

**Trafficking and Prostitution in Thailand:
Re-Conceptualizing International Law in the Age of Globalization**

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Introduction

Human trafficking for the purposes of prostitution is a global problem, no more so than in Southeast Asia. The International Organization for Migration estimated that 200-225,000 women and children from Southeast Asia are trafficked to other countries annually, making this region the largest source of trafficked women in the world,¹ and Thailand, which the U.S. State Department designated a “Tier 2” country,² has been classified as a source, transit and destination country, due to its relative affluence in the region.³ International human rights law has taken important steps to address the issue of trafficking within the global criminal economy. Treaties and conventions have successfully established a conceptual linkage between trafficking and prostitution that is vital to our understanding of why these crimes occur. International law falls short, however, when it comes to defining prostitution as being a transnational crime since prostitution is not always linked to the crossing of physical borders between sovereign states. In this paper I argue that prostitution, particularly in a country like Thailand, is a transnational issue. I illustrate how the limited view of prostitution in the human rights discourse points to larger issues about the role of international law in the context of globalization, and I use contemporary globalization theory to show how the institution of international law functions in an outmoded paradigm. I then call for a re-examination of the international legal discourse on trafficking and prostitution.

In examining prostitution in Thailand, I will make two important assumptions: first, that prostitution in all its forms is a violation of human rights. This issue of whether prostitution can ever be considered a “choice” has been subject to a great deal of scholarly debate,⁴ but I will not reiterate this argument here. Rather, I will make the

¹ Farr, K (2005) *Sex Trafficking: The Global Market in Women and Children*. Worth Publishers, New York. p. 4.

² U.S. Department of State Office to Monitor and Combat Trafficking in Persons. *Trafficking In Persons Report 2009: Tier Placements*. Retrieved on May 18, 2010 from <http://www.state.gov/g/tip/rls/tiprpt/2009/123132.htm>

³ Thailand: The Situation. www.humantrafficking.org. Retrieved on May 19, 2010 from <http://www.humantrafficking.org/countries/thailand>

⁴ See Catherine MacKinnon (2007) *Are Women Human? And Other International Dialogues* Harvard University Press: Cambridge and Doezema, Jo (Mar., 2002), Who Gets to Choose? Coercion, Consent, and the UN Trafficking Protocol, *Gender and Development*, Vol. 10, No. 1, Trafficking and Slavery. pp. 20- 27 : Taylor & Francis, Ltd. on behalf of Oxfam Retrieved on

assumption that prostitution should be viewed as a human rights violation, falling under the auspices of the UN Declaration of Human Right's Article 5, which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."⁵ Rather than unpacking the definition of prostitution and showing how it is "cruel," "inhuman" and "degrading," I will assume this to be the case, and focus instead on how and why prostitution should be understood as being a transnational issue.

Second, I will use the terms "globalization" and "transnationalism" interchangeably, to evoke the conceptual framework set forth by Castells:⁶ that in the context of globalization, networks offer a system of logic that is more relevant to the needs and functions of modern society than the "vertically organized, command and control structures,"⁷ that make up hierarchically dominating institutions such as sovereign states. Evoking this concept, I assert that both human traffickers as well as consumers of prostitution from various regions of the world participate in a network of crime and exploitation to which international law must respond. The involvement of these global actors constitutes a "network of purveyors" that contributes to prostitution's emergence a transnational issue in the age of globalization.

The Treaties and Their Histories

In recent decades, the UN has developed treaties and Conventions intended to suppress human trafficking and prostitution. The 2001 United Nations Protocol put forth a definition as to what constitutes human trafficking and its relationship to prostitution:

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

October 31, 2009 from <http://www.jstor.org/stable/4030678>

⁵ The Universal Declaration of Human Rights. Retrieved on April 7, 2010 from <http://www.un.org/en/documents/udhr/>

⁶ Castells, Manuel (2004). "Informationalism, Networks, and the Network Society: A Theoretical Blueprint" in Castells, Manuel (Ed) *The Network Society: A Cross-Cultural perspective*. Northampton, MA: Edward Elgar. 2004. P. 5

⁷ *Ibid*

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.⁸

Thailand is a party to this Convention, which is supplementary to the Convention against Organized Crime. Thailand has taken additional measures to address trafficking in persons under international human rights law by adopting the *National Policy and Plan of Action for the Prevention and Eradication of the Commercial Sexual Exploitation of Children* (1996) and the 1997 amendment of the *Act on Prevention of Traffic in Women and Children* to include boys.⁹ In 1992 Thailand ratified the *Convention on the Rights of the Child (CRC)* and more recently adopted the *Optional Protocol on the sale of children, child prostitution and child pornography*.

I will now briefly describe the history of anti-trafficking treaties and agreements made under international law, in order to illustrate the trajectory of this discourse. In doing so, I will illustrate how the treaties have made important inroads into viewing prostitution as a transnational crime, rather than merely a domestic one. Throughout the better part of the past century, anti-trafficking policy has introduced important connections between trafficking and prostitution. The first such connection involved the protection of European women from being sold into slavery in the former European colonies, and was named The International Agreement for the Suppression of White Slave Traffic in 1904 (the "1904 Agreement").¹⁰ The Agreement distinguished between "pure and innocent" women and those who formerly worked as prostitutes, a distinction that supported the dichotomy of victimhood versus consent that is mirrored in many current debates about whether or not prostituted have "choice." Interestingly, the 1904 Agreement excluded the detention of a woman within a brothel (after she had been trafficked) because of presumed conflicts with domestic jurisdiction and state law—perhaps foreshadowing the notion of "non-interference" that contemporary international

⁸ Taylor, Lisa Rende (June, 2005). "Dangerous Trade-Offs: The Behavioral Ecology of Child Labor and Prostitution in Rural Northern Thailand." *Current Anthropology*, Volume 46, Number 3. The Wenner-Gren Foundation for Anthropological Research. p. 412

⁹ *Combating Trafficking in South-East Asia: A Review of Policy and Programme Responses*. The International Organization for Migration, prepared by Annuska Derks. p. 33

¹⁰ Chuang, Janie (1998) Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts *Harvard Human Rights Journal*, 11 Harv. Hum. Rts. J. 65

law assumes in allowing states to prosecute international trafficking crimes in the domestic arena. Parallel still further, the International Convention for the Suppression of the Traffic in Women and Children (the "1921 Convention"), and the International Convention on the Suppression of the Traffic in Women of Full Age (the "1933 Convention") continued to consider the outcomes of trafficking crimes to be a matter of domestic jurisdiction.¹¹

The League of Nations introduced a new urgency to the issues of trafficking and prostitution, and in so doing, began to establish a conceptual link between these issues and the notion of transnationalism. The International Agreement for the Suppression of the White Slave Traffic (Article 23(c)) entrusted the League "with the general supervision over the execution of agreements with regard to the traffic in women and children"¹² and in 1927 the League appointed investigators to research the trafficking of persons in the Americas, Europe, Asia, Far East and the Middle East. For the first time, an International law-making body found that trafficking and prostitution were international, transnational problems that must be addressed beyond the domestic realm.¹³

1933 saw a progressive moment, when the League introduced important amendments extending protections to non-white women, while firmly eliminating idea of "consent" as a viable defense.¹⁴ By 1937 the League of Nations had identified the key player in the trafficking of women in Asia as being none other than the brothel. This new view of the brothel as being a mechanism for suppressing women was, perhaps, the first identifiable moment when trafficking and prostitution were clearly defined as intersecting elements of the same circumstance of slavery.¹⁵ Consent, as a concept, was removed from the discourse entirely and trafficked women were viewed as victims of a coerced experience-- at minimum. One wonders why, when the concept of consent could be so

¹¹ *Ibid*

¹² Reanda, Laura (May, 1991) Prostitution as A Human Rights Question: Problems and Prospects of United Nations Action. *Human Rights Quarterly*, Vol. 13, No. 2, p. 206. The Johns Hopkins University Press, p. 208

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ Reanda, Laura (May, 1991) Prostitution as A Human Rights Question: Problems and Prospects of United Nations Action. *Human Rights Quarterly*, Vol. 13, No. 2, p. 206. The Johns Hopkins University Press, p. 209

readily removed from the human trafficking discourse, the same clear deletion could not be also applied to the debate around prostitution?

The debate between the regulationist argument asserting “the right *to*” engage in sex work, and the abolitionist argument claiming that prostitutes should have “the right *from*” engaging in this work takes a large focus in the current discourse on prostitution and trafficking. As Katherine MacKinnon argues, framing sex work as an empowering act is masculinist and imperialistic, as “right-to” approaches are primarily masculine, Western concepts.¹⁶ Additionally, the “right to” frame disregards the premise that prostitution is harmful to the security of the person engaging in it.¹⁷

Historically, international law has lent its support to an abolitionist stance on prostitution. The first law that articulated this stance was the 1949 Convention, the “first international instrument to consider forced prostitution a matter of international law, rather than strictly an issue of domestic jurisdiction.”¹⁸ Originally proposed in 1946 by the United Nations Economic and Social Council, the Convention was designed to address the League of Nation’s initiatives in the social realm.¹⁹ Its goal in relation to prostitution was to “promote an end to the ‘regulationist’ approach in favor of the ‘abolitionist’ philosophy”.²⁰ The Convention established a legal framework asserting that procurers of trafficking and prostitution should be punished, regardless of issues relating to victim’s age or consent. In so doing, this initiative advanced the notion that prostitution is inherently demeaning to woman and communities, and a violation of human rights.

The conditions set forth in the Convention introduced a level of complexity to the penalization of criminals, however, in that for the first time, punishable offenses had to be considered “extraditable.” State parties were made to agree to establish systems of informational exchange, in which states would work domestically to reduce prostitution through initiatives such as education. These factors introduced a challenge within the international legal system: rather than adopting a unified global governance approach to

¹⁶ MacKinnon, Catherine (2007) *Are Women Human? And Other International Dialogues* Harvard University Press: Cambridge, p. 5

¹⁷ *Ibid*

¹⁸ Reanda, Laura (May, 1991) Prostitution as A Human Rights Question: Problems and Prospects of United Nations Action. *Human Rights Quarterly*, Vol. 13, No. 2, p. 206. The Johns Hopkins University Press, p. 209

¹⁹ *Ibid*

²⁰ *Ibid*

prostitution, the Convention allowed prostitution to be regarded and penalized in ways that varied domestically. The Convention introduced no provision for international supervision and only required states to report “periodically” on their progress—bound by no mandatory timeframe.²¹ These lenient conditions introduced flaws in the international legal realm, allowing states to respond to prostitution ambiguously. Conceptually, the law did not insist that prostitution be viewed as a human rights violation when it came to the treatment of its procurers in the domestic arena.

Despite these flaws, however, the Convention set forth important language that is relevant to our understanding of the relationship between human trafficking and prostitution. The 1949 Convention describes the offender in a human trafficking and prostitution case as being a person who, “to gratify the passions of another, ‘(1) procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; (2) exploits the prostitution of another person, even with the consent of that person.’”²² While there is much continued debate over the perceived differences between forced and voluntary prostitution,²³ the Convention’s definition succeeds in making a conceptual connection between trafficking and prostitution that is vital for an analysis of prostitution in the context of globalization. Furthermore, the Convention clearly asserts that the procurement of prostitution can not be justified by the presumption of the victim’s consent.

Another important legal initiative asserting the abolitionist stance on prostitution came in the 1975 UN Convention on the Elimination of All Forms of Discrimination (CEDAW), which sought to define and elaborate on general guarantees of women’s rights and guidelines against discrimination.²⁴ CEDAW worked to decriminalize prostitution throughout the international arena for the express purpose of ending

²¹ *Ibid*, pp. 210-211

²² Chuang, Janie (1998) Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts *Harvard Human Rights Journal*, 11 Harvard Human rights Journal 65

²³ *Ibid*

²⁴ Convention on the Elimination of All Forms of Discrimination Against Women. *United Nations Division for the Advancement of Women Department of Economic and Social Affairs*. Retrieved on August 29, 2009 from <http://www.un.org/womenwatch/daw/cedaw/>

penalization against women who are trafficked and forced into working as prostitutes.²⁵ CEDAW's continued assertion that prostitutes are not criminals carries particular significance in countries such as Thailand, where prostitutes often fear criminal persecution if they turn to the law for advocacy and protection. According to the United Nations Association of the United States of America,

...in such situations, these women have no recourse for action, either to seek treatment for sexually-transmitted diseases such as HIV/AIDS or to gain their release, because they are afraid of arrest if they contact the authorities.²⁶

CEDAW recognizes the need for the international community to view prostitution as a human rights violation, rather than a criminal act warranting punishment. This view of prostitution has been met with resistance in societies who view women's sexual activity as being threatening, shameful or deserving of punishment.²⁷ Nevertheless, CEDAW's conceptual stance supports the notion that prostitution is a transnational process, and should be viewed as such in the international legal discourse.

Spurred by the achievements of the UN Universal Declaration of Human Rights, other international organizations have brought trafficking and prostitution into the center of the international human rights law discourse. UNESCO and the World Tourism Organization made sex tourism a focal point of their agenda in the 1980's.²⁸ Additionally, the 2000 UN General Assembly Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the "Trafficking Protocol") supports the neo-abolitionist view of trafficking and prostitution, and the criminalizing of procurers.²⁹ Maintaining this view has had important implications on the role of international law in the suppression of trafficking and prostitution worldwide.

²⁵ The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). *United Nations Association of the United States of America*. Retrieved on October 31, 2009 from <http://www.unausa.org/Page.aspx?pid=935>

²⁶ *Ibid*

²⁷ *Ibid*

²⁸ Seagrave, Marie (2009) Order at the border: The repatriation of victims of trafficking. *Women's Studies International Forum* School of Political and Social Inquiry, Monash University, Australia. p. 253

²⁹ *Ibid*

Thailand has also passed similar legislation. In 1997 Thailand passed the Measures in Prevention and Suppression of Trafficking in Women and Children Act,³⁰ and has since implemented a strong NGO anti-trafficking presence including organizations such as ECPAT, UNIFEM, GAATW, UNESCO, ILO, small NGOs, and ninety-seven government-funded shelters.³¹ Despite these measures, however, to date there is “no single trafficking policy operating within Thailand.”³²

The Problem With the Domestic Arena

As with all conventions adopted under international law, state parties are responsible for upholding the standards and conditions set forth, and for enforcing criminalization on the domestic level when laws are broken. The Protocol requires:

...state parties to provide, if appropriate and possible in accordance with their national laws, assistance to the trafficked persons and set up mechanism and co-operation to tackle the issue more effectively the problem. However, it was felt that the wording in this section of the Protocol does not oblige state party to seriously provide assistance to trafficked persons because the state can set condition to act in accordance with their own national laws but not according to the international human rights standard.³³

This statement illustrates a fundamental flaw in international human rights law as it is presently conceived. The difficulty with allowing international crimes to be prosecuted in the domestic arena involves the element of interpretation. By leaving the prosecution and policing in the hands of states, rather than an international criminal court, states are given the leeway to interpret the details of these crimes as they see fit, allowing for the possibility of misinterpreting the intentions of international law. In the case of Thailand, many NGOs have observed that police efforts to prosecute criminals and purveyors of commercial sex often fall short, with crimes notoriously going un-noticed and, in some

³⁰ *Ibid*, p. 254

³¹ *Ibid*

³² *Ibid*

³³ Skrobanek, Siriporn (2003) Human trafficking: from vertical to horizontal journey. *Voices of Thai Women*. Retrieved on October 25, 2009 from http://findarticles.com/p/articles/mi_7068/is_20/ai_n28149390/pg_4/?tag=content;col. p. 1

cases, with the police themselves demonstrating complicity.³⁴ The following statement made by a senior administrator at ECPAT International alludes to the shortcomings of the domestic arena:

I will say that the Thai government does work in the ‘multi-disciplinary’ team approach and actively collaborates with NGOs, including ECPAT. Of course, while they are trying there [is] always room for strengthening how all the stakeholders should work together.³⁵

While NGOs such as ECPAT support the abolitionist approaches to prostitution and are tasked with pressuring local governments to criminalize procurers in accordance with the standards of international law, the ambiguity of the administrator’s statement illustrates the tenuous reality of how traffickers and procurers of prostitution are regarded in Thailand. While many NGOs advocate for punishing traffickers and procurers, these organizations are well aware that on a local level, corruption often interferes with the mandates of international law. This mishandling of the UN Protocol’s intentions illustrates an important example of how international law can be easily dismissed in situations in which a state’s representatives (in Thailand’s case, the police) deem these laws as being domestically irrelevant. Since the decisions about criminalization rest in the hands of domestic law enforcement, ultimately international law is open to vastly subjective interpretation. The domestic interpretation of international law endangers women and children whose lives and security are at great risk, but whose needs are being ignored.

Weaknesses in the Treaties

I will now discuss the weaknesses of the treaties in dealing with prostitution in the international realm. From there, I will illustrate the need for international law to more adequately address the realities of the processes of globalization.

³⁴ ECPAT International. (2006) *Global Monitoring Report on the Status of Action Against Commercial Sexual Exploitation of Children: Thailand*.

³⁵ Online interview with Ms. Patchareeboon Sakulpitakphon (Mam), Programme Associate for Combating Child Trafficking for Sexual Purposes, ECPAT International. Retrieved on July 7, 2009 from www.gmail.com

The UN treaties on trafficking accurately define human trafficking as being a transnational crime involving the crossing of national boundaries. When a state party ratifies these treaties, it agrees to adhere by the principals of criminalization set forth in the treaty. As I have illustrated, however, since the world does not employ a sole international court to address all human rights abuses that occur, the process of penalizing traffickers is always tried in the realm of the domestic courts. This policy fails to recognize the transnational nature of trafficking and prostitution. Moreover, it gives a great deal of power to domestic courts.

Domestic courts are not all alike. Some countries inflict much harsher punishments on individuals for crimes that, in other countries, would be considered benign. One example of this disparity can be seen in the recent case of the Saudi Arabian “Sorcerer” conviction. In April, 2010 Ali Hussain Sibat, a Lebanese man was tried and convicted in Saudi Arabia for offering “Predictions and advice to callers on a Lebanese television network.”³⁶ Initially slated to be beheaded on the grounds of breaking Sharia law, his sentence has been delayed in what one article described as a “domestic political power play... by conservatives who may be seeking to embarrass reformist leaders such as King Abdullah.”³⁷ Despite the fact that the accused was not a Saudi Arabian national, nor had he committed the alleged “crime” on Saudi Arabian soil, Ali Hussain Sibat was nevertheless tried in a domestic Saudi Arabian court. The fact that international law allows for such loopholes in its system of global governance, exemplifies the danger and precariousness of this institution in the context of globalization. Unless Saudi Arabia agreed to ratify and uphold a treaty honoring the human rights of freedom of opinion and expression, and freedom from religious persecution (set forth in the UN Declaration on Human Rights in Articles 16 and 18, respectively³⁸), the state, as an independent actor, is free to determine to its own satisfaction the parameters of human rights law.

³⁶ Jamjoom, Mohammed (April 2, 2010). Condemned 'sorcerer' won't die Friday, lawyer says. *CNN*. Retrieved on April 15, 2010 from <http://www.cnn.com/2010/WORLD/meast/04/01/saudi.arabia.sorcery/index.html>

³⁷ Saudi Arabia: Factional politics may be at heart of legal dispute over psychic's fate. (April 2, 2010) *Los Angeles Times*. Retrieved on April 15, 2010 from <http://latimesblogs.latimes.com/babylonbeyond/2010/04/saudi-arabia-lebanese-tv-psychics-death-sentence-stayed.html>

³⁸ The Universal Declaration of Human Rights. Retrieved on April 15, 2010 from <http://www.un.org/en/documents/udhr/>

In the case of prostitution, as I have illustrated, a similar problem exists in regard the domestic courts varying interpretation of prostitution. Despite the conceptual linkage between trafficking and prostitution that the international treaties and conventions have established, many domestic courts choose to view prostitution in ways that deviate from international law, depending on the varying cultural perceptions that exist about prostitution in a given domestic arena. In examining different states' views of prostitution, it becomes clear that prostitution is a highly contested act, containing multiple layers of meaning that result in policies that differ vastly according to context. In Sweden, for example, prostitution was legalized in 1999, at which time the act of procuring, rather than prostituting, became criminalized.³⁹ This is not the case in the United States, a country in which, in many jurisdictions, prostitutes themselves are regarded and penalized as criminals, while customers often remain unpunished. Similarly, in Thailand prostitution is treated as a crime in itself unless the prostitute can prove that she or he is a victim of human trafficking. The fact that domestic courts employ such vastly different understandings about the nature and definition of prostitution, points to the weakness in international human rights law. Rather than allowing for these vast discrepancies in interpretation, international human rights law should set a uniform standard as to what prostitution is, and how it should be regarded in the courts, regardless of their domestic jurisdiction.

The anti-trafficking treaties also possess a generally weak understanding of women's lives and realities. While the treaties offer a basic framework and definition as to what constitutes human trafficking, they fail to recognize, give voice to, or otherwise acknowledge the circumstances that lead to trafficking and prostitution, particularly in the developing world. In contrast, in her article *Prostitution as A Human Rights Question: Problems and Prospects of United Nations Action*, scholar Laura Reanda points out that mass prostitution always develops in tandem with high levels of military troops, or circumstances in which groups of men want to be "serviced."⁴⁰ This explains how the prostitution in Thailand emerged largely as a response to the Vietnam War. Despite regulationist arguments asserting that it is imperialistic for the West to assume

³⁹ Sweden's Prostitution Solution: Why Hasn't Anyone Tried This Before? *Women's Justice Center*. Retrieved on April 15, 2010 from http://www.justicewomen.com/cj_sweden.html

⁴⁰ *Ibid*

responsibility for Southeast Asia's trafficking and prostitution epidemic, the recent rise of Western sex tourism has had detrimental effects on the migrant women and children who typically take part in it.⁴¹ The failure of the treaties to acknowledge the historic occurrences which set the scene for today's exploitation of prostitutes in Southeast Asia by western tourists, points to the west's complicity in the systemic violation of women's rights in the developing world.

Additionally, the treaties fail to assert that prostitution, when viewed separately from human trafficking, is a form of violence against women. Katherine MacKinnon has attempted to remedy this oversight by explicitly re-framing prostitution as being an undeniable violation of human rights:

Sale of a person for sex is an industry of abuse that is a cornerstone of the inequality of the sexes. Women are sold for sex by force of arms, rape, or circumstance, usually desperate poverty, caste, or race, because they are women under social conditions of sex inequality. Sex inequality in all its forms should be abolished, step by step, in a practical way suitable to conditions in each place, not collaborated with or tolerated by law. No woman fights to become a prostitute; she is in prostitution because her fights for any other life have been lost. Women everywhere need real alternatives so they can live independent lives, and they know it.⁴²

While McKinnon's explanation of prostitution's inherent abuse towards women is well stated, the treaties fail to adequately acknowledge this view. The treaties also fail to address the political economy factors that lead women into to prostitution, and the larger insecurity of women's poverty in general. Economic disparity, which is seen most sharply in circumstances faced by women, is a primary cause of women's migration through and beyond Southeast Asia for purposes of prostitution.⁴³ According to UNIFEM:

⁴¹ Guzder, Deena (August 14, 2009). Thailand: The World's Sex Tourism Capital. The Pulitzer Center on Crisis Reporting. Retrieved on October 31, 2009 from http://pulitzercenter.typepad.com/untold_stories/2009/08/thailand-flesh-market.html

⁴² Shobha, S.V. (2009) No Woman Fights to Become A Prostitute. *Boloji.com*. Retrieved on November 1, 2009 from <http://www.boloji.com/wfs6/2009/wfs1241.htm>

⁴³ Personal interview with Volunteer Coordinator at D.E.P.D.C., July, 2009

Women represent 70 percent of the world's poor. They are often paid less than men for their work, with the average wage gap in 2008 being 17 percent. Women face persistent discrimination when they apply for credit for business or self-employment and are often concentrated in insecure, unsafe and low-wage work. Eight out of ten women workers are considered to be in vulnerable employment in sub-Saharan Africa and South Asia, with global economic changes taking a huge toll on their livelihoods.⁴⁴

Acknowledging the global reality that women generally face harsher, more dire economic circumstances than men is a critical, yet often overlooked part of the trafficking and prostitution equation. Additionally, it is essential to acknowledge that working as a prostitute in a destination city (such as Bangkok) is likely to earn a woman a higher wages than she would otherwise have made working the land in a rural village. Economic disparity as a “push” factor in women's migration may be seen as a form of coercion in itself—a factor compelling women to turn to prostitution.

Some research has indicated that prostitution in destination cities in Thailand is preferable to situations of dire economic hardship in the countries and rural regions of the peripheral villages. According to one scholar's dissertation,

“Miss Tola ran away from her parents, and paid US \$400 to a person who promised her a job as a prostitute in Koh Kong (she stole the money from her parents). Later she was sold to the brothel in Klong Yai for US \$800. Having repaid this money, she now rents her own room”. Source: IOM (1999, pg 24)⁴⁵

Finnerty explains that despite being trafficked, prostituted, and held in debt-bondage (also a criminal offense under international law⁴⁶), many women who migrate into Thailand from surrounding Southeast Asian countries do so voluntarily, as “The situation in the migrants' home countries is so dire that this work in Thailand is more

⁴⁴ Women, Poverty and Economics. (2000) *UNIFEM*. Retrieved on October 30, 2009 from http://www.unifem.org/gender_issues/women_poverty_economics/

⁴⁵ Finnerty, Chantal (2008) *Cross Border Migration and Prostitution in Thailand: Is There a Fine Line Between Trafficking and Voluntary Migration of Women and Girls?* MA Development Studies Dissertation, University of Leeds, p. 26

⁴⁶ Major forms of Trafficking in Persons: Trafficking in persons Report . (2009). *US Department of State Office to Monitor and Combat Trafficking in Persons*. Retrieved on November 2, 2009 from <http://www.state.gov/g/tip/rls/tiprpt/2009/123126.htm>

preferable.”⁴⁷ These circumstances, in which life as a prostitute is preferable to conditions in one’s home community, point to the political economy factors pushing women and girls into making choices that violate their rights to dignity and security. The UN conventions and treaties should explicitly address and acknowledge these circumstances, yet they fail to do so.

Another weakness in the treaties involves the rights-based framework they employ. Rather than focusing on economic and social rights, which, theoretically are designed to protect victims *from* human rights abuses, the language of the treaties is structured to support civil and politically-oriented rights, often thought of as *right to* types of rights. Such rights deal primarily with issues related to the public sphere and political processes; for example, the right to vote, the right to bear arms, or the right to engage in free speech. Female migrants facing economic hardship and material deprivation are seldom as concerned with civil and political rights, as they are caught in the mire of having to first defend their economic and social rights. As Thomas Pogge notes in his essay *Reframing Global Economic Security and Justice*, world poverty is as much a cause of weakness, vulnerability and injustice, as it is a result.⁴⁸ For impoverished people around the world, and particularly for women and girls, civil and political rights that treat people as independent, rational actors yet dismiss systems of engrained economic disadvantage and social discrimination, are not the types of rights they need defended most. The anti-trafficking treaties, by using language that broadly and vaguely defines the concepts related to human rights violations, fail to adequately address the systemic issues that lead to these violations.

Globalization Theory and International Law

I will now turn to a broader examination of international law as it relates to processes of globalization in the modern world. Saskia Sassen has introduced the issue of the nature of

⁴⁷ Finnerty, Chantal (2008) *Cross Border Migration and Prostitution in Thailand: Is There a Fine Line Between Trafficking and Voluntary Migration of Women and Girls?* MA Development Studies Dissertation, University of Leeds, p. 46

⁴⁸ Pogge, Thomas (2007). “Reframing Economic Security and Justice” in Held and McGrew Eds., *Globalization Theory: Approaches and Controversies* Polity Press: Malden, MA. P. 206

the global versus the local in the context of the changing conception of the modern state.⁴⁹ Sassen asserts that in the modern world, globalized processes can be found not just in transnational networks or existing in a “global” sphere, but are actually located within states themselves.⁵⁰ That is, processes of globalization have penetrated local environments, changing the nature of various social issues and institutions. This notion serves as a frame for my assertion that prostitution is a transnational process, rather than a local one. Sassen points out that this “localization of the global” requires that we not only re-negotiate the concept of the national,⁵¹ but also re-examine the social sciences themselves, and re-frame our thinking about various political institutions.⁵² Building upon the analysis of the treaties that I have presented, I argue that international human rights law is one such institution. While international law provides a framework for responding to transnational criminal activity, this framework is limited conceptually. In essence, it is a “step behind” the globalization process that Sassen analyzes. Because of this, international law must be re-imagined to adequately address issues such as prostitution as being global crimes taking place within local spheres.

During the past century, the UN charter has established conceptual parameters of transnational processes through implementing and recognizing state sovereignty. The paradigm of sovereignty, which initially emerged as a result of the Treaties of Westphalia in 1648,⁵³ was solidified in the 1933 Montevideo Convention on the Rights and Duties of States, which established that state sovereignty would encompass “three main requirements: a permanent population, a defined territory, and a functioning government. An important component of sovereignty has always been an adequate display of the authority of states to act over their territory to the exclusion of other states.”⁵⁴ This concept of sovereignty plays a significant role in the discourse on human trafficking. State parties are responsible for ratifying and upholding anti-trafficking conventions, and

⁴⁹ Sassen, Saskia (2007). “The Places and Spaces of the Global: An Expanded Analytic Terrain” in Held and McGrew Eds., *Globalization Theory: Approaches and Controversies* Polity Press: Malden, MA. pp. 79-82

⁵⁰ *Ibid*

⁵¹ *Ibid*, p. 80

⁵² *Ibid*

⁵³ State Sovereignty. *The International development Research Center*. Retrieved on April 15, 2010 from http://www.idrc.ca/en/ev-28492-201-1-DO_TOPIC.html

⁵⁴ *Ibid*

the international-versus-domestic criminal divide is viewed by the law through the lens of sovereignty.

This, in turn, has many implications for women who are trafficked and who work as prostitutes within the boundaries of a sovereign state. In the cases of trafficking and prostitution, unless the crossing of an international border occurs, international law has not been violated. Conversely, it can be seen that international law offers no protections to people who are trafficked and/or engage in prostitution unless they cross physical, politically defined boundaries from one sovereign state into another. Given the fact that domestic law often does little to punish these crimes, we may logically conclude that many crimes against women who are trafficked domestically or subjected to working as prostitutes—despite the transnational *processes* that may contribute to creating these circumstances—often go unnoticed and punished. I will return to this idea shortly.

Sassen questions the concept of state sovereignty under the ever-evolving conditions of globalization. She points out that as we work to “re-code the national,”⁵⁵ our previous notions of state sovereignty and territorial land boundaries must shift.⁵⁶ While she does not argue for a return to pre-Westphalia notions of territory, Sassen proposes an important shift in our thinking about what constitutes a political boundary. Closely related to this idea, she asserts that certain institutions that are viewed as “distinct” and “mutually exclusive”⁵⁷ from one another must now be re-examined:

Key among these are some components of the work of ministries of finance, central banks, and the increasingly specialized technical regulatory agencies, such as those concerned with finance, telecommunications, and competition policy. In this regard, then, my position is not comfortably subsumed under the proposition that nothing much has changed in terms of sovereign state power, nor can it be subsumed under the proposition of the declining significance of the state.⁵⁸

I add to Sassen’s list the institution of international human rights law. While recent treaties do address transnational crimes such as the trafficking of humans and goods across national, sovereign borders, they do not reach into realms traditionally considered

⁵⁵ *Ibid*, p. 91

⁵⁶ *Ibid*

⁵⁷ *Ibid*, p. 81

⁵⁸ *Ibid*

to be “local,” that is, locations that function under domestic, state jurisdiction. Further, as we have seen, these treaties provide limited definitions of what constitutes transnational criminal activity, and, in the case of prostitution, whether purveyors of commercial sex should be held criminally accountable. Making the assumption that prostitution is in itself a human rights violation, I assert that the criminal penalization of its customers worldwide should be a given. In addition, prostitution must be viewed through a wider lens than that of the sovereign state paradigm.

International law must be re-imagined in the context of globalization, in order to encompass the ambiguities of criminal activities that do not necessarily involve the crossing of land boundaries between sovereign states. To re-imagine prostitution as warranting such attention would mean treating this offense with more gravity and importance than it presently receives. It is the job of international law to adopt the perspective that prostitution is not just another crime to be dealt with in domestic courts of sovereign states, but rather, as a larger global issue that is, at its core, a violation of human rights.

Prostitution is Transnational

Building upon this foundation, I assert that contrary to the international legal discourse, prostitution is not merely a domestic issue, but a transnational one. Prostitution, which is directly related to trafficking within the global criminal networks, surpasses the UN-defined jurisdictions of national borders. Now I will offer some concrete examples illustrating how prostitution is a transnational process.

The first example involves migration. Migration across sovereign borders, as well as within the borders of a state, is commonly associated with the issue of prostitution. Here I will discuss the migration of Burmese women into Thailand as one example. Being caught in a web of economic desperation leads many Burmese women to give up their homes, families, and personal security to migrate to destinations such as Bangkok that offer them the promise of greater economic opportunity. As Thailand is a richer country than Burma, and many Thai citizens enjoy higher economic status and considerably greater freedom, many Burmese migrants find the prospect of settling in

Thailand to be appealing. Thailand's GNP per capita is six times higher than that of Burma, seven times higher than that of Lao PDR and twelve times that of Cambodia⁵⁹, which contributes to its being a central destination for migrants from throughout Southeast Asia. Whether migration occurs under threat of violence, deception, or with an understanding on the part of the migrant of what fate awaits her in the brothels of her destination, the fact remains that upon arrival, many women find themselves in situations in which they are unable to escape. According to the Development and Education Programme for Daughters and Communities, an NGO working to prevent trafficking among stateless minority women and children in Thailand's north, Burmese migrants rarely possess legal status in Thailand, as their methods of migration are often illegal, rendering them unable to claim even the most basic protections under Thai law.⁶⁰ Having no access to health care, education, "legitimate" employment opportunities or even police protections, many Burmese migrants in Thailand find themselves in situations of dire exploitation, prostitution being one such situation.⁶¹ This example illustrates the way prostitution may be viewed as being transnational in nature.

Two other examples that illustrate the transnational nature of prostitution may be seen in the sex tourism and mail order bride industries. Thai scholar Siriporn Skrobanek, in her essay *Human Trafficking: From Vertical to Horizontal Journey* which focuses on prostitution in Thailand, describes how the emergence of the Western tourism industry in Thailand during the post Vietnam War era of the 1980's sparked what is now a human trafficking epidemic.⁶² Skrobanek explains that when American troops initially withdrew from Vietnam, "sex tourism took over the existing sex-related infrastructure. Bangkok and Pattaya became sex havens of men all over the world."⁶³ Skrobanek explains that while Thailand criminalized prostitution in 1960, by the mid 1990's the discourse on prostitution began to change. In 1996 Thailand passed a law on the suppression and prevention of prostitution, designed to shift the focus to fining consumers and purveyors

⁵⁹ International Organisation of Migration (2005) *International Migration in Thailand*. www.iom.int. Retrieved May 29, 2008. p. 5

⁶⁰ D.E.P.D.C., "Home." Retrieved on November 1, 2009 from <http://depdc.org/index.htm>

⁶¹ *Ibid*

⁶² Skrobanek, Siriporn (2003) Human trafficking: from vertical to horizontal journey. *Voices of Thai Women*. Retrieved on October 25, 2009 from http://findarticles.com/p/articles/mi_7068/is_20/ai_n28149390/pg_4/?tag=content;col.p.1

⁶³ *Ibid*,

of prostitution rather than victims.⁶⁴ That the evolution in Thailand's thinking about prostitution occurred in tandem with processes of globalization provides important clues about prostitution being an issue that inhabits the transnational realm.

This shift in perceiving prostitutes as victims rather than criminals also emerged in tandem with a growing concern over the global problem of human trafficking. Skrobanek explains that in recent decades, the migration of Thai and Southeast Asian prostitutes to Europe and the West has increased. She points out, "In the early 1980's Thai women, on their own, moved to European countries to work in entertainment sector and/or to live with European sex tourists."⁶⁵ Because of this, she explains, the mail-order bride business now thrives as a lucrative, booming industry in tandem with trafficking and sex tourism. Skrobanek suggests that certain types of migration are, in fact, synonymous with trafficking, namely when the act of migration is forced or coerced.⁶⁶

While these examples illustrate the ways in which prostitution may be viewed as a transnational crime, international law does not explicitly regard it as such. In the context of sex tourism, for example, if it can not be proven that a prostitute can has been trafficked across sovereign state borders, then she/ he is not subject to protections under international law. Indeed, in Thailand prostitutes who are not explicitly "trafficked" may be subject to fines and face criminal persecution. If international law acknowledged prostitution as being a violation of human rights, and as being a transnational crime, it would follow that sex tourism in all its forms would be treated as an international crime. International law, however, remains inflexible on this issue, conceiving prostitution as being a problem rendered to the domestic arena. The realities of globalization make these existing treaties seem antiquated.

In the context of globalization theory, many additional political structures and institutions also fail to support the transnational processes that currently affect so many lives. An important essay by Andrew Kaupr further articulates this idea:

Globalization—particularly the massive growth in the extent, intensity, velocity, and scope of cross-border interactions (Held et al., 1999)—has

⁶⁴ *Ibid*

⁶⁵ *Ibid*, p. 2

⁶⁶ *Ibid*

not been met by a corresponding increase in our capacity to exercise political control over this enmeshed world. We have gaping holes where governance should be.... In the face of dramatic de facto changes in economic and political power, there has been a combined failure to reconstruct political theory and to transform our political institutions—to the dramatic extent commensurate with this new reality.⁶⁷

Kaupr articulates the danger in lagging behind the present conditions of globalization--conditions that warrant a shift in the way political institutions are viewed. To this I add that the private has become more political than ever before, in that activities previously rendered as belonging to domestic sphere are now directly connected to global processes. The implications on global governance and the ethical responsibility of the world community in addressing these issues are grave. Prostitution, viewed so ambiguously across cultures and over time, must no longer be rendered to such vast disparity in interpretation. As the above examples demonstrate, it is a global process that international law must now explicitly address.

The Case of D.E.P.D.C.

I will now briefly present a case in which these issues come together to illustrate why domestic-level prostitution is a concern in the international arena, and should not be merely relegated to the domestic criminal realm.

In 2009 I traveled to Mae Sai, a small city in Thailand adjacent to the Burmese border, to conduct research on the trafficking of women and girls into and within Thailand. I worked at an organization called the Development Organization for Daughters and Communities, an NGO dedicated to trafficking prevention among ethnic minorities in the Mekong Sub-Region. While at DEPDC, I learned that ethnic minorities in Thailand are often more vulnerable to the problem of trafficking than Thai nationals, as their citizenship status leaves them lacking many basic rights. According to the literature of DEPDC:

⁶⁷ Kupur, Andrew (2007) "Reconstructing Global Governance: Eight Innovations" in Held and McGrew Eds., *Globalization Theory: Approaches and Controversies*. Polity Press: Malden, MA. P. 225

Although women and children of Thai nationality are still being trafficked nowadays the majority of the victims are from the ethnic hill tribes who reside in Thailand without citizenship and from the aforementioned countries in the region. Many come to Thailand seeking jobs and new opportunities but are quickly trapped in a system of abuse with nowhere to turn given that they have no rights of citizenship.⁶⁸

As I have discussed in an earlier paper,⁶⁹ without citizenship rights, many families succumb to the forces of poverty and crime, each in turn becoming driving factors for child trafficking. D.E.P.D.C. is explicit in its mission to prevent child trafficking among the many ethnic minority communities in Thailand, Burma, Laos, the Yunnan province of China, Cambodia and Vietnam.⁷⁰ Among these groups are the Shan, Kachin, Karen, Tai-Yai, Hmong, Lahu and Akha peoples of the *Lanna* region of Thailand's north.

In addressing the concerns put forth by NGOs such as D.E.P.D.C., Thailand has adopted numerous initiatives to comply with the United Nations efforts to combat human trafficking. Among these are the *National Policy and Plan of Action for the Prevention and Eradication of the Commercial Sexual Exploitation of Children* (1996) to the 1997 amendment of the *Act on Prevention of Traffic in Women and Children* to include boys.⁷¹ Since 1992, when it ratified the *Convention on the Rights of the Child (CRC)* as well as with its adoption of the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, Thailand has demonstrated a willingness to implement policies that treat human trafficking as a crime.

Yet, as my paper illustrates,⁷² Thailand's reputation abroad is still that of a trafficking hub, and the Thai government has been sluggish to penalize traffickers. Thailand's public diplomacy initiatives remain underdeveloped, and its single campaign

⁶⁸ D.E.P.D.C., "Home." Retrieved on July 6, 2009 from <http://depdc.org/index.htm>

⁶⁹ Kamler, Erin (2009). *National Identity, the Shan and Child Trafficking in Northern Thailand: The Case of D.E.P.D.C.* Working Paper Presented at Chulalongkorn University's International Conference on Shan Studies, Bangkok, Thailand, October 15-18, 2009

⁷⁰ D.E.P.D.C., "About Us." Retrieved on July 6, 2009 from http://depdc.org/eng/aboutus/target_group.html

⁷¹ *Combating Trafficking in South-East Asia: A Review of Policy and Programme Responses*. The International Organization for Migration, prepared by Annuska Derks. p. 33

⁷² Kamler, Erin (2009). *National Identity, the Shan and Child Trafficking in Northern Thailand: The Case of D.E.P.D.C.* Working Paper Presented at Chulalongkorn University, first presented at the International Conference on Shan Studies, Bangkok, Thailand, October 15-18, 2009

to “re-brand” Thailand’s image in order to steer public attention away from viewing the country as a sex-tourism hub has been a failure.⁷³ In contrast to its neighbor Cambodia, for example, a country that has taken significant steps in its public diplomacy efforts to combat child trafficking,⁷⁴ such awareness campaigns in Thailand are rarely effectively geared toward the general public. Despite a 1998 report, in which the International Labor Organization estimated that 100,000-200,000 Thai women and girls worked in the commercial sex industry overseas,⁷⁵ Thailand’s measures to combat its image as a destination for sex tourism have been few and far between.

Additionally, while the Convention is designed to protect Thai citizens from trafficking abuses, the Government of the Kingdom of Thailand has maintained two reservations on this initiative: Article 7, regarding birth registration and Article 22, regarding children seeking refugee status in Thailand.⁷⁶ These reservations reveal that while the government is taking a policy stance against the trafficking of Thai citizens, it is unwilling to extend these efforts towards refugees and stateless ethnic minorities living within Thailand’s borders. Thailand’s efforts to protect or even recognize the rights of ethnic minority women and girls—the populations, according to D.E.P.D.C., that are most vulnerable to trafficking and other exploitative labor situations⁷⁷—are barely existent.

Thailand’s Lenient Stance

⁷³ Nuttavuthisit, Kritinee. (October 30, 2006). Branding Thailand: Correcting the negative image of sex tourism. *Place Branding and Public Diplomacy*. (2007) Page 23. Palgrave MacMillan Ltd. Vol 3, 1, 21-30. Retrieved on September 1, 2008 from www.palgrave-journals.com/pb

⁷⁴ The comparison between Thailand and Cambodia is based on my first-hand observation of a specific high-profile ad-campaign initiated in Phnom Penh. When visiting Cambodia’s capital in July of 2009, I observed several large advertisements plastering the backs of tuk-tuk’s throughout the city, reading, “CAMBODIA WELCOMES RESPONSIBLE TOURISTS. HELP PROTECT OUR CHILDREN.” To date, I have not witnessed any such media campaign in Thailand.

⁷⁵ Limm (1998) Cited in Rende Taylor, Lisa. (2008) “Dangerous Trade-offs: The Behavioral Ecology of Child Labor and Prostitution in Rural Northern Thailand.” *Current Anthropology*, Volume 46, No. 3, June, 2005. The Wenner-Gem Foundation for Anthropological Research. p. 411

⁷⁶ ECPAT International. (2006) *Global Monitoring Report on the Status of Action Against Commercial Sexual Exploitation of Children: Thailand*. p. 21

⁷⁷ D.E.P.D.C., “Home.” Retrieved on July 6, 2009 from <http://depdc.org/index.htm>

Several factors explain why the Thai Government has been largely dismissive of the trafficking and prostitution that takes place within and beyond its national borders. Among these are examples pointing to the globalized, transnational nature of the crimes in question. In this section I will illustrate how Thailand's lenient attitude toward trafficking and prostitution are connected to the nation's role as a transnational actor.

The first among these factors is sex tourism. Sex tourism in Thailand is, perhaps, the largest issue that exacerbates the spread of prostitution among young girls in Thailand. Western sex tourism continues to function as a booming industry in Thailand, with the number of prostitutes serving foreign male clients recently estimated at between 800,000 to 2 million.⁷⁸ According to a recent article by a Pulitzer Crisis Center reporter in Bangkok, "North Americans comprise 25% of sex tourists in the world and are directly complicit in economically supporting this industry — an industry that often involves prepubescent girls — so this story is largely about our own responsibility."⁷⁹

In addition to directly purchasing sex with prostitutes, sex tourists from western countries support a plethora of activities related to sexual perversion, which are highly dangerous to the Thai, Burmese, ethnic minority and migrant women involved. One article describes the grave realities of sex tourism:

One older woman with a scar across her belly from a c-section confides after her performance at a Ping Pong Show, "I don't like being here, I feel dirty." She adds, "I left my village when my factory closed." Nobody knows when, exactly, Ping Pong Shows began, but they're increasingly raunchy and dangerous as tourists' threshold for shock increases. One Bangkok organization, EMPOWER, even instructed women in bar prostitution how to insert and pull out razor blades from their vaginas, according to Melissa Farley, Executive Director of Prostitution Research & Education." This is understood to be a job requirement in the bar-show setting where tricks are sexually excited by the possibility of the genital mutilation of Thai women.⁸⁰

In Thailand, the activities described above are common practice. In the late 1990's, Thailand's reputation as a destination for sex tourism increased. Due to the 1997 Asian

⁷⁸ Guzder, Deena (August 14, 2009). Thailand: The World's Sex Tourism Capital. The Pulitzer Center on Crisis Reporting. Retrieved on October 31, 2009 from http://pulitzercenter.typepad.com/untold_stories/2009/08/thailand-flesh-market.html

⁷⁹ *Ibid*

⁸⁰ *Ibid*

economic crisis, many women from the rural northeast and other economically deprived regions of the country flocked to Bangkok to find work as unskilled laborers, many turning to prostitution. The trafficking of children for sexual exploitation also increased. By this time Thai officials were well aware that “policies to encourage the growth of tourism, promote migration for employment, promote exports of female labor for earning foreign exchange... contributed indirectly to the growth of prostitution.”⁸¹ During this time, it was widely thought that police corruption played a large part in the issue. With western television shows promoting its beaches as easy places to purchase sex, and bar girls crowding Bangkok’s tourist-district streets, Thailand’s image as a destination for sex tourism was on the rise.

In 2003 the Thai government attempted to launch a public diplomacy “re-branding” initiative, focusing tourists attention on positive associates such as such as “exotic,” “friendly,” “fun,” and “cuisine,” and away from negative words such as “sex/prostitute,” “cheap” and “poor.”⁸² The Thai government recognized the need to correct its negative image abroad by addressing the problem of prostitution and trafficking in its nation-branding strategy. Despite efforts to re-brand its national image and implement policy changes, however, as of 2006 “no public officials or law enforcement officials were arrested for being complicit in trafficking,”⁸³ and the Thai government had failed at substantially documenting and tracking the victims of sex trafficking.⁸⁴ While Thailand has made attempts to correct its negative image, the fact remains that prostitution is embedded in the tourist-based economy that makes Thailand thrive.

Another factor that plays into Thailand’s participation in the global trafficking and prostitution problem involves Thailand’s national identity vis-a-vis ethnic differentiation. Thailand, in order to maintain its national identity and thus its differential

⁸¹ Sex as a Sector: Economic incentives and hardships fuel growth. (September/ October 1998). *International Labor Organization*. Retrieved on October 24, 2008 from <http://www.ilo.org/public/english/bureau/inf/magazine/26/sex.htm>

⁸² Nuttavuthisit, Kritinee. (October 30, 2006). Branding Thailand: Correcting the negative image of sex tourism. *Place Branding and Public Diplomacy*. (2007) Page 23. Palgrave MacMillan Ltd. Vol 3, 1, 21-30. Retrieved on September 1, 2008 from www.palgrave-journals.com/pb

⁸³ *Humantrafficking.org*. Thailand- The Situation. Retrieved on October 25, 2008 from <http://www.humantrafficking.org/countries/thailand>

⁸⁴ *Ibid*

status within the region and within the world, uses ethnic differentiation to cement its national identity.⁸⁵ Bangkok elites go to great lengths to set themselves apart from the many “hilltribe” ethnic groups living along Thailand’s northern borders. Cementing this ethnic differentiation, and thus creating a (fictionalized, yet conceptually very real) national identity can be seen as an issue relating to culture, globalization and identity. Castells has introduced a framework for the relationship between globalization and culture, suggesting that at the advent of the twenty-first century, cultures began to trend toward a kind of contraction, a rigid self-definition, in the face of globalization’s ever-widening pull.⁸⁶ The instinct for cultures to become increasingly nationalistic, Castells suggests, is in fact a reaction against the threats of globalization that they perceive are occurring.⁸⁷ Thailand’s national identity project relates directly to such a perceived threat. In order to uphold its notion of identity, Thailand has become increasingly permissive of the crimes of sex trafficking and prostitution that occur so widely within its borders. This curious case, in which transnational crime actually *supports* the establishment of national identity, has dangerous implications on the relationship between nationalism and globalization—implications that should not be overlooked in the international human rights law discourse. Additionally, the circumstances occurring within Thailand support Sassen’s assertion that global processes have local effects, and are playing out in new ways that existing international institutions must address.⁸⁸

Closely connected to this idea of upholding national identity, is Thailand’s desire to maintain regional economic hegemony. This national goal also relates to the prevalence of prostitution in Thailand, in that Thailand’s participation in the global criminal economy helps uphold its status as a regional economic hegemon. It can be argued that Bangkok’s identity as a sex trafficking hub draws money and resources into Thailand much in the way that other counties attract real estate or manufacturing

⁸⁵ Kamler, Erin (2009). *National Identity, the Shan and Child Trafficking in Northern Thailand: The Case of D.E.P.D.C.* Working Paper Presented at Chulalongkorn University, first presented at the International Conference on Shan Studies, Bangkok, Thailand, October 15-18, 2009

⁸⁶ Castells, Manuel. *The Power of Identity*. Blackwell Publishing: Oxford. (2004)

p. 69

⁸⁷ *Ibid*

⁸⁸ Sassen, Saskia (2007). “The Places and Spaces of the Global: An Expanded Analytic Terrain” in Held and McGrew Eds., *Globalization Theory: Approaches and Controversies* Polity Press: Malden, MA. P. 79

investment. Indeed, is China is known for cheap manufacturing of goods, Thailand's cheap labor is the services of sex. This reality presents another example of how prostitution is, in fact, a transnational issue.

Does the West Have Responsibility?

International law is lagging sorely behind the realities of globalization. Problems such as prostitution, which pervade the global arena while situating themselves within local realms, are conceptualized and handled in antiquated ways. How should the west respond to these issues? Thomas Pogge's thought-provoking essay articulates the difficulty in reconciling western attitudes toward the global poor and issues of inequality:

World poverty appears as one overwhelming—Herculean or rather Sisyphean—task to which we, as individuals, cannot meaningfully contribute. One makes a disaster relief contribution after a tsunami and finds that, two years later, the damaged areas have been largely rebuilt, with our help. One makes a contribution to poverty relief and finds that, two years later, the number of people living and dying in extreme poverty is still unimaginably large. The former contribution seems meaningful because we think of the task as limited to one disaster—rather than including the effects of all natural disasters, say. The latter contribution appears pointless. But such appearances arise from our conventional sorting categories. Seeing the global poor as one vast homogenous mass, we overlook that saving ten children from a painful death by hunger does make a real difference, all the difference for these children and their families, and that this difference is quite significant even when many other children remain desperately hungry.⁸⁹

Here, Pogge suggests that western neglect of these issues can not be justified under the current conditions of globalization. Concurring with Pogge's assertion, I argue that globalization processes warrant global responsibility. Transnational processes have now come to the people, and are affecting local economies and cultures worldwide. As consumers of the sex trade, in the forms of both human trafficking and prostitution, western nations, organizations, institutions and individuals have an obligation to provide

⁸⁹ Pogge, Thomas (2007). "Reframing Economic Security and Justice" in Held and McGrew Eds., *Globalization Theory: Approaches and Controversies* Polity Press: Malten, MA. pp. 210-211

safety measures for women and children whose sex the west is all too willing to consume. In order to advance the discussion about western responsibility, however, the international legal discourse must also advance. The first step in this direction involves international law's explicit recognition of prostitution as a violation of universal human rights. Thereafter, treaties must address prostitution as being its own issue, and work to decriminalize the act of prostitution in states worldwide. From there, international law must advance its reach into the domestic arena, overseeing the criminalization of both traffickers and consumers of commercial sex. Implementing these policies will be a crucial step in the paradigm shift that is required by the current conditions of globalization. Treaties must re-imagine the international as also encompassing the local. In so doing, we may begin to advance the discourse on international human rights law at this crucial, albeit fragile moment in our history.

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