDAW is indispensable for protecting women’s rights and combating violence, including trafficking. It calls upon states to implement comprehensive strategies that tackle underlying factors such as poverty and gender inequality, highlighting the importance of collaborative endeavors to eradicate violence and promote global safety.

⁴³ *Supra* note 42, art. 10.

⁴⁴ The Convention on the Elimination of All Forms of Discrimination against Women (adopted on 18 December 1979, came into force on 2 September 1981).

⁴⁵ *Supra* note 2 at 65.

⁴⁶ See Janie Chaung, “Commentary on CEDAW Article 6,” in Marsha A. Freeman, Beate Rudolf, *et. al* (ed.) *The UN Convention on the Elimination of All Forms of Discrimination against Women : A Commentary* (Oxford University Press, 2012).

⁴⁷ CEDAW Committee, *General Recommendation No.19: Violence Against Women* A/47/38 (June 24, 1992).

⁴⁸ *Ibid.*

“**The Convention on the Rights of Child, 1989**”⁴⁹(CRC) is the primary instrument to recognize child trafficking as a distinct issue, necessitating targeted prevention and support measures for victims. It is pivotal in the realm of human rights, specifically concerning human trafficking. Article 11 mandates measures to prevent cross-border trafficking of children⁵⁰, Article 34 addresses sexual offenses against children including prostitution and pornography⁵¹, and Article 35, requires national and international efforts to prevent child abduction, sale, or trafficking in any form.⁵² Nevertheless, the CRC has been criticized for lacking effective enforcement mechanisms to ensure that state parties comply with its provisions. However, the convention’s strong emphasis on the primary principle of the “best interest” of the child is intricately structured to carefully address their specific needs and aims to ensure that their rights are protected and promoted comprehensively. Further, the “**Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000**”⁵³ criminalizes the “sale of children”⁵⁴, “child prostitution”⁵⁵, and “child pornography”⁵⁶, addressing gaps in the CRC. Additionally, the Protocol mandates the “nations to provide assistance and support to child victims, including rehabilitation and integration into society.”

Furthermore “**UNOHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking**” provide crucial guidance to governments and stakeholders on upholding human rights in combating trafficking. Covers prevention, protection, and assistance for trafficked individuals, and emphasizes tackling root causes like poverty and prejudice, advocating for a gender-sensitive approach.

⁴⁹The Convention on the Rights of the Child, 1989 (adopted on 20 November, came into force on 2 September, 1990).

⁵⁰ *Id.*, art.14.

⁵¹ *Id.*, art 34.

⁵² *Id.*, art 35.

⁵³Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000 (adopted on 25 May, came into force on 18 January, 2002).

⁵⁴ *Id.*,art.2 (a) states that “Sale of Children: means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.”

⁵⁵ *Id.*,art. 2 (b) states that “Child Prostitution: “means the use of a child in sexual activities for remuneration or any other form of consideration.”

⁵⁶ *Id.*,art.2(c) states that Child pornography: “means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.”

IV. International Labour Law

The International Labour Organization's (ILO) conventions on trafficking have shifted focus beyond prostitution by considering trafficking as a "degrading misuse of human resources resulting in undignified and unproductive work"⁵⁷ By prohibiting "forced labour", the "worst forms of child labour", "and exploitation of migrant worker" and by protecting trafficked persons, international labor law has expanded the spectrum of trafficking under the Trafficking Protocol to include labour exploitation.⁵⁸ A Few relevant Conventions are discussed below:

"ILO Convention No. 29 on Forced Labour, 1930"⁵⁹ was the first to define "forced labour" as "work or service extracted under threat of penalty without voluntary consent."⁶⁰ It requires state parties to criminalize forced labour but includes exceptions for military service, civic duties, and lawful court penalties. **"The Convention on the Abolition of Forced Labor 1957"**⁶¹ aims to eliminate all forms of forced labour, advocating strong measures for its immediate and complete abolition. It prohibits forced labor as a tool for political coercion, punishment, or economic exploitation based on ethnic or social background. Further, it explicitly forbids forced labor as a form of discrimination, encompassing factors like "race, color, sex, religion, political opinion, national extraction, or social origin."⁶² Its primary goal is to eradicate forced labor entirely to protect individuals from exploitation and discrimination.

Further, International labour law has also aided in combating trafficking, particularly in cases involving the exploitation of child labour and trafficking of migrant workers. **"Convention No. 182 on the Worst Forms of Child Labor (1999)"**⁶³ prohibits and calls for eradication of the "worst forms of child labour." Article 3 defines these as including "slavery", "trafficking", "debt bondage", "serfdom", "forced labour", "forced enlistment in armed conflict", "exploitation for prostitution or pornography", illicit activities like "drug trafficking", and hazardous work jeopardizing children's "health, safety, or moral integrity."⁶⁴

⁵⁷ ILO, *Unbearable to Human Hearts: Child Trafficking and Action to eliminate it*, vii (2002).

<https://www.ilo.org/publications/unbearable-human-heart-child-trafficking-and-action-eliminate-it> (last visited on 17 January 2025).

⁵⁸ Panudda Boonpala, June Kane, *Trafficking of Children: The Problem and Responses Worldwide* (International Labour Organization, Geneva, 2001).

⁵⁹ ILO Convention No. 29 on Forced Labour, 1930 (adopted 28 June 1930, came into force on 1 May 1932).

⁶⁰ *Id.*, art. 2.

⁶¹ The Convention on the Abolition of Forced Labour, 1957 (adopted on 25 June 1957, came into force on 17 January 1959).

⁶² *Id.*, art.1.

⁶³ Convention No. 182 on the Worst Forms of Child Labour, 1999 (adopted on 17 June 1999, came into force on 19 November 2000).

⁶⁴ *Id.*, art.3.

“The Convention on the Protection of the Rights of All Migrants Workers and Members of their Families, 1990”⁶⁵ is oriented towards protecting the fundamental human rights and preserving the dignity of all migrant workers and their families, regardless of their legal standing. Additionally, it aims to counteract unlawful or covert recruitment of migrants and trafficking activities. However, it hasn’t been rectified by many countries.

V. Anti – Slavery Conventions

International agreements were enacted as a result of the moral outcry against “slavery and the slave trade” beginning in the early 19th century. These conventions were vital in shaping the current international anti-trafficking framework. While initial conventions concentrated on abolishing the trading of African slaves, a gradual evolution toward the prohibition of slavery as an institution emerged, culminating in the “1926 League of Nations International Convention.” **“The Slavery Convention”⁶⁶** is the groundbreaking instrument to outline “slavery and the slave trade.”⁶⁷ Further, **“Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956”⁶⁸** delivers more detailed definitions of institutions and practices similar to slavery, including “debt bondage”⁶⁹, “serfdom”⁷⁰, and “forced marriage”⁷¹ and mandates that state parties adopt all appropriate measures for their progressive abolition. These conventions were pivotal in the fight against trafficking by recognizing slavery and servitude as objectives of trafficking.

⁶⁵United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, (adopted on 18 December 1990, came into force on 1 July 2003).

⁶⁶The Slavery Convention 1926 (adopted on 7 September 1956, came into force on 30 April 1957).

⁶⁷*Id.*,art 1.

⁶⁸ The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and the institutions and Practices similar to Slavery 1956 (adopted on 7 September, came into force on 30 April 197).

⁶⁹*Id.*,art. 1(a) states that “Debt Bondage” is “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”

⁷⁰*Id.*,art.1(b) states “Serfdom” as, “the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.”

⁷¹ *Id.*,art 1 (c) (d) states “Forced Marriage” as “any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”

VII. Protocol to Prevent, Suppress, and Punish Trafficking in Person, especially Women and Children, 2000⁷²

The Trafficking Protocol originated due to increasing concerns about trafficking in women and children and Argentina's frustration with the slow progress on a CRC protocol addressing child pornography and prostitution. During a UN Commission on Crime Prevention and Criminal Justice conference, Argentina's 1997 proposal for a convention on "trafficking in minors" attracted attention, corresponding with major states growing awareness of the need for a comprehensive anti-trafficking policy.

Hence in 2000, a new international instrument with a globally recognized definition of "human trafficking" was adopted. According to Article 3,⁷³ trafficking involves three elements: a) action, b) means, and c) purpose of exploitation, all of which must be present. However, for child trafficking, the "means" requirement is waived, covering any recruitment, transportation, or receipt of a child for exploitation.

The Protocol is explicitly designed to tackle human trafficking by preventing its occurrence, combating it effectively, and ensuring "protection and support" of its victims, while encouraging collaboration across state parties.⁷⁴ While addressing various aspects of trafficking, the Protocol primarily focuses on criminalization of the act. Article 4 specifies its scope, including prevention, investigation, and prosecution of trafficking-related offenses⁷⁵, and mandates state parties to enact laws against trafficking and related behaviors.⁷⁶

In the domain of in law enforcement states parties must collaborate, sharing information on trafficking routes, fraudulent documents, and potential traffickers to dismantle networks,

⁷² *Supra* note 1.

⁷³ *Id.*, art.3. defines "Trafficking in persons" shall mean the "recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;(d) "Child" shall mean any person under eighteen years of age."

⁷⁴ *Id.*, art.2.

⁷⁵ *Id.*, art.4.

⁷⁶ *Id.*, art.5 (1).

identify victims, and prosecute offenders.⁷⁷ They must also offer or improve training for law enforcement and personnel, focusing on human rights, child-related issues, gender perspectives, and partnerships with NGOs and civil society.⁷⁸ Further, the Protocol mandates strengthening border controls and enacting legislation to prevent trafficking via commercial transport.⁷⁹ Importantly, these measures should not hinder the freedom of movement of individuals or violate other transnationally recognized human rights, together with asylum rights.⁸⁰

The Trafficking Protocol underscores the significance of protecting trafficking victims and outlines measures for their assistance and safeguarding in Part II, urging states to provide such support within their legal frameworks. States parties are enjoined “to provide assistance for and protection of trafficked persons in *appropriate cases and* to the extent possible under domestic law”.⁸¹ To ensure the victims are provided with pertinent information about court and administrative proceedings and support to voice their opinions and have them taken into account during criminal proceedings when *appropriate*.⁸² Additionally, it’s important to note granting legal status to victims in receiving states is not mandatory. NGOs and the Inter-Agency Group advocated for victims’ rights during negotiations, and states acknowledged the need for victims to potentially stay to avoid re-victimization and for humanitarian reasons. Nevertheless, Article 7 suggests that states should consider measures allowing trafficking victims to stay in their territory temporarily or permanently in *appropriate cases*.⁸³

The optional tone of protective measure of the trafficking protocol was criticized by commentators.⁸⁴ In their joint submission, the Ad-Hoc Committee emphasized that States Parties should, at a minimum, be required to provide trafficking victims with information about available remedies. They also stressed the importance of addressing the unique needs of children to ensure they are granted the support they are entitled to.⁸⁵

⁷⁷ *Supra* note 1, art.10.

⁷⁸ *Ibid.*

⁷⁹ *Id.*, art.10(2).

⁸⁰ *Supra* note 2 at

⁸¹ *Supra* note 1, art. 6(1).

⁸² *Id.*, art.6(2).

⁸³ *Id.*, art.7.

⁸⁴ *Supra* note 12 at 164.

⁸⁵ The Ad-Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime, *Note by the United Nations High Commissioner for Human Rights, the United Nations Children’s Fund, the United Nations High Commissioner for Refugees, and the International Organization for Migration on the draft protocols concerning migrant smuggling and trafficking in persons*, U.N. Doc. A/AC.254/27 (February 8, 2000).

VII. Conclusion

Trafficking, a contemporary form of slavery impacts individuals globally, particularly women and children, necessitates a holistic approach. It involves numerous human rights violations beyond exploitation, including privacy, movement, justice, and dignity.⁸⁶ Adopting a human rights stance is fundamental to addressing this menace effectively. Nevertheless, an analysis of early instrument that influenced the Trafficking Protocol consistently focused on “crime control.”

International anti-prostitution conventions have shaped modern views on trafficking. Originating from early efforts to combat the trafficking of women and children for commercial sexual exploitation, these conventions established an international framework. In the early 20th century, “white slave traffic,”- the abduction of European girls were linked trafficking to prostitution. This focus on prostitution guided subsequent criminalization and anti-trafficking efforts.

The 1949 Convention, addressed as the principal comprehensive tool to fight trafficking, primarily targeted the women for “prostitution”, disregarding other forms of trafficking. Rooted in a moralistic perspective, it viewed prostitution as a vice necessitating eradication. However, the convention overlooked the autonomy of individuals involved in sex work and failed to acknowledge the intricate factors influencing their engagement in such endeavors. Furthermore, its crime-centric approach led to the infringement of rights of women to equitable treatment, freedom of movement, and employment devoid of discrimination.

Subsequent international instruments, notably the Trafficking Protocol, define trafficking uniformly and guide nations in creating laws and policies against it. The Protocol requires states to criminalize trafficking, enforce severe penalties, and provide comprehensive support to victims, including healthcare, legal aid, social services, voluntary and safe repatriation.

The Trafficking Protocol emphasizes holding traffickers accountable over prioritizing victim protection. This disparity is concerning as mandatory criminal provisions for state parties overshadow optional human rights protections, potentially neglecting victims critical needs and rights in favor of prosecuting traffickers. Therefore, it would not be inaccurate to assert that

⁸⁶ P.M. Nair, *Trafficking of Women and Child for Sexual Exploitation: Handbook for Law enforcement Agencies India* (UNODC, New Delhi, 2nd edn.,2007).

this protocol does prioritize crime control over human rights protection, indicating a lack of innovation in this regard. To combat trafficking effectively, protocol must prioritize human rights, particularly for victims. Equitable consideration of protective measures alongside crime control is essential, ensuring comprehensive support for victims, including healthcare and legal aid, and avoiding punishment for coerced offenses.

Trafficking constitutes a severe infringement of human rights, stripping victims of their freedom and dignity in abhorrent conditions. Effectively addressing trafficking necessitates a prioritization of human rights beyond mere prosecution of traffickers. Solely focusing on crime control may overlook the needs and rights of victims, underscoring the need for a strategy that intricately addresses their circumstances.

In essence, embracing a human rights perspective is paramount in the quest to eradicate trafficking, recognizing it as a human rights issue and prioritizing victim protection. This involves identifying relevant rights, such as “life”, “work”, ‘health’, and the “prohibition of torture and slaver” It also obliges states to prohibit trafficking, prosecute traffickers, protect victims, and address trafficking’s causes and consequences.⁸⁷

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⁸⁷*Supra* note 12 at 171.