Child Trafficking: An International Problem

by

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Date:
Introduction

This thesis focuses on the failure of the international law regime to effectively address child trafficking. There is a need for the establishment of a new international instrument specifically addressing the trafficking in children, separate from that of the trafficking in adults.

Chapter one shows that the trafficking in children differs from the trafficking in adults in such significant ways that a new international instrument specific to combating child trafficking is required. The more lucrative nature of child trafficking and the fact that children are trafficked to fulfill a specific demand indicates that child trafficking is not a side business for human traffickers, but is in fact a criminal enterprise on its own. Also, children are more vulnerable to being trafficked and they have different needs and interests with regards to rehabilitation and legal procedures. These needs must be attended to with the establishment of anti-trafficking measures specific to children and only the establishment of an instrument specifically addressing child trafficking will ensure that this happens.

In chapter two, the inadequacies of the definition of child trafficking in current international instruments are examined. This centers on the definition of child trafficking in the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Because the Convention defines child trafficking as a sub-issue to the trafficking in adults, the current definition of child trafficking is limited to transnational organized crime carried out by at least three or more persons; it is neutral with regards to prostitution; and it has limitations on the age of victims. Consequently, this definition is inadequate to effectively combat child trafficking.

Chapter three examines the flaws of the patchwork framework of international law addressing child trafficking. These flaws are that each international instrument has a restricted scope, essential human rights provisions in relation to children exist only as an idealistic framework of principles which act as a standard but are difficult to realize, and key provisions and guidelines are discretionary. As a result, the current international law regime is ineffective in combating child trafficking and does not fulfill its purpose in establishing a holistic approach against the trafficking in children.
Chapter four discusses the problems in national implementation of the current international framework to address child trafficking. The weaknesses of the current definition of child trafficking have led to a failure to criminalize internal child trafficking as well as to inconsistent national laws concerning prostitution, age of consent and penalties for perpetrators of child trafficking. The difficulty of realizing idealistic principles in international law concerning child trafficking is demonstrated through the implementation of the ‘best interests of the child’ principle, found in Article 3 of the Convention on the Rights of the Child, into national legal systems. The effect of phrasing key obligations in discretionary language, such as the obligation to ‘cooperate and communicate towards the eradication of child trafficking’, is revealed in the failure of individual States to effectively cooperate and communicate with non-governmental organizations and border control agencies.

Chapter five identifies the weaknesses of the existing enforcement system with regards to child trafficking. There is an unnecessary duplication of work, a lack of focus on child trafficking and each enforcement mechanism has a limited focus. Each is concerned with only certain areas of international law. The enforcement mechanisms also have limitations as the fulfillment of their mandate is dependent on State cooperation which, however, is not based on any hard obligations. Enforcement mechanisms do not compel States to answer for any allegations or proven breaches; they can only monitor progress of national implementation and make recommendations. Moreover, there is a limited accountability of individual States to some of the key mechanisms in this enforcement system with regards to their reporting obligations and other international obligations.

In conclusion, chapter six provides recommendations for the improvement of this international regime, starting with the creation of a holistic new international agreement specifically addressing child trafficking. This new international agreement will contain a new definition of child trafficking, improved international obligations addressing the prevention of child trafficking, the protection of victims and the punishment of perpetrators, a financial mechanism to assist developing country States to fulfill their obligations and a new enforcement system dedicated to ensuring the appropriate national implementation of these obligations. The new definition of child trafficking and the prevention, protection and punishment provisions in this new treaty will better assist in implementing more effective anti-child trafficking measures and the new
enforcement system would ensure the continuing progress and success of national implementation of these anti-child trafficking measures.