The UN Special Rapporteur on Trafficking: A Turbulent Decade in Review

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In 2004, largely in response to external developments, the predecessor to the United Nations Human Rights Council appointed a Special Rapporteur on trafficking in persons with an explicit mandate to address the human rights aspects of trafficking. This article critically assesses the first decade of that mandate—identifying important achievements but also acknowledging substantial challenges in securing effective responses to trafficking that both protect and advance human rights. In looking ahead it considers the broader lessons that this experience may hold for the emergent global movement against human exploitation—and the place of human rights in the dynamic but often chaotic and schismatic environment that has emerged around trafficking over the past decade.

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I. INTRODUCTION: THE MANDATE IN CONTEXT

Since the turn of the present century, the issue of human trafficking has been elevated from the lower levels of the international human rights system to somewhere very near the top. This is primarily the result of legal and political developments outside that system that fundamentally changed how states and the international community understood and responded to trafficking. The story is a complex one but can be usefully summarized for purposes of the present article as follows.

Trafficking arrived onto the international agenda in the mid-1990s as information emerged about the cross-border exploitation of girls and young women in South East Asia and Eastern Europe.1 At that time there was no accepted international legal definition of “trafficking,” no understanding that men and boys could also be victims, and no conception that the purposes of trafficking could be as varied as the potential for profit. Within the human rights system, trafficking was strictly a peripheral issue: specific references were confined to brief, rarely invoked provisions of two mainstream treaties,2 and formal discussion was limited to a marginal committee of a sub-committee to the main human rights body of the United Nations.3 In short, there was no “international law” of human trafficking and no institutional capacity within the human rights system to address the issue in any meaningful way.

In the late 1990s the international community commenced work on an instrument that would eventually address some of these gaps, and in December 2000 the General Assembly adopted the first treaty on trafficking in more than fifty years. While trafficking had always “belonged” to human rights, this new instrument, the Protocol to Prevent, Suppress and Punish

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Trafficking in Persons, Especially Women and Children (Trafficking Protocol)\textsuperscript{4} was developed outside that system—in the United Nations Commission on Drugs and Crime. This meant that its orientation was firmly towards criminalization of trafficking and cooperation between states to facilitate prosecution, not the protection of victims’ rights. The Protocol also broke with long-standing tradition in that it rejected the previous understanding that trafficking is solely about the cross-border sexual exploitation of women and girls. Instead, the Protocol embraced a definition that, over time, has proved broad enough to encompass the myriad ways in which women, men, and children are exploited for private profit or other personal gain.\textsuperscript{5}

The Trafficking Protocol proved to be a game-changer, triggering unprecedented levels of action. In the several years that followed its adoption the Council of Europe developed a major regional treaty on the subject\textsuperscript{6} and a substantial body of soft law emerged including, in 2002, the \textit{Recommended Principles and Guidelines on Human Rights and Human Trafficking}.\textsuperscript{7} This United Nations instrument, initiated by then High Commissioner for Human Rights Mary Robinson, was specifically intended to bring the emerging dis-

\begin{enumerate}
\item Trafficking in persons is:
\begin{itemize}
\item[(a)] 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 purposes 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;
\item[(b)] the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) shall be irrelevant where any of the means set forth in subparagraph (a) have been used.
\end{itemize}

Note that in the case of children, the element of “means” is dispensed with:
\begin{itemize}
\item[(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;
\item[(d)] “Child” shall mean any person under eighteen years of age.
\end{itemize}

\end{enumerate}
course around trafficking back to its human rights roots.\(^8\) International and regional bodies from the UN High Commissioner for Refugees (UNHCR)\(^9\) to the Organization of American States (OAS),\(^10\) along with civil society groups from mainstream human rights organizations\(^11\) to new anti-trafficking non-governmental organizations,\(^12\) became involved in researching the issue and supporting anti-trafficking efforts. Ratification of the Protocol was rapid and states quickly began implementing the core obligations of the Protocol by introducing new laws and policies to criminalize trafficking, and, in most cases, to protect victims and prevent future trafficking. As part of its own new trafficking law, the United States of America launched a unilateral monitoring mechanism that, in 2001, commenced reporting on and evaluating the response of other states to the phenomenon.\(^13\) All of these developments set the stage for the international human rights system to take up the issue of trafficking in a way that it had never done previously.

In 2004, largely in response to the momentum generated by the Protocol, the predecessor to the Human Rights Council, the Commission on Human Rights, decided to appoint a Special Rapporteur on trafficking in persons, especially women and children (SRTIP), whose mandate would focus on the human rights aspects of the victims of trafficking.\(^14\) Sigma Huda (SRTIP Huda) occupied the position from 2004 to 2007 and Joy Ezeilo (SRTIP Ezeilo) from 2008 to 2014. The central theme of the mandate entrusted to them was critical. While states were prepared to acknowledge the human rights aspects of trafficking, there was a widespread perception that this issue was principally about migration, security, and public order. The Trafficking Protocol, now the single most important international agreement on the subject, was clearly not a human rights treaty, but rather one aimed squarely at preventing the spread of trafficking as a form of transnational

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organized crime. While the issue of trafficking had been on the agenda of the modern international human rights system since its inception, there was, in 2004, a very real danger that its core identity as a violation of the rights of the most vulnerable was being severely compromised and could even be lost altogether. The establishment of the position of special rapporteur, with an explicit mandate to address the human rights aspects of trafficking, provided the possibility of a circuit breaker. The key question of this article is whether that has been successful. To what extent are human rights at the center of how trafficking is currently understood? What place do human rights occupy within national, regional and international responses? Where does the international human rights system, including the SRTIP, figure in the dynamic but often chaotic and schismatic environment that has emerged around trafficking over the past decade?

This article originated from work undertaken by the authors in the context of a report to the Human Rights Council on the ten years of the mandate of the SRTIP. Preparation of that report involved a review and analysis of relevant documentation produced by the two mandate holders as well as information received from a questionnaire circulated to states and organizations with whom the mandate had worked with a view to soliciting their views on its achievements and future areas of focus. While this article builds on that work it moves beyond the considerable constraints of a formal United Nations report to examine, in more detail and from a more critical perspective, the successes and challenges of the mandate and the lessons that this experience may hold for the emergent global movement against human exploitation. Following this introduction, Part II provides a summary of the working methods of the mandate and a brief overview of its main outputs and general approach. Part III identifies the principal legal and conceptual achievements of the mandate, analyzing these within the context of external developments that shaped—and were shaped by—the work of the mandate. Taking a similarly expansive perspective, Part IV examines the challenges that faced the mandate throughout the turbulent first decade of its existence. This analysis provides the foundation for critical questions that must be addressed in the future: how can the mandate best continue its work in promoting a rights-based, victim-centered approach to trafficking? What issues or areas require more attention—or indeed a different approach? How can the mandate work to bring together the many public and private parties upon whom meaningful progress depends? How

can it help establish common standards and approaches among new and
difficult players—including the mega-movements, funded by vast wealth,
that are increasingly becoming the public face of anti-trafficking advocacy?
How can it help resolve some of the seemingly intractable debates and
doctrinal controversies that continue to obstruct real and lasting change?

II. PART II. WORKING METHODS AND A HUMAN RIGHTS
APPROACH

The SRTIP is part of a system of investigatory mechanisms that a former
UN Secretary General has aptly described as the “crown jewel” of the hu-
man rights machinery of the Organization.16 These special procedures are
charged with monitoring, advising, and publicly reporting on a human rights
situation in a specific country (country mandates) or on a particular issue
(thematic mandates)—serving, in theory at least, to increase governmental
accountability by documenting and exposing violations. There are currently
forty-one thematic mandates and fourteen country-specific mandates.17 The
resolution establishing individual mandates dictates the methods of work, but
those invariably include conducting on-site visits for information gathering
as well as issuing appeals to governments in individual urgent cases that
are brought to the attention of the mandate holder.18 The SRTIP is specifi-
cally authorized to: (i) seek and receive relevant information from a variety
of sources, (ii) recommend practical solutions for prevention or redressing
of violations, and (iii) examine the human rights impact of anti-trafficking
measures with a view to proposing adequate responses.19

Those tasks are discharged through two main vehicles: thematic studies
and country reports. The former have been a major focus of the work of the
mandate: enabling it to make substantial contributions to poorly understood
or new areas of concern. Topics for study have been chosen on the basis of
their perceived importance and urgency as well as the SRTIP’s perception

16. Surya P. Subedi, Protection of Human Rights Through the Mechanism of UN Special
Rapporteurs 33 Hum. Rts. Q. 201, 203 (2011) (citing a 2006 statement by UN Secretary-
General Kofi Annan).

17. As at June 2015: for information about the special procedures see http://www.ohchr.org/
EN/HRBodies/SP/Pages/Welcomepage.aspx. It is relevant to note that while the number of
the thematic mandates is increasing the number of country specific mandates is slowly,
but apparently inexorably, dwindling.

43–48 (2008). Further on the SRTIP’s method of work with respect to communications
see Comm’n on Hum. Rts, Report of the Special Rapporteur on Trafficking in Persons,

19. HRC Res. 8/12, ¶ 4, U.N. Doc. A/HRC/RES/8/12 (18 June 2008); HRC Res. 17/1, ¶ 2,
of her capacity to make a contribution to shaping international standards and promoting awareness in the chosen area. Issues covered in this way were: measures to discourage demand for the goods and services produced through trafficking (2006 and 2013);\textsuperscript{20} trafficking for forced marriage (2007);\textsuperscript{21} victim identification, protection and assistance (2009);\textsuperscript{22} regional and sub-regional cooperation in promoting a human-rights-based approach to trafficking (2010);\textsuperscript{23} prevention of trafficking (2010);\textsuperscript{24} the right to an effective remedy for trafficked persons (2011);\textsuperscript{25} the administration of criminal justice in trafficking in persons cases (2012);\textsuperscript{26} trafficking in supply chains (2012);\textsuperscript{27} and trafficking in persons for the removal of organs (2013).\textsuperscript{28} In the context of preparing, finalizing, and revising these reports, the SRTIP organized expert consultations, seminars, side events, and meetings with individuals and groups in a position to contribute to the area under consideration. For example, in her study on trafficking in persons for the removal of organs, SRTIP Ezeilo convened a group of transplant professionals, ethicists, medical anthropologists, and legal experts to provide input into her report and review its draft findings and recommendations.\textsuperscript{29} In two other areas of study,
the work of the SRTIP resulted in the preparation of guiding instruments: a set of draft basic principles on the right to an effective remedy (2011) and a checklist of indicators and benchmarks to assist businesses to assess the risks of human trafficking in their supply chains (2012).

Country visits have been a critical aspect of the work of the mandate; they have helped ground the mandate-holders’ understanding of the problem of trafficking in national realities and served to forge important relationships with those on the front line, while also providing involved states and their partners an opportunity to access information, expertise, and insight. The focus of these visits has been to ascertain the nature of the trafficking problem, the key human rights issues, and the effectiveness of existing institutional, legal, judicial, administrative, and other mechanisms to protect those rights. The mandate holders have taken particular care to ensure that country visits were widely consultative, involving not just public officials but also civil society groups involved in victim support and advocacy and, as far as was possible, victims themselves. During the first ten years of the mandate, country visits were made to Bosnia-Herzegovina and Lebanon (2005); Bahrain, Oman and Qatar (2007); Belarus, Poland, and Japan (2009); Egypt, Uruguay, and Argentina (2010); Thailand and Australia (2011); United Arab Emirates, Gabon, and the Philippines (2012); Mo-

It is important to note that the SRTIP is only authorized to conduct official visits with the approval of the state in question. While SRTIP Ezeilo made overtures to a number of states in that regard, some repeatedly postponed issuing an invitation while others refused to do so.

As noted in the introduction, human rights are just one lens through which trafficking can be viewed and responded to. Since the inception of the mandate, both mandate holders consistently maintained the position that prioritizing other concerns such as crime prevention and migration control over human rights distorts the nature of the problem and obscures the most important and effective solutions. In her first report SRTIP Huda affirmed the mandate’s interpretation of a “human rights approach” to trafficking: first, “that the human rights of trafficked persons are to be at the centre of all efforts to combat trafficking and to protect, assist and provide redress to those affected,” and second, that “anti-trafficking measures should not adversely affect the human rights and dignity of the persons concerned.”

The mandate has continued to affirm its commitment to a rights-based approach and to refine understandings of how such an approach can be operationalized to best effect. In practical terms, “victim-centeredness,” the first pillar of this approach, requires careful consideration of the ways in which human rights violations arise throughout the trafficking cycle, as well as of states’ obligations under international human rights law. It seeks to both identify and redress the discriminatory practices and unjust distributions of power that underlie trafficking, that maintain impunity for traffickers, and

51. Report of the Special Rapporteur Dec. 2004, supra note 18, ¶ 11. This conceptualization of a human rights approach to trafficking drew directly on the 2002 UN Trafficking Principles and Guidelines, supra note 7, developed under the leadership of UN High Commissioner for Human Rights, Mary Robinson.
53. For example, SRTIP Ezeilo promoted a strategic vision for an effective and rights-based response to trafficking that went well beyond the widely accepted “5Ps” of protection, prosecution and prevention to include: punishment of perpetrators; and promotion of international cooperation (in relation to the criminal justice response); redress, rehabilitation and reintegration (in relation to victim support); and capacity, coordination and cooperation (in relation to organization of the response). See Report of the Special Rapporteur Feb. 2009, supra note 52, § V.
that deny justice to victims. Evaluating the response of a state to trafficking from the perspective of the victim requires consideration of certain questions—from whether the criminal justice process provides justice for victims and seeks to avoid their re-traumatization to whether victims are able to access appropriate remedies. A victim-centered approach will also recognize that trafficked persons are not a homogenous group and that some, such as children and those living with disabilities, have particular needs that should be met and additional status-based entitlements that should be provided.

The second pillar of the approach has proved to be of increasing importance over the course of the decade. It is an unfortunate fact that measures taken in the name of preventing or otherwise addressing trafficking often have a highly adverse impact on individual rights and freedoms that are protected under international law. Examples of such negative human rights externalities uncovered by the mandate over the course of the decade include detention of trafficked persons in immigration or shelter facilities, prosecution of trafficked persons for status-related offenses (including illegal entry, illegal stay, and illegal work), denial of exit or entry visas or permits, and raids, rescues, and “crackdowns” that do not include full consideration of and protection for the rights of individuals involved. Other examples include forced repatriation of victims in danger of reprisals or re-trafficking, provision of support and assistance that is conditional on victim cooperation with criminal justice authorities, denial of a right to a remedy, and violations of the rights of persons suspected or convicted of involvement in trafficking, including unfair trials and inappropriate sentencing. These practices, still commonplace in many countries, underscore the strong relationship between trafficking and human rights and the critical importance of using human rights as a measure against which state responses to trafficking should be tested.

III. CONCEPTUAL AND LEGAL GAINS

The past decade has been one of great development and change. With the benefit of an agreed definition of trafficking in persons, new international, regional and national laws, clearer policies and heightened political commitment, the mandate has been able to make a critical contribution at a unique moment in time. This Part identifies several significant areas of progress and achievement to which the mandate has contributed, focused particularly on conceptual and legal gains.

54. Further on the implications of a human rights approach, see the Commentary to the UN Trafficking Principles and Guidelines, supra note 8, at 49–74.
A. All Forms of Trafficking and All Victims

The old idea that trafficking is solely about the cross-border sexual exploitation of women and children has been consigned to history, at least in terms of law and policy. It is now widely accepted that women, men, and children are trafficked and that the forms of trafficking are as varied as the potential for profit or other personal gain. This development is highly significant from the perspective of international law because it brings within the relevant legal framework a wide range of exploitative conduct, much of which has been poorly or selectively regulated at both national and international levels.

Throughout the first decade of its existence, the mandate actively embraced and advocated for this widened understanding of trafficking, thereby helping to expand the focus of international and national anti-trafficking efforts and contributing to greater conceptual clarity around the parameters of the definition. However the shift was gradual. In her very first report, SRTIP Huda indicated that she would “devote attention to trafficking at all sites and for all purposes.”\footnote{Report of the Special Rapporteur Dec. 2004, supra note 18, ¶ 12.} In practice, forms of trafficking that are particularly relevant to women and children (such as sexual exploitation and forced marriage) dominated the work of the first mandate holder. The second mandate holder explicitly adopted a broader approach. In her first report, SRTIP Ezeilo affirmed her understanding of the mandate to include the full range of purposes set out in the Protocol.\footnote{Report of the Special Rapporteur Feb. 2009, supra note 52, ¶ 16. Note that the Human Rights Council has explicitly required the SRTIP to address trafficking “in all its forms.” See HRC Res. 8/12, supra note 19, ¶ 4(a).} This approach enabled the mandate to shed light on poorly understood phenomena such as trafficking in persons for the removal of organs, internal trafficking, and trafficking into industries not commonly associated with such exploitation (for example, fishing and agriculture and the service industries). SRTIP Ezeilo also sought to highlight the plight of “imperfect” victims, including those who appear to have consented to some aspect of their situation and those who have committed criminal offenses in the course of their trafficking experience. She made particular effort to interrogate and, where appropriate, challenge gender stereotypes that are endemic in public perception and official discourse around who is trafficked and for what purpose. Most particularly, she highlighted the misperceptions that lead authorities to ignore the trafficking of men, resulting in identification failures and significant discrimination against male victims, particularly in terms of identification, access to protection, and assistance.\footnote{Report of the Special Rapporteur May 2010, supra note 23, ¶¶ 98–100, 120. See also SRTIP Mission to Philippines, supra note 45, ¶¶ 7, 8, 26, 61; SRTIP Mission to Poland, supra note 36, ¶ 61; SRTIP Mission to Japan, supra note 37, ¶ 43.}
B. Greater Clarity on Victim Rights and the Obligations of States

It is one thing to assert the human rights of trafficking victims and quite another to specify, with sufficient level of detail, what those rights actually are and what obligations they impose on states. That process is essential because it is only through such certainty that it becomes possible to assess the extent to which a particular situation, initiative, or response is in conformity with international human rights law. The task is made difficult by the fact that the central international instrument relevant to trafficking, the Trafficking Protocol, is not at all clear on the issue of victim rights. The Protocol makes some very general references to human rights and includes a number of obligations that may be understood as aimed at protecting victims. However, on its own, it makes little headway in establishing the precise nature of victim entitlements and how these should be met. It is also relevant to note that when the mandate commenced, the international human rights system’s own contribution to clarifying the substantive content of relevant rights and obligations had been meager. While there was regular condemnation of the human rights violations associated with trafficking, the practice was rarely linked to the violation of a specific right in a specific treaty. In the words of one of the present authors, “working out the ‘wrong’ of trafficking with reference to international human rights law was a difficult and frustrating task.”

From its commencement, the mandate was able to build on several developments that challenged this unsatisfactory situation. The Recommended Principles and Guidelines on Human Rights and Human Trafficking, issued only a few years previously, proved instrumental in shaping the approach of the mandate to victim rights and state obligations in many different contexts. Throughout the past decade, increasing attention to trafficking by different parts of the international human rights system, as well as by regional institutions and courts, has further supported the mandate in detailing the rights of victims and the corresponding obligations of states. Today there is widespread acceptance of the fact that victims of trafficking are indeed the holders of a special set of rights conferred upon them by their status as trafficked persons. These include but are not limited to: the right to be identified quickly and accurately, the right to immediate protection and support, the right to legal information and the opportunity to decide whether and how to cooperate in the prosecution of their exploiters, the right to not be detained, the right to not be prosecuted for offenses that relate directly to having been trafficked, the right to be returned home safely or to benefit from another solution if safe return is not possible, and the right to an ef-

fective remedy that reflects the harm committed against them. It is also now widely accepted that certain categories of victims, most particularly children, benefit from additional, status-related rights in recognition of their special vulnerabilities and special needs.

One example from this list provides an instructive insight into normative development around the issue of trafficking to which the mandate directly contributed. At the time that the Trafficking Protocol was drafted, states refused to consider the inclusion of any provision allowing for non-punishment of victims for offenses committed in the course of their trafficking such as illegal departure, illegal entry and stay, or illegal work.60 That was a serious omission; such criminalization is widespread and it inevitably compounds the harm already experienced by trafficked persons and denies them the rights to which they are entitled. It also compromises an effective criminal justice response by removing any basis of trust that is necessary to encourage victims to cooperate in the prosecution of their exploiters. Two years after the Protocol was adopted, the UN Trafficking Principles and Guidelines addressed the matter directly, declaring that:

Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.61

In 2005, the Council of Europe Trafficking Convention became the first treaty to confront the “status offenses” issue, although the relevant provision was less broad than that set out in the UN Trafficking Principles and Guidelines, encouraging states to provide for the possibility of non-punishment for status offenses.62 Throughout the next decade the SRTIP consistently raised the issue of status offenses in both thematic and country reports, calling on states and the international community to recognize the fundamental injustice of prosecuting victims for crimes they were essentially compelled to commit.63 The matter was picked up in resolutions of the Human Rights

61. UN Trafficking Principles and Guidelines, supra note 7, Princ. 7.
62. European Trafficking Convention, supra note 6, at art. 26 (“Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”)
Council\textsuperscript{64} and General Assembly,\textsuperscript{65} as well as by other mechanisms of the UN human rights system\textsuperscript{66} and the Working Group established to oversee the Trafficking Protocol.\textsuperscript{67} The second treaty-based provision on status-related offenses was in the 2011 EU Directive on Trafficking, which went beyond the Council of Europe Convention position in requiring participating states to ensure that authorities are entitled not to prosecute for status offenses.\textsuperscript{68} Confirmation that the principle of non-prosecution for status-related offenses is now a well-established part of the international legal framework around trafficking came in 2014 with the International Labour Organization (ILO) Protocol to the Forced Labour Convention, which affirms its application to victims of forced and compulsory labor.\textsuperscript{69} While the exact parameters of the principle remain to be settled,\textsuperscript{70} the significance of this development for advancing a human rights-based approach to trafficking cannot be overstated.

\textsuperscript{64}. See, e.g., Human Rights Council Res. 11/3, ¶ 3, U.N. Doc. A/HRC/RES/11/3 (17 June 2009) (urging states to “take all appropriate measures to ensure that victims of trafficking are not penalized for being trafficked and that they do not suffer from revictimization as a result of actions taken by Government authorities, bearing in mind that they are victims of exploitation”).

\textsuperscript{65}. See, e.g., G.A. Res. 67/145, ¶ 20, U.N. Doc. A/RES/67/145 (27 Feb. 2013) (urging “Governments to take all appropriate measures to ensure that victims of trafficking are not penalized or prosecuted for acts committed as a direct result of being trafficked and that they do not suffer from revictimization as a result of actions taken by Government authorities, and encourages Governments to prevent, within their legal framework and in accordance with national policies, victims of trafficking in persons from being prosecuted for their illegal entry or residence”).


\textsuperscript{70}. Understandably, states are reluctant to accept blanket immunity of trafficked persons in relation to all offenses. In particular, problems may arise in respect of cases involving trafficking for forced criminality and the involvement of former victims of trafficking in trafficking offenses (for example as recruiters or enforcers). For a useful overview of the relevant issues and legal/policy options see Organisation for Security and Cooperation in Europe, Policy and Legislative Recommendations Towards the Effective Implementation of the Non-punishment Provision with Regard to Victims of Trafficking (2013). (Note however this report does not grapple adequately with the practical difficulties associated with broad application of the non-criminalization principle.)
The focus of the mandate on the rights of victims has not diverted attention from the obligations of states that extend well beyond those that relate immediately to victims. For example, in relation to criminal justice responses, SRTIP Ezeilo repeatedly confirmed that all states have an obligation to investigate and prosecute trafficking, as well as to protect the rights of suspects including their right to a fair trial. Through country reports the mandate holders have also highlighted the link between corruption and trafficking, noting that states are required to act in preventing such corruption and dealing with it once it is uncovered. More broadly, the mandate has examined the implications of the legal obligation on states to take steps to prevent trafficking: detailing the actions that should be taken within the framework of a human rights approach.

The mandate has also contributed to an improved awareness of the need to ensure that responses to trafficking do not violate established rights. This can happen with the best of intentions. For example, the SRTIP has reported instances where states have sought to protect their citizens from trafficking by preventing them from migrating for work and to protect victims by locking them up in shelters. Despite their protective intention, such measures may constitute an unlawful restriction on the right to leave one’s country and the right to freedom of movement and, being typically directed solely at women, they also constitute a violation of the prohibition on discrimination. Violation of the right of suspects to a fair trial, and prevention strategies developed and implemented outside the framework of a victim-centered, rights-based approach, are further examples of failure to engage a genuinely human rights based approach to trafficking that have been raised by the SRTIP in the context of both thematic and country reporting.

By highlighting the most prevalent risks, and by documenting instances of compromised responses, the mandate has played a crucial role in raising awareness of the obligation on states to respond lawfully and ensure that their anti-trafficking efforts do not compound harm.

C. Trafficking and Prostitution: No Resolution but Opening the Debate

The question of how prostitution relates to trafficking is a difficult and highly contentious one, dividing states and civil society groups in a manner that,

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71. See, e.g., Report of the Special Rapporteur June 2012, supra note 26, ¶ 71; SRTIP Mission to Thailand, supra note 41, ¶ 77(h).
72. See, e.g., SRTIP Mission to Thailand, supra note 41, ¶ 77(j).
73. See, e.g., Report of the Special Rapporteur Feb. 2009, supra note 52, ¶¶ 45–47. See also infra Part IV.E.
75. See, e.g., SRTIP Mission to Belarus, supra note 35, ¶¶ 40–41.
in the view of the authors, has often been highly destructive to broader goals of advancing human rights, dignity, and freedom. While the debate is a long-standing one, it reached a critical point during negotiations around the Trafficking Protocol. Some states and civil society groups saw the development of the first-ever definition of trafficking and an accompanying legal framework as the long-awaited chance to secure a clear international legal prohibition on prostitution. Others viewed it as an opportunity to strengthen human rights protections for those involved in prostitution. The drafters satisfied neither group, adopting a compromise definition that has proved troublesome in its ambiguity, while also confirming the long-standing international position that regulation of prostitution is to be left in the hands of individual states.

There have been distinct differences in approach and emphasis between the two mandate holders on the issue. In her second annual report, dealing with the question of demand, SRTIP Huda affirmed that international law does not require states to abolish prostitution. She further noted that international law requires states to treat as trafficking all adult prostitution in which a person is subjected to one of the stipulated acts (recruited, transported, harbored, or received) by use of any of the stipulated means (including threat or use of force, coercion, and abuse of power or of a position of vulnerability) for the purpose of exploiting their prostitution. Based on her experiences and investigations as SRTIP, the first mandate holder found it evident that “most prostitution is accomplished by one or more of the illicit means outlined in . . . the Protocol and therefore constitutes trafficking.” In her recommendations she took a principled stance against “legalization of prostituted persons” on the basis that this increases demand for trafficking.

The second mandate holder followed a different path. Particularly in her country reports, SRTIP Ezeilo regularly identified prostitution as a major site of trafficking-related exploitation, while noting that in international law, prostitution and trafficking are not equivalent. SRTIP Ezeilo was also less willing than her predecessor to accept that measures taken to abolish prostitution will always have a positive impact on the problem of trafficking. In relation

78. See infra Part IV.A.
81. Id. ¶ 48.
82. Id. ¶ 52.
to the vexed matter of how to deal with demand as it relates to trafficking for sexual exploitation, she pointed out that available evidence fails to provide a definitive answer to the question of whether and how legalization or criminalization of prostitution affects the existence and incidence of trafficking for sexual exploitation.\(^{83}\) In this regard she was also reflecting on her own experience of finding trafficking for sexual exploitation in every country she visited, irrespective of how the national law dealt with the issue of prostitution. While not pronouncing directly on which approaches to prostitution should be adopted by states, SRTIP Ezeilo consistently sought to widen the debate, shifting attention to the obligation on states to tackle root causes of trafficking while respecting the human rights of all persons. Debates about the link between trafficking and prostitution have continued unabated, but hopefully this more nuanced position (which accepts complexity and seeks to establish common ground within a robust human rights framework) will gain greater recognition and influence.

### IV. CHALLENGES

The work of the mandate has confirmed that the problem of human trafficking in all of its manifestations continues to be endemic in all parts of the world. While the legal framework at every level is stronger than ever, and while awareness of trafficking and of relevant rights and obligations has improved significantly, it is difficult to be persuaded that substantial changes are happening on the ground. Large numbers of women, men, and children continue to be exploited; very few receive support, protection, or redress; perpetrators are rarely apprehended, and in every country the number of prosecutions remains stubbornly low.\(^{84}\) This section focuses on those legal and policy challenges that are likely to be of particular concern to the international community as well as to the mandate as it evolves into the future.

### A. CLARIFYING THE BOUNDARIES OF THE INTERNATIONAL LEGAL DEFINITION

The definition of trafficking adopted in 2000\(^{85}\) has been widely embraced by states and the international community, at least at the level of law and formal policy. However, its integration into national law and practice over

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85. See definition supra note 5.
the past fifteen years has not been without complication. As states seek to grapple with practical, day-to-day challenges like victim identification and prosecution, questions have surfaced about certain aspects of the definition. For example, to what extent does the act of “harboring” enable the definition to encompass the maintenance of an individual in a situation of exploitation and not just movement into that situation? Should a single, minor deception at the recruitment stage be sufficient to turn an exploitative situation into one of trafficking? How broadly should the means “abuse . . . of a position of vulnerability” be read? For example, should it include vulnerability related to economic necessity or to immigration status? How broadly should “exploitation” (including “sexual exploitation”) be understood? What criteria, if any, should be used to determine whether other exploitative practices are to be included within the open-ended list set out in the international definition? What is the legal relationship between trafficking and related practices also prohibited under international law, including slavery, servitude and forced labor? When would an instance of forced labor or slavery not be trafficking? How should exploitation through debt bondage be understood in context of modern international recruitment and employment practices? And critically, at what point does a bad employment situation morph into trafficking?

The existence of such questions means that, despite the best efforts of the drafters, the parameters around what constitutes trafficking are not yet firmly established in international, regional and national law. This is important because the ability to characterize certain conduct as trafficking has significant and wide-ranging consequences for states, for the perpetrators of that conduct, and for the victims. Of relevance to states, for example, is the fact that the identification of a particular practice as trafficking brings that practice within the various monitoring and compliance mechanisms that have evolved at the international, regional, and national levels. Such identification will also trigger a range of criminalization and cooperation obligations on the part of the state —imposed through both national and international law. Criminals involved in a practice that is identified as trafficking are likely to be subject to a different and typically harsher legal regime than would be applicable if that identification had not been made. Persons who are identified as “victims of trafficking” are entitled to special measures of assistance, support, and protection that could be withheld from those who are not considered to have been “trafficked.”

In the years that followed the Protocol’s adoption, concerns were regularly raised about the perceived narrowness of the definition of trafficking: that only a small portion of exploited persons would ever be in a position to benefit from this new legal regime.86 More recent developments, including those recounted above, appear to confirm that it is not the narrowness

of its scope but the potential breadth of the definition of trafficking that is a principal cause for concern. Certainly there are positive aspects to an expanded concept of trafficking. Many of the practices associated with trafficking, from forced marriage to debt bondage to forced labor, have long been subject to legal prohibition at both national and international levels. However, international scrutiny has been almost non-existent and states have rarely been called to task for even the most egregious violations. The abject failure of the international community—including the international human rights system—to secure meaningful progress on any of these fronts over the lifetime of the United Nations should not be forgotten. Recent legal and political developments around trafficking have changed this situation fundamentally, giving these previously moribund prohibitions a new lease of life. New laws, institutions, and compliance machinery strengthen the capacity of both national and international law to address such practices effectively. Further, it is reasonable to speculate that broadening the parameters of trafficking to embrace the many ways in which individuals are exploited for private gain—even those that appear to be at the less severe end of the spectrum—will help to focus law, public attention, and resources where they are so badly needed.

But the very real dangers associated with what has been termed an expansionist “creep” must be openly acknowledged and actively managed. Making all exploitation trafficking (and indeed, making all trafficking “slavery”) complicates the task of states enormously, presenting particular challenges in countries that lack specialist capacity and robust criminal justice systems. In all countries the expansionist creep risks diluting attention and effort, and potentially deflects attention from the worst forms of exploitation that are most difficult for states to address. The equation of prostitution with trafficking (typically through a broad reading of the means “abuse of a position of vulnerability”) provides a case in point: it permits states to claim easy credit for virtually effortless arrests and prosecutions that do little or nothing to address those egregious forms of sexual exploitation that the Protocol was intended to challenge. Prosecuting employers for lesser labor exploitations in the name of addressing trafficking is equally questionable. In most countries a raft of offenses are readily available to address such conduct. It is important to ask why the blunt instrument of trafficking is being favored over these apparently more appropriate alternatives. It is equally important to question assessment systems that recognize and reward even the poorest and ill-conceived prosecutions for ‘trafficking’ while ignoring valuable prosecutions for related offenses.

88. For example, Trafficking in Persons Reports (2001–2015), supra note 13; UNODC Global Report on Trafficking in Persons, supra note 84; (note also that in reporting on prosecutions the Walkfree Global Slavery Index (2013); Global Slavery Index (2014) used US Department of State statistics).
These issues must be faced head-on because the stakes are too high to allow those with the loudest voices or greatest resources to skew the debate. The international community should be taking a leadership role in efforts to critically examine problematic aspects of the international legal framework, while being mindful of vested interests and conflicting agendas that will likely favor a particular reading of the definition. An important step in the right direction was a recent, pioneering study into the most fluid and contested concepts of the definition of trafficking that was initiated by the UN Office on Drugs and Crime in response to a request from states parties to the UN Trafficking Protocol.89 The resulting body of work, which reflects the front line experiences of criminal justice practitioners in more than forty countries, has laid a solid foundation for what must be a much broader consideration of the legal framework around trafficking and related issues, with a view to promoting the conceptual clarity that is a prerequisite to effective, well-coordinated responses.

B. Strengthening International Oversight and Guidance

Over the course of the decade, the SRTIP often had reason to draw attention to a worrying gap between obligations of states with regard to trafficking (what states are required to do or refrain from doing) and the extent to which those obligations are met in practice (what actually happens). This is particularly the case with regard to the rights of victims that, despite being protected by international and national laws, are too often disregarded. That is not always the result of a lack of political will. The complexity of the trafficking phenomenon, uncertainty about aspects of the solution, and the fact that states are rarely the direct perpetrators of trafficking-related harm all complicate the task of securing compliance with international legal rules.

Strong and credible international compliance machinery, aimed at closing this gap, is desperately needed. Unfortunately, the obstacles are considerable. The UN Trafficking Protocol, still the central legal instrument in this area, operates under the very loose oversight of a working group of states parties attached to the broader Conference of Parties to the Organized

Crime Convention. The Working Group does not equate, in any respects, to a human rights treaty body. It does not examine reports from states parties on implementation of the Protocol and does not issue recommendations to individual state parties, engage in a constructive dialogue, or otherwise interact with states parties in a structured way. While there has been discussion about strengthening the supervisory machinery attached to the Organized Crime Convention and its Protocols, there appears to be little appetite for another monitoring mechanism in what has become a crowded, contested field that is beset with problems borne of conceptual confusions, overconfidence in poor quality data, and a persistent failure to assess performance against recognized international legal standards.

Certainly the international human rights system has an important role to play in helping close the implementation gap through more rigorous and consistent attention to both rights and obligations as they relate to trafficking. Trafficking cuts across the work of all human rights treaty bodies to some degree and each can contribute to reinforcing the new rules and standards and fleshing out the substantive content of a rights-based approach. Trafficking also engages (and potentially overlaps with) several of the other special procedures, most particularly the mandates on contemporary forms of slavery, the rights of migrants, and the sale of children. There is room for more and better collaboration between these mechanisms through, for example, agreement on common approaches, division of responsibilities, joint visits, joint reports, and joint studies on issues of common concern. Outside the formal human rights system, the International Labour Organisation has emerged as a key player in relation to both standard-setting and monitoring. As traf-

93. See, e.g., Convention Concerning Decent Work for Domestic Workers, (ILO No.189), adopted at the 100th session of the International Labour Conference, Geneva (2011); Protocol to the ILO Forced Labour Convention, supra note 69.
ficking for labor exploitation begins to receive the attention it has long been
denied, the need to involve the ILO and its supervisory bodies in broader
international compliance efforts will become more acute.

C. Securing Accountability of Non-State Actors

Securing greater accountability of states for trafficking-related harm has been
one of the major achievements of the broader anti-trafficking movement
over the past decade. Although they are often only indirectly implicated
in such harm, states have come to understand their legal responsibility to
respond to trafficking by protecting victims, investigating and prosecuting
perpetrators to the required level of due diligence, and working to the same
standard to prevent future trafficking. In short, while implementation of
those obligations remains a serious problem, no state is likely to deny their
existence. Unfortunately, there has been much less progress in establishing
legal responsibility of non-state actors who are also implicated, typically
more directly than states, in the harm of trafficking. An effective criminal
justice response is the primary avenue for securing both criminal and civil
responsibility for traffickers and their accomplices.95 However, it is now well
understood that the web of trafficking-related exploitation is a dense one
that implicates a wide range of non-state actors from recruitment agencies
that channel vulnerable individuals into exploitation96 to large corporations
that benefit from cheap, exploited labor in their supply chains.97

The issue of corporate accountability for trafficking has become an
increasingly pressing one as information comes to light about the extent to
which the supply chains of major businesses and industries are tainted by
forced and highly exploited labor.98 The fishing sector is a case in point. Over
the past several years, investigations by the United Nations and independent
journalists have documented cases of Ukrainian crews forced to work at
gunpoint in the Northern Pacific, Burmese fishermen on Thai boats murdered
and thrown overboard when starvation, overwork, and disease diminished
their capacity to work, and West African children as young as four lured
away from their parents for a life of hardship and abuse on inland lakes or

95. See Anne Gallagher & Paul Holmes, Developing an Effective Criminal Justice Response
96. See, e.g., Verite, LABOR BROKERAGE AND TRAFFICKING OF NEPAI MIGRANT WORKERS (n.d) available at
97. See, e.g., OHCHR, HUMAN TRAFFICKING AND GLOBAL SUPPLY CHAINS: A BACKGROUND PAPER (prepared
for the expert meeting convened by the UN Special Rapporteur on trafficking in persons,
98. SR TIP Mission to Gabon, supra note 44, ¶ 19.
The Special Rapporteur on Trafficking

in the middle of the Indian Ocean.\textsuperscript{99} Trafficking has also been documented in foreign-owned vessels fishing legally in the waters of New Zealand. The catch from the boats is sold to local processing companies with worldwide distribution, ending up on the plates of Australian and North American consumers.\textsuperscript{100} The garment industry provides another example of tainted supply chains, a situation again brought to public attention through the collapse of a factory building in Bangladesh in 2013, an avoidable tragedy that claimed the lives of over one thousand impoverished, low-paid, and unprotected workers, most of them women.\textsuperscript{101}

The difficulties inherent in improving the transparency of supply chains—a necessary prerequisite for dealing with exploitation—should not be underestimated. The globalization of production means that many corporations themselves are often unaware of the conditions under which goods and services produced for them are obtained. But that lack of knowledge can also provide a useful excuse for corporations that reap the benefits of cheap, exploitable labor to avoid taking meaningful action. In some instances it appears that the use of third parties (for example, recruitment agencies) is a deliberate strategy to distance a corporation from responsibility for exploitation. Corporations should be required to take at least the minimum steps necessary to assess their supply chains for risk of exploitation, to deal with any exploitation found, and to put in place mechanisms for effective future monitoring.\textsuperscript{102} Initiatives aimed at promoting greater responsibility and self-regulation should be encouraged, particularly those that are rights based and widely supported such as the United Nations own \textit{Guiding Principles on Business and Human Rights}.\textsuperscript{103} However, experience has shown that self-regulation measures are limited in their impact and effectiveness. Codes of conduct and sector-wide verification procedures can be near worthless unless accompanied by independent monitoring. Other stakeholders, such as consumers and the media, have an important role in holding corporations accountable.


\textsuperscript{101} See ILO & Int’l Institute for Labour Studies, \textit{Bangladesh: Seeking Better Employment Conditions for Better Socioeconomic Outcomes} 1, 16 (2013).


But discussions around consumer and corporate responsibility for trafficking should not distract from the fact that states have the ultimate responsibility to prevent and respond to the human rights violations associated with trafficking that are occurring within their jurisdiction or otherwise under their control. To that end states in which exploitation may occur should be reviewing their labor laws and strengthening their enforcement. Along with states of origin they should also be regulating the activities of public and private recruitment agencies and be paying particular attention to those agencies that charge fees to workers to secure a placement, as this is often a direct gateway to exploitative debt. All states can support such actions by legislating for transparency in supply chains—particularly for government suppliers and by making corporations legally responsible for exploitation uncovered in their supply chains. They can promote public-private partnerships to engage community and business in preventing trafficking and develop incentives that encourage transparency and active risk management.

D. Remedies for Victims

While many substantive issues drew the attention of the mandate over the past decade, the matter of remedies for victims stands out as particularly urgent and compelling. Remedies are a critical aspect of the international legal response to trafficking, as they confirm the status of trafficked persons as victims of crime and victims of human rights abuse. International law is clear on the point that individuals who have been trafficked or otherwise subject to the exploitative practices associated with trafficking have the right to seek and access remedies for the harms committed against them. The legal framework is equally clear that states are under an obligation to provide

104. The US has taken several important steps in this regard. For example the California Transparency in Supply Chains Act (2010), available at http://www.state.gov/documents/organization/164934.pdf (compelling companies that meet certain threshold requirements to disclose their efforts to eradicate slavery and human trafficking from their supply chains); Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts (2012), available at http://www.gpo.gov/fdsys/pkg/DCPD-201200750/pdf/DCPD-201200750.pdf (requiring US government contractors and sub-contractors to comply with basic conduct rules aimed at addressing trafficking in supply chains). The 2015 United Kingdom Modern Slavery Act (Transparency in Supply Chains clause) places legal obligations on all companies above a certain turnover, and with UK operations, to publish an annual statement disclosing the steps that they are taking to ensure there is no slavery or human trafficking in their business and supply chains. Shortly after the act was adopted the UK Government launched a public consultation to determine, for purposes of secondary legislation and statutory guidance, the size of business this measure should apply to and the reporting requirements that will be imposed. See also Home Office, Modern Slavery and Supply Chains Consultation (2015), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403575/2015-02-12_TISC_Consultation_FINAL.pdf.
remedies to victims of trafficking when they are legally responsible, directly or indirectly, for the harm caused or when a relevant treaty mandates the provision of or access to such remedies.  

Significant progress has been made in articulating a right to a remedy in the context of trafficking, and the mandate has made a singular contribution through the development of a set of basic principles on the right to a remedy for victims of trafficking. Motivation for that work stemmed from a growing understanding that, in all parts of the world, victims of trafficking very rarely receive the justice to which they are entitled. The reasons for this are tied up in the myriad systemic failures that undermine the professed commitment of states to a rights-based approach. For example, it is widely acknowledged that the vast majority of trafficked persons are never identified, which means that their right to a remedy will not be acknowledged or respected. Routine detention and deportation of trafficked persons are similarly obstructive of the right to a remedy, as is the failure to provide victims with legal assistance, information, and support. Other factors contributing to the widespread non-fulfillment of the right to a remedy include inadequate legal frameworks, persistently low rates of prosecutions for trafficking-related exploitation (particularly in situations where offender identification and prosecution or conviction is a prerequisite for certain remedies), lack of protection of victims and victim-witnesses, discrimination on the basis of nationality and citizenship, absence of effective international legal cooperation, and low rates of success in tracing and seizing profits of trafficking-related crimes. Improvements in access to remedies will only come after these underlying weaknesses are openly acknowledged and effectively addressed.

E. Prevention of Trafficking

In the context of trafficking, the term “prevention” is plagued by conceptual and practical difficulties, encompassing (as it does) the full range of measures aimed at preventing future acts of trafficking from occurring. International law requires that states act with due diligence to prevent trafficking and associated human rights violations, but the substantive content of this obligation is far from settled. For example, while there is general agreement that states should be addressing “demand” for the cheap, exploitable labor made possible through trafficking—as well as the goods and services produced by trafficking—it has proved extremely difficult to translate this requirement into specific and measurable actions.

The mandate has sought to contribute to general discussions around prevention while also identifying several immediate prevention priorities. The link between migration policies and prevention of trafficking provides a useful example. It has become abundantly clear over the past decade that the creation of opportunities for legal, gainful, and non-exploitative migration is key to preventing future trafficking. This responsibility falls on countries of origin as well as countries of destination. For the former, the provision of adequate information about migrants’ rights, as well as practical advice on how to manage risks in the migratory process are integral obligations. Policies that seek to prevent migration to certain places or among certain groups may have their place in a broader prevention strategy but the risks of exacerbating the vulnerability of those who are compelled to move anyway should be openly and honestly addressed.

The work of the mandate has provided ample evidence that widespread failure to protect the rights of workers, most particularly migrant workers, is a major contribution to trafficking-related exploitation. An increasingly globalized labor market that seeks to minimize production costs through low wages and maximum flexibility has exacerbated the vulnerability of such workers who, deliberately left unprotected, can be paid badly, subjected to harsh conditions, and dismissed when no longer needed. As noted above, the involvement of recruitment agencies, many of which are unregulated and unsupervised, has created an additional layer of vulnerability for such workers, often trapping them in a debt from which it is very difficult to escape—or participating in the deception that funnels them into a situation of severe exploitation. In too many countries, labor inspectorates are not up to the task of supervising workplaces and will, at any rate, not have access to

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109. UN Trafficking Protocol, supra note 4, art. 9; European Trafficking Convention, supra note 6, art. 5. For a detailed examination of the international legal obligation to prevent trafficking see Gallagher, The International Law of Human Trafficking, supra note 5, Ch. 8.

the common sites of exploitation for trafficked persons that include brothels, private homes, farms, and small factories. Any credible, rights-based prevention strategy must openly acknowledge the critical importance of strong, well enforced labor laws that extend to all sectors of the labor market as well as to those involved in the recruitment of workers.

V. CONCLUSION: TOWARDS THE FUTURE

The decision to establish a Special Rapporteur on trafficking has been well vindicated. The SRTIP has helped to reclaim trafficking for the human rights system and contributed to shaping a vision of a human rights approach to this issue that has found resonance within the wider international community. These are significant victories; their potency is enhanced by the expanding conception of trafficking and the evolution of a strong legal framework around the issue that includes—but extends well beyond—international human rights law.

The many successes of the mandate deserve to be celebrated. However, much remains to be done, particularly in fleshing out the substance of obligations that relate to the treatment of victims and prevention of trafficking. For example, while it is now well understood that states are required to facilitate the safe return of trafficking victims, the responsibilities specific to returning and receiving states remains to be settled. Similar gaps exist in relation to the obligation to provide immediate assistance and support and the obligation to ensure that responses to trafficking do not violate established rights. Another challenge relates to the ever-shifting nature of human exploitation. Experience has shown that the mandate is capable of playing a critical role in shedding light on newer or less visible forms of trafficking-related exploitation. That role will be important in the years ahead, in relation to issues as diverse as trafficking for organ removal and commercial surrogacy and recruitment into armed conflict.111

More fundamentally, the coming years will be critical in testing the depth of commitment to genuine change on the part of states, the international community, and the rapidly growing anti-trafficking / anti-slavery movement. With respect to the latter, there is reason to be optimistic that the issue is attracting such broad interest and support. However, human exploitation is well established in the global economy and a major driver of global economic growth. Anti-trafficking campaigns that fail to challenge the status quo—the political, economic, and structural forces that facilitate exploitation—will be inevitably limited in their impact and may end up being little more than

111. See UNODC, ISSUE PAPER: THE CONCEPT OF “EXPLOITATION” IN THE TRAFFICKING IN PERSONS PROTOCOL, supra note 89.
“conscience-laundering,” a convenient distraction for those who have good reason to resist real and lasting change.

The conflicting interests of states must also be openly and honestly addressed. The work of the mandate has made clear that many states are reliant on cheap foreign labor that, deliberately exploited or unprotected by law, can be criminalized or shoved aside when circumstances require. Some that maintain a strong policy position against prostitution are nevertheless apparently comfortable with a marginalized and closeted sex industry comprised principally of exploited foreigners. Countries that rely heavily on the remittances of their overseas workers may be reluctant to interfere with a system that brings economic benefits—even if it is clear that some of their citizens are being harmed. The SRTIP and the wider human rights system must be fearless in pointing out these uncomfortable realities and their legal and ethical implications. For example, states that fail to protect migrants and migrant workers within their territory, whether legally present or not, should be compelled to take responsibility for creating an environment in which exploitation of these persons becomes both possible and worthwhile.

Trafficking may have started out as a narrow human rights issue but it has evolved to embrace some of the worst and most pervasive human rights violations of our time. The international community has new tools with which to work and a strong foundation of public support on which to build. The human rights system must be at the forefront in ensuring that this unprecedented opportunity to secure justice for so many is not squandered.

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