

*Terrorism must be fought
with total determination.
But asylum is and must
remain a central tenet
of democracy.*

- **António Guterres**
3 October 2005



António Guterres became the 10th UN High Commissioner for Refugees on 15 June (photo by Migration Policy Institute). He heads an agency with more than 6,000 staff in over 115 countries, serving 17 million refugees and displaced persons with a budget of over \$1 billion.

In a career of more than 25 years of public service, Mr. Guterres served as Prime Minister of Portugal from 1996 to 2002. As Prime Minister, he led the drive for international intervention to halt the violence in East Timor following the Timorese vote for independence, and co-chaired the first EU-Africa summit. He founded the Portuguese Refugee Council in 1991.

On 1 August, during his first visit to Washington in his capacity as High Commissioner, after less than three weeks in office, he was interviewed by MPI Director Kathleen Newland and Migration Information Source Editor Kirin Kalia.

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Interview with António Guterres, UN High Commissioner for Refugees

Kathleen Newland & Kirin Kalia

You have an extraordinary curriculum vitae, with more than 25 years of public service behind you, including six years as Prime Minister of Portugal — but others with more direct refugee experience were on the short list of candidates for High Commissioner for Refugees. What skills and qualities that you developed as a politician and prime minister put you in a position to do this job?

I have a lot of respect for all personalities who were on the short list prepared by the Secretary General. Any one of them could do the job as well as I can. I consider myself privileged. I have a wonderful family and education. I was engaged in politics at a revolutionary time, and then as democracy flourished in Portugal.

I have been very active in international political activity and always had a very strong interest in refugee problems. As a member of the Parliamentary Assembly of the Council of Europe, I chaired the relevant Committee [on Demography, Migrations and Refugees]. I was also much involved with NGOs in Portugal.

You founded the Portuguese Refugee Council in 1991 — what led to that?

Our priorities were fighting social exclusion of refugees and creating conditions for equal opportunity. The situation in Portugal made me particularly interested in migration and asylum seekers, and my responsibilities in the Portuguese Council of State included immigrant integration. Portugal has a long tradition of emigration, but it was not really prepared to absorb new communities. A lot had to be done, such as adopting legislation that was asylum-friendly. It was important to involve civil society in that effort.

Protection of refugees remains to many people a legal abstraction. How do you make it concrete?

Protection means the opportunity to fully enjoy your rights. Some of those are legal rights, like those associated with citizenship; others have to do with material conditions like shelter, food, and the education of children — which are the minimum requirements of a welfare society.

Protection needs to encompass a comprehensive approach, ensuring that refugees can exercise the full spectrum of their rights. We need to see providing material assistance as an instrument, not a value in itself. From UNHCR's perspective, that is the kind of assistance we are supposed to deliver.

On your fourth day as High Commissioner, you went to Uganda and visited a refugee camp. You spent the night of World Refugee Day in a tent, among UNHCR staff. Direct exposure to a refugee situation can be a searing experience. Can you tell us something about your first exposure, or the one that made the strongest impression on you?

Of course, I had very often seen refugee situations before the recent trip to Uganda. I suppose the one that made the greatest impression on me was visiting Somalia during

the worst of the crisis in the early 1990s. It was really terrible to go to Mogadishu and see the destruction. The conditions in the refugee and IDP camps were appalling, and people were suffering terribly.

How did you come to decide that you wanted to spend the next chapter of your life working on refugee issues?

Quite central for me is the Biblical “parable of the talents”. Having been given great opportunities and privileges, I am obliged to make sure I use them in the best way so others can benefit from them. After a career in politics, I thought, “What would make sense, what would be a good way to use my energies?” I wanted to use them to the benefit of those who face the most dramatic challenge in today’s world, and you cannot find people in more need than refugees.

One of the first things that you are bound to face at UNHCR is the difficult question of how to deliver services and protection to internally displaced persons (IDPs). For more than 20 years, a rather circular discussion has been going on about how to organize an adequate response. How do you anticipate that you will approach this issue?

I think we need to confront the needs of IDPs directly, and not only in a way that is concurrent with UNHCR’s mandate for refugees. There are clearly gaps in the international community’s abilities and mandates to provide protection and support for IDPs. I don’t believe we at UNHCR can stay away from the problem. But we don’t have the capacity to solve it alone.

We need to be engaged in good faith with other UN agencies, with donors, and with NGOs in order for our office to be able to play a global role with IDPs. We need to agree on a clear division of labor among agencies. It is important to follow a consistent approach through these very difficult situations. It must be consistent with a vision for protecting not just refugees but persons displaced in their own countries.

The spontaneous arrival of asylum seekers is a politically charged issue in a great many countries today. Some of those governments that have mounted the greatest challenges to the idea of territorial asylum are UNHCR’s major donors. You have a great deal of experience in European politics, as Prime Minister and as a member of the European Council. Do you expect challenges to asylum to be a continuing theme of your tenure?

Unfortunately, yes. There is a huge misperception in public opinion about asylum, on two levels. At one level, there is confusion about the relationship between asylum and security questions. At another level, people do not distinguish between refugees and voluntary migrants.

It is my deep belief that mixing asylum and refugees into the security debate is a big mistake. States are concerned with fighting terrorism and ensuring security. That can and should be entirely compatible with fair procedures for asylum. If you are a terrorist, the worst way to enter a country is through the asylum door — you will be registered, fingerprinted, photographed, and connected to public service agencies. I do believe it’s important to face the populist approach that makes asylum seekers out to be some kind of threat; important to cooperate with NGOs and other leaders to clarify the situation of people who are in need of refuge. I think we can deliver a strong, unambiguous message about the asylum-security nexus.

The asylum-migration nexus is a more difficult set of perceptions to address. People leave their home countries for two kinds of reasons. One, they leave in search of better

Internally displaced people are said to number 20 to 25 million, more than double the nine million refugees who are recognized as such, having crossed a border, and their plight — as in Darfur — often is just as bad, acknowledges Mr Guterres. “This is undoubtedly the international community’s biggest failure in terms of humanitarian action,” he told Reuters in September. His agencies deal with some IDP situations on an ad hoc basis, in the absence of a convention specifying obligations, although a clearer policy is being developed, partly because of changing international attitudes toward sovereignty and the essential governmental responsibility to protect.

A dangerous hypocritical discourse has emerged that encourages the labour of migrant workers, while denying their humanity.

- Amnesty International

conditions; two, they leave because they are persecuted, threatened, or because of war. One is voluntary and one is involuntary. One group must have permission to enter another country legally, while the other has a right to seek asylum. The public needs to understand the difference.

I recognize that in many countries, there is a close connection between asylum and other kinds of migration, with both voluntary and involuntary migrants moving through the same channels and often even in the same vessels. It is difficult to clarify the different obligations states have to migrants and refugees.

Governments need to work honestly with NGOs and civil society to make the public understand that we must take care of protection needs even when we adopt a border-control policy designed to limit unauthorized migrant flows. UNHCR is there to help governments fulfill their obligations to protect refugees and to help the authorities distinguish between refugees and migrants who are not in need of international protection.

With good will and a humane perspective, we can preserve the institution of asylum in modern times.

Democratic governments respond to public opinion, and public opinion is often seen as opposed to migrants and refugees. What role does public education play in UNHCR's work?

I believe we have a lot of improvements to make in that role. Technology has changed things dramatically. But we are still old-fashioned at UNHCR. We need a bigger capacity to interact with public opinion — directly and through the media — elected representatives, and NGOs.

Governments should not simply react to public opinion. They need to provide leadership and promote values in an active way. The debate about asylum is a debate about the values of a society. Asylum is a way of helping people in need and protecting those who are unjustly persecuted.

I would go further and say that asylum is one of the fundamental institutions of democracy, because it helps to preserve people's freedom of religion, thought, and association. So if we want to protect the values of democracy, we must defend the right to seek asylum.

How do you convince the media to pay more attention to asylum and refugee issues?

In my political experience, what really is news is not when a dog bites a person, but when a person bites a dog. The media look for what is sensational, and may overlook the rest.

Take the situation of Sudanese refugees in Northwest Uganda, for example. They are not in camps, they are in settlements. They farm land, their children have access to schools, they have medical support. This is not news. But we must keep telling the story of refugees even when it is not sensational.

Our duty is to go on insisting, to be patient, and, in the end, the values we fight for will be realized by the people even if they are not as attractive to the media as a scandal.

There is a politically populist wave that tends to mix everything — asylum, migration, security and terrorism — and that is very detrimental to the issue of asylum. [And beneath that issue is a question about the standards of tolerance needed to maintain cohesion in multi-ethnic and multi-cultural societies (Reuters interview with António Guterres, 27 September).] Either we have a tolerant atmosphere or we will have a nightmare in the future.

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Her writings on issues of migration and asylum in Europe and the United States include a coauthored book, *Women's Movement: Women Under Immigration, Nationality and Refugee Law* (1994), an edited volume, *Asylum Law And Practice in Europe and North America* (1992), and many articles, including "Get Back to Where You Once Belonged: Identity, Citizenship and Exclusion in Europe" (1998), "Internationalist Gatekeepers? The tension between asylum advocacy and human rights" (2002), and "The Citizenship Deficit: On Being a Citizen Child" (2003). She is working on issues of child migration, smuggling and trafficking, adoption, and citizenship — aiming "to expand the scope of international refugee law to encompass the persecution of children" (*Harvard Magazine*, May-June 2005).

Jacqueline Bhabha also is a legal consultant to an ongoing project by the International Council on Human Rights Policy, "Migration, Human Smuggling and Human Rights" (FMI: www.ichrp.org).

Trafficking, Smuggling, and Human Rights

Jacqueline Bhabha

In recent years, the smuggling of human beings across international borders has grown rapidly. A small-scale cross border activity affecting a handful of countries has become a multimillion-dollar activity that is global in scope.

Information about human smuggling — the numbers of people smuggled, the conditions that they endure in transit and their treatment on arrival — is patchy at best. It is currently estimated that some 800,000 people are smuggled across borders every year.

These figures mask the complex and various experiences of the men, women, and children caught up in such processes. Those who are smuggled include political refugees, those fleeing conflict and violence of various kinds, and economic migrants in search of a better life.

This is by nature a secretive, illicit activity, and one that is increasingly controlled by transnational organized crime syndicates. What little we do hear, however, gives ample cause for human rights concerns — numerous press articles describe cases of migrants drowning in unsafe vessels or suffocating to death in overcrowded truck compartments and ships, or being victimized for revealing information about smuggling gangs.

Many of those who do reach their destination find themselves locked in cycles of violence, exploitation, and abuse. These violations tend to go unreported because the victims fear arrest and deportation on one hand, and retribution by smuggling gangs on the other.

The spread of human smuggling needs to be understood in the context of globalization and migration. Since 1965, the number of international migrants has doubled to some 175 million persons at the turn of the millennium. Prospects of a better life abroad, poverty, economic marginalization, political and social unrest, and conflict are all incentives to move.

In an increasingly interconnected world, movement is easier. As push and pull factors encourage increasing numbers of people to migrate, these individuals in turn collide with the many legal obstacles to entry that industrialized countries have put in place.

However, opportunities to immigrate legally are severely limited. Migrants, including asylum seekers, have increasingly resorted to illegal entry and unauthorized stays, and ever-larger numbers use the services of smugglers to evade the system, compounding their vulnerability to exploitation and ill treatment.

Human Rights and the Definitions of Smuggling and Trafficking

Despite the plethora of human rights concerns associated with human smuggling, it is in fact the law enforcement imperative — the war against terrorism, narcotics, and irregular migration — that have moved this issue up the international policy agenda.

In 2000, states drafted two new protocols to the UN Convention on Transnational Organized Crime (UN TOC) dealing with trafficking and smuggling respectively. The Trafficking and Smuggling Protocols, more commonly known as the Palermo Protocols, came into force on December 23, 2003 and January 28, 2004 respectively.

The Palermo Protocols are framed around a central dichotomy between coerced and consensual irregular migrants. Whereas people who are trafficked are assumed not to have given their consent and are considered to be “victims or “survivors,” people who are smuggled are considered to have willingly engaged in a criminal enterprise.

There is also a gender dimension to these distinctions: whereas those who are smuggled are mostly assumed to be men, victims of trafficking are associated with the traditional targets of protective concern — women and children.

Trafficking

The UN TOC Convention brought to a close decades of frustrating and inward-looking debate about the distinction between human trafficking and human smuggling. Trafficking is defined as:

...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

...The consent of a victim of trafficking in persons to the intended exploitation... shall be irrelevant where any of the means set forth (above) have been used. The recruitment, transportation, transfers... 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 (above).

This definition of coercion is expansive, reflecting perhaps the concerted input and interest of the human rights and feminist lobbies in the drafting of this protocol (an interest that was less evident in the Smuggling Protocol).

Coercion is not simply brute physical force, or even mental domination, but includes “the abuse of a position of vulnerability.” This can potentially encompass a very broad range of situations, since poverty, hunger, illness, lack of education, and displacement could all constitute a position of vulnerability. Whether a particular arrangement constitutes “abuse” may be as much a question of assessing the market or “going” rate for pricing a particular migration service as of characterizing a personal interaction.

Second, the trafficking definition requires exploitation, but exploitation itself is undefined. However, the trafficking definition does include exploitative actions, such as prostitution of others, as well as a range of non-sexual labor relationships that are “practices similar to slavery” such as indentured or bonded labor, child labor, or oppressive forms of labor. It is agnostic on whether prostitution itself constitutes exploitation, reflecting the deeply polarized views within UN Member States on the topic.

In sum, the protocol’s critical ingredients for trafficking in persons are the presence of exploitation and the fact of coercion. Cross-border transport of the trafficked person is not required, provided the offense is “transnational in nature” as defined in the UN TOC (Article 4).

Smuggling

In contrast, the term “smuggling”, following general practice, refers to consensual transactions where the transporter and the transportee agree to circumvent immigration control for mutually advantageous reasons. The Smuggling Protocol defines “smuggling of migrants” as:

“the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” (Article 3).

The two critical ingredients of this definition are illegal border crossing by the smuggled person and receipt of a material benefit by the smuggler.

Comparing the Protocols

The protocols share several key features. Both require state parties to criminalize the relevant conduct of traffickers or smugglers, to establish and implement domestic law enforcement mechanisms, and to cooperate with other states to strengthen international prevention and punishment of these activities. Both stipulate that the migrants themselves should not be subject to criminal prosecution because of their illegal entry.

An interesting innovation is that both protocols require states parties to concretely address the root causes of vulnerability to trafficking and smuggling (see for example (Article 9(4) of the Trafficking Protocol and Article 15(3) of the Smuggling Protocol).

Finally, neither protocol explicitly requires states to implement any particular immigration benefits for victims, to regularize or expand lawful access to their territory, or to address the chronic mismatch between supply and demand by increasing supply.

However, the two protocols do differ in several key respects, particularly in the protections they afford migrants. The Trafficking Protocol addresses the need for protection of trafficked persons in some detail and provides for a broad range of protective measures.

Though the requirements are couched in optional rather than mandatory language — “each state shall consider implementing... in appropriate cases...” and “...shall endeavor to provide” — they establish a useful framework for intervention to enhance human rights protections for trafficked persons.

Article 6(3) in particular requires states to consider “implementing measures to provide for the physical, psychological, and social recovery of victims of trafficking in persons.” This includes cooperation with NGOs; provision of housing, counselling, medical, psychological, and material assistance; and employment and training opportunities.

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It even requires states to consider adopting legislation to enable trafficking victims to remain in their country “temporarily, or permanently, in appropriate cases” according to Article 7. If domestically enacted, adequately funded and energetically enforced, these measures would constitute significant benefits for trafficked persons.

The Smuggling Protocol, by contrast, contains rather minimal reference to the protection needs of smuggled persons. The preamble to the protocol does set out “the need to provide migrants with humane treatment and full protection of their rights,” and expresses concern that “the smuggling of migrants can endanger the lives or security of the migrants involved.”

This, combined with the prohibition on criminalization of migrants, articulates an important and useful international commitment to a basic level of protection. This is significant given the pervasive use of de facto punitive measures against smuggled migrants.

The Smuggling Protocol also requires states to “ensure the safety and humane treatment of the persons on board” vessels that are searched (Article 9); and to implement their preexisting, absolute obligations under international law, to protect the right to life and the right not to be subjected to torture or to cruel, inhuman, or degrading treatment or punishment (Article 16(1)).

States parties are also required to embark on a range of prevention measures (Article 15), including strengthening domestic information programs to increase public awareness of the dangers facing smuggled migrants and collaborating with other states to prevent migrant recruitment by criminal gangs.

But there are no provisions regarding medical, psychological, or social recovery, which include help with housing, employment, and job training. States also are not obligated to collaborate with NGOs, or to provide temporary legal residency as in the Trafficking Protocol. Nor are the inclusive rights to non-discriminatory treatment derived from relevant international law included in the convention.

Moreover, even the requirement to afford at-risk smuggled migrants protection is very heavily qualified: states should “take appropriate measures to afford migrants appropriate protection” against violence from smugglers and where their lives are endangered. But “appropriate” to whom and what? This clause undercuts the more robust protections afforded by the recently ratified 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

At the same time, the protocol explicitly endorses the possibility that states can detain smuggled migrants provided they are afforded the requisite consular access, and it requires states to remove smuggled migrants back to their home countries expeditiously.

Thus, in terms of protections, migrants are better off being classified as trafficked than smuggled; however, the distinction in practice may obscure more than it illuminates.

The Consent/Coercion Seesaw

First of all, the distinction between trafficking and smuggling is difficult to implement in practice. Rarely are there “pure” cases of one or the other. Children kidnapped without their parents’ consent and migrant workers lied to from the outset are at one end of the spectrum, while the opposite end includes completely transparent cross border transportation agreements where a fee is mutually agreed on and the relationship between transporter and transported ends once the border is crossed.

The vast variety of migration strategies and circumstances defies easy categorization. At the point of departure and at multiple stages of the journey, it may well be unclear which category of irregular migration is at issue — trafficking or smuggling.

And the most accurate classification may change over time. The available evidence suggests that most transported undocumented migrants consent in some way to an initial proposition to travel, but that, en route or on arrival in the destination country, circumstances frequently change.

At what point should the decision about how to characterize the conduct be made? States tend to favor the point of departure as an indication of the migrant's "true intentions". Rights advocates favor the time of arrival or stay as an indication of the migrant's needs. Yet, the state's perspective usually wins because it is very difficult for someone who was a sex worker prior to departure to ever claim successfully that she was trafficked, even when subjected to severe human rights violations.

Second, the distinction depends on a flawed conception of human agency. It presupposes a hard and fast divide between two motivational states — consent and coercion. At first sight this is plausible. States and rights advocates want to distinguish agreements people enter into voluntarily from those they enter into as a result of coercion, because the latter are not real agreements and should not bind the coerced person.

But the distinction between coercion and consent is complex. How should coercion be characterized? Does someone with a gun to their head consent to hand over their money when robbed? Most would say no. But does someone who sells his kidneys because his children are starving consent?

Translated into the migration context, do persecution, destitution, and heartache from prolonged family separation constitute "guns" to the head? Are refugees "choosing" to avail themselves of the services of travel professionals to get false travel documents, cross unguarded borders, or create fictive identities — or are they "coerced"?

The trafficking protocol defines coercion to include not only force (e.g., kidnapping) but also "the abuse of power or of a position of vulnerability." The latter, however, is not defined, and it remains to be seen whether states and courts will interpret it as including extreme poverty. If they do, many cases currently considered instances of human smuggling will be brought under the Trafficking Protocol. If they do not, then the political point of expanding the concept of coercion beyond mere physical force, fraud, or deceit could be lost.

A further complication arises in deciding how to characterize situations of "mutually advantageous exploitation," a very common circumstance for smuggled migrants. The transporter benefits from his or her profit, the transportee benefits from gaining access to an employment opportunity, even if the smuggling fee is exploitative.

Yet, many of the employment opportunities that smuggled migrants are keen to access constitute "forced labor" in international law terms—paradoxically, they are forced but chosen opportunities. Are these workers smuggled because they surely consent, or are they trafficked because the exploitative offer is actually a threat? Not accepting means they lose the opportunity to find work.

There is no question that smugglers take advantage of migrants' desperation or vulnerability. But are all exploitative offers coercive and is coercion always exploitative? The answer is no: hawkers selling tickets to the Olympics may charge exploitative prices, but they are certainly not coercive; conversely, a parent forcing a child to travel abroad to practice a foreign language before an exam is coercive but not exploitative.

Therefore, just because the smuggler's offer is exploitative does not necessarily mean the migrant is coerced. For that to be the case, states need an independent yardstick. If the migrant has no other acceptable options, then the exploitative offer becomes coercive. For instance, if the migrant would starve, or be unable to get medicine for a child unless he or she took up the offer, then the offer would be coercive.

In these situations, the fact that the migrant consents to be smuggled (because the deal is mutually advantageous) does not alter the fact that it is coercive. The critical issue is

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to determine which alternatives are considered acceptable and which are not.

The question of acceptable alternatives comes back to international norms, and to what philosopher Alan Wertheimer calls the “moral baseline.” In assessing what counts as coercive and what counts as consensual, states are forced to engage in moral decisions about what types of conduct are acceptable or permissible in a society and what are not. Slavery and slavery-like work are clearly not acceptable. But what about destitution — lack of access to essential food, medicine, and shelter?

This discussion applies to the distinction between smuggling and trafficking. If the person consents to be transported knowing what the working conditions abroad will be like, then, according to UN TOC, the person is smuggled — unless the con-

sent was obtained by force, by undue influence, or “abuse of a position of vulnerability” because the person had no morally acceptable alternatives.

But by this standard, many people who are now considered “smuggled” should fall within the category of trafficking victim, even though they have formally consented to travel and/or to engage in exploitative work in the destination state.

Conclusion

From a human rights perspective, migration is an inherently risky activity. Despite the potential rewards and benefits, switching the familiar for the new, and the status of a national for that of a non-national or alien in a world in which the state is still the prime guarantor of rights entails material, social, and psychological challenges.

These risks are heightened when combined with an irregular status. The UN TOC and its two protocols on trafficking and smuggling mark an important step forward in the battle against some of the most exploitative and dangerous situations that migrants can encounter. Although motivated primarily by law enforcement concerns, the protocols contain important protective measures, which, if implemented fully, could significantly advance the human rights of migrants.

However, it is critical that these new provisions be read against the corpus of existing human rights law and labor standards that already exist to protect the rights of migrants and that policymakers strike an appropriate balance between the security interests of states and the human security entitlements of migrants.

Pouring New Wine into Old Bottles: Understanding the Dilemmas of Contemporary Trafficking Work

Alice Miller

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This short essay explores the dilemmas faced by anti-trafficking activists working to bring human rights to bear. Although the essence of ‘trafficking’ is most often framed as about gender, sexual harm, and prosecution of ‘traffickers’, effective rights interventions in ‘trafficking’ must be situated in a deeper understanding of the modern reality of globalization. While I am not arguing that understanding gender or sexual harm are irrelevant in anti-trafficking work, hyper-attention to stories of sex slaves weakens our interventions. It is critical to understand the histories of the frameworks (like ‘trafficking’) in which we work. Failing that, we become inadvertent pawns, allowing governments to take up the rhetoric of rights without a real shift in power. Anti-trafficking work is on the edge of this form of complicity.

To understand how we have come to this dangerous edge, reverse the proverb about the trick of pouring old wine into new bottles. Trying to use contemporary human rights strategies within the framework of ‘trafficking’ finds us pouring new wine into old bottles: residues of the law and ideology of the late 19th and early 20th century campaigns against ‘white slavery’ linger in the ‘old bottle’ of the trafficking framework. Despite our demand that “more rights, not fewer rights” must be the basis of state responses to trafficking, the anti-trafficking framework has served at times to justify limiting rights.

Signs of danger?

A recent warning of co-option flashed globally when the President of the US linked his moral crusade against trafficking (all trafficking rendered as 'sexual slavery') to the war against terrorism in a UN General Assembly speech in September 2003. However, there were earlier warning signals: in 1995, the Philippines temporarily suspended visas for domestic workers going to Singapore in response to allegations of abuse, in 1998, Nepal denied visas to women for their protection. Although some activists struggled to keep a rights-focus in the US Victims of Trafficking and Violence Protection Act of 2000, the law only provides full remedies for trafficked persons willing to cooperate with prosecution. In what other human rights abuse is a remedy *conditional*? Jyoti Sangera, advisor on trafficking in the OHCHR, has been alarmed at evidence that anti-trafficking activists have become complicitous in regulating borders, such as interdicting young women on the India/Nepal border.

Contemporary rhetoric on trafficking harnessed the language of rights and horrendous harm – indeed, often slavery (or when focused on sex trafficking, of sexual slavery) to move *some* persons out of the category of despised illegal migrant and into the category of deserving victim. This move is connected to the astounding recent growth of international criminal law. In 2000, the UN adopted a new constellation of trans-national criminal law treaties, including one specific to trafficking, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. While effective and fair prosecution for servitude and violence, whether in providing sex, picking tomatoes or harvesting shrimp, is a key component of rights work, it is notable that other aspects of rights work have languished. The 1990 International Convention on the Rights of All Migrant Workers and Members of their Families took over ten years to come into force, and so far only primarily sending countries have ratified it. At the 2001 World Conference against Racism, receiving states of the North and South

fought against recognizing rights for irregular migrants. In the 2001 UN General Assembly on HIV/AIDS, states refused to reference persons in sex work as rights holders. There has been almost no progress made in compelling richer states or the international financial institutions (IFIs) to revise structural adjustment policies or destructive trade restrictions, even in the face of evidence of their role in rights violations, including exploitation in new and irregular markets.

More on the 'old bottle' of the trafficking framework: why history matters

The first wave of anti-trafficking coincided with the waves of migrating women within and out of Europe and North America from the mid-late 19th to early 20th Century. As Elaine Scully has noted, the 'white slavery' panic arose as a response to a rapidly changing world, shaped by paradigms of colonial power, immigration, social hygiene and urban angst ... entangled in issues of class, gender, race, and sexuality. Anti-trafficking's ideological and legal roots tap into beliefs that prostitution (violation of women's dignity) is the central harm of trafficking, and yield one remedy: rescue and return. Of course, only some women were worth rescuing in the name of re-asserting control of some men over all women of all colors, of some nations over all colonized peoples. Yet, today as 100 years ago, the focus on sex trafficking serves another purpose. What Carole Vance in "Innocence and Experience" calls trafficking "melomentaries" (melodramatic pseudo-documentaries) claim to be part of a critique of global inequality, yet their rescue stories displace attention from geo-political economic conditions. Rescue and prosecution of brothel-owners resonate with this story; advocacy on the WTO does not.

Markets, movement, borders, exploited migrants, gender and citizenship

Yet, contemporary analysis of 'trafficking' reveals that it primarily results from people with the need – and agency, albeit constrained – to move, and who must pay agents to get them past increasingly high barriers. This position, combined with fail-

ure to accept that irregular migrant workers need rights, renders them vulnerable to traffickers and exploitation in the exploding, unregulated markets. In "Planet of Slums", Mike Davis plumbs recent UN reports on shelter to expose the future of global poverty. By the year 2050, the majority of the world's poor will live in megacities, sprawling urban areas unable to absorb the labor of or provide essential services for intra and trans-national migrants. Yet the poor move to these cities because their rural livelihoods have been destroyed by Northern-directed trade and development policies, impacts often amplified by local political repression. For many women, movement is linked not only to the destruction of traditional livelihoods, but also to gendered and ethnicized subordination operating within tradition.

In this brave new world, there is exploitation by the poor of those more poor, (think of children enslaved as domestic workers in Haiti for families only marginally less poor), as well as exploitation of the less poor (persons able to pay smuggling agents) by new capitalists, such as textile mill owners on the Thai/Burma border or brothel owners in Bosnia Herzegovina. In "Why Migration Policies Fail", Stephen Castles exposes contradictory border and labor policies — strong states often promote economic policies (trade restrictions, SAPs) that compel movement, then trumpet restrictions at the border: claims to "...exclude undocumented workers may really often be about allowing them in through the side doors and back doors so that they can be more readily exploited". In regard to the exploitation of person in the sex sector, this double discourse of condemnation and reliance on that sector facilitates exploitation with impunity. As described in Lin Lean Lim's 1998 Report for the ILO, states derive large proportions of their GNP from sex sectors, but refuse to grant those working – or trapped — in those sectors rights.

People remain in need of real protections, whether working locally or migrating, and the power to participate in the policies that determine their lives. Yet, their claims as citizens disappear in the current stories of "trafficking", as contemporary anti-traf-

ficking reports tell stories which retain the impress of anti-vice and social purity movements. The hypocritical focus on sexual harm masks the absence of concrete steps to create the conditions for sexual – or economic –rights for women and men. Instead, they are increasingly patrolled while capital moves. We come full circle:

without the ability to intervene meaningfully against state practices and interests that generate unsafe migration, we are left helping – through the operation of the criminal law— those very same states regulate the movement of already constrained persons. All anti-trafficking work is not rights based. As rights activists, we

must begin to work with economic justice as well as anti-impunity and prosecution activists. By this, we can re-affirm human rights in the context of globalization as a tool of struggle, and ensure that the women and men on whose behalf we claim to work are actual beneficiaries.

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The is an excerpt from their article, “International Approaches to Human Trafficking: The Call for a Gender-Sensitive Perspective in International Law”, in *Women’s Health Journal*, April 2004 (Latin American and Caribbean Women’s Health Network, <www.reddesalud.org>).

The essay opens with the following epigraph:

“The illegal trade in drugs, arms, intellectual property, people and money is booming. Like the war on terrorism, the fight to control these illicit markets pits governments against agile, stateless and resourceful networks empowered by globalization. Governments will continue to lose these wars until they adopt new strategies to deal with a larger, unprecedented struggle that now shapes the world as much as confrontations between nation-states once did.”

- Moisés Naím, “The Five Wars of Globalization”, *Foreign Policy Magazine*, January/February 2003

The UN Trafficking Protocol and CEDAW: At Legal Odds

Phyllis Coontz & Catherine Griebel

Despite the comprehensive legal approach to trafficking in persons represented by the UN Trafficking Protocol, from a feminist and human rights perspective the document is flawed. Through its indirect treatment of women and tentative language regarding the obligations of the State to guarantee victims’ civil rights, such as due process and unconditional protection, the Protocol fails to extend meaningful rights.

The focus of the UN Protocol is on criminalization, deportation and border control strategies, resulting in a supply-side approach that places primary responsibility on law enforcement and pays scant attention to the demand side of the problem or to factors of economic inequality between developing and developed nations. The total neglect of a fundamental actor — the trafficked person —in many ways reinforces the structural factors that give rise to human trafficking. This serious ellipsis likewise reveals the distance between new UN rhetoric concerning economic, social and cultural rights and non-discriminatory treatment of women on one hand and the enforceability of the instruments of international law on the other, which continues to depend on former notions of state sovereignty, notions that historically have been framed and carried out by predominately male UN assemblies. In so doing, the Protocol contradicts and compromises the gains that have been made to ensure gender equality through the international legal system.¹⁹

Such contradictions permeate the UN system. For example, the female subject is treated quite differently in the UN Trafficking Protocol and the 1979 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW),²⁰ the exemplary international legal document addressing women. To appreciate how the UN Trafficking Protocol resonates with a type of state-centered, paternalistic language reminiscent of former discriminatory international lawmaking, it is helpful to review three conceptual models regarding women’s treatment in international law proposed by Natalie Kaufman Hevener.

Varying Conceptual Models in Feminist Law: Protective, Corrective and Non-Discriminatory Legal Action

In *International Law and the Status of Women* (Boulder, CO: Westview Press, 1983), Natalie Hevener-Kaufman analyzed all the major international agreements dealing with

women since 1945 and defined three categories: protective conventions, corrective conventions and non-discriminatory conventions.²¹ Even though they were first formulated two decades ago, Hevener-Kaufman's classifications are still relevant to women's status and treatment in UN documents.

Protective Conventions

Hevener-Kaufman describes the legal language of protective conventions as limiting the female to her role as wife and mother. In circumstances where the woman steps outside of this domain, "her presence may be seen as necessitating protection if her primary role is to be preserved".²² Hevener-Kaufman explains that in any circumstance where the woman is acting outside of her societal boundaries (whether they be physical, conceptual or geographical), legal measures are put in place in order to "protect" her subordinate status: "...[women] are subjected to the paternal power of the State, which seeks to protect them by completely proscribing or restricting their participation in certain areas of activity."²³

Classic examples of protective action at the international level are particularly evident in the economic sphere and include the original Convention Concerning Night Work of Women Employed in Industry, drafted by the ILO in 1919, and the 1935 and revised 1946 ILO Convention Concerning the Employment of Women on Underground Work in Mines of All Kinds.²⁴

Corrective Conventions

Corrective international legal action affecting women typically addresses disparities between men and women and targets women in international legal conventions where men are not perceived to be victims or are not equally threatened by the illegal activity in question. Normally, corrective legal action is linked to protective or non-discriminatory conventions but serves to "right a wrong."²⁵ Hevener-Kaufman notes that corrective action "seeks to establish genuine equality before the law, something which solely nondiscriminatory action

does not achieve without a lengthy waiting period, if it achieves it at all".²⁶

The corrective legal approach was first used by the UN in a series of agreements addressing prostitution beginning in 1994.²⁷ These international agreements emphasized the punishment of the organizers of prostitution and not the women. While these agreements were latent with protective language, they were the first such agreements focused solely on women, as men were not perceived as victims and therefore were not subject to the same legal treatment. Other important conventions using corrective techniques were the 1957 Convention on the Nationality of Married Women and a 1956 International Labor Organization Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. This convention makes special reference to institutions that exploit women's marriage, property or inheritance rights.

Above all, the introduction of corrective legal action indicated an opening in international law for increased attention to women and their equal claims to fundamental human rights under the UN Charter.

Non-discriminatory Conventions

The watershed for the third category was the drafting of the 1979 Convention on the Elimination of Discrimination against Women (CEDAW), which represents the first bill of rights for women. According to Hevener-Kaufman, the nondiscriminatory approach was designed to "revise the legal system in such a way that sex will no longer be a basis for the allocation of benefits and burdens in society".²⁸ However, the author emphasizes that accompanying corrective measures are still needed and that to achieve a progressive realization of equal rights for women in the law, the two approaches must coincide.

The first objective of a non-discriminatory approach to international law is to create and promote a new language of gender equality while the second is to acknowledge and make amends for former dis-

criminatory laws.²⁹ This shift from "protecting" and limiting women's roles to explicitly acknowledging, correcting and setting new benchmarks for future legal and public policy affecting women is significant; globally, the treaties provide evidence of social attitudes moving gradually toward the equal treatment of women in all spheres of daily life.

Evaluating the CEDAW and the UN Protocol

The CEDAW was a watershed for women's rights in the UN system because it obliged the international community and signatory States to make redress for discriminatory language of earlier UN documents and pushed for more progressive roles of men and women. However, a comparison of the documents reveals a discrepancy between women's treatment in the more recent UN Protocol and in CEDAW. This is particularly evident in the CEDAW Articles dealing with civil and employment rights.

Civil Rights

In the civil rights arena, a major hallmark of CEDAW was its declaration that women worldwide have the same claim to civil liberties — such as property rights, the right to vote and hold office — as men, regardless of the national or cultural context. For example, Article Two of Part I of CEDAW states:

State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) to establish the legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public

institutions the effective protection of women against any act of discrimination.

Similarly, in Part IV, Article 15 of CEDAW, women's legal rights under law are reintroduced. The document specifies:

1. State Parties shall accord women equality with men before the law. 2. State Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

With these provisions women, like men, are guaranteed due process as victims of a crime and are responsible actors in those crimes committed against them with a full range of legal options. However, the Trafficking Protocol is vague and ultimately non-committal with respect to the right to due process and in other provisions.

For example, the opening phrase of the Protection of Victims section of the Protocol states: "1. *In appropriate cases and to the extent possible* under its domestic law, each State Party shall the protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential" [emphasis ours]. Under item 2 of the same section the Protocol reads: "Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, *in appropriate cases*: (a) information on relevant court or administrative proceedings; (b) assistance to enable their views and concerns to be presented and considered at *appropriate* stages of criminal proceedings..." [emphasis ours].

The intent of the CEDAW clearly was to place women on an equal plane with men under the law and to reverse a global perception of women as third parties to the legal process. And yet as the binding language of the Protocol reveals, women take a backseat to the criminal justice process. The US model similarly relies almost entirely on criminal law involving the State

as the voluntary investigator, prosecutor and plaintiff. In the case of human trafficking cases tried in the US, federal prosecutors are unlikely to try cases they cannot win, leaving the trafficking victim entirely dependent on the will and benevolence of the Department of Justice and Attorney General's office.³⁰ As legal scholar Ratna Kapur writes in response to legal treatment of violence against women, "There is no space in this construction [of the victim subject] for ... the articulation of a subject that is empowered. ... Additionally, [the victim construction] encourages States to resort to the criminal law to address women's rights issues, an arena of law in which nation-states enjoy the powers of moral surveillance and regulation."³¹

A related issue is the treatment of proceeds confiscated from convicted traffickers. The UN Convention against Transnational Organized Crime (which addresses restitution for human trafficking) states: "1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 and 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures." Item 2 goes on to stipulate that: "When acting on the request made by another State Party in accordance with article 13 of this Convention, State parties shall, *to the extent permitted by domestic law and if so requested*, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners" [emphasis ours].

In response to these Articles, Ann Jordon, author of *The Annotated Guide to the Complete UN Trafficking Protocol*, asserts that "National laws in many countries will need to be revised in order to ensure that disposal of assets is done in a manner that benefits trafficked persons. ... Governments should not keep the assets for other purposes, and those that do are guilty of profiting from the traffickers' criminal acts."³² Jordon articulates precisely the type of rights-based rhetoric found in CEDAW by pointing out the trafficked persons' legitimate claim to assets confiscated from

the trafficker. She also points to the weakness of the UN Trafficking Protocol's restitution approach, which provides no definite process as to how a female trafficking victim actually goes about recovering assets from her trafficker. The UN Protocol further demotes female victims' rights by including the option of creating a law enforcement account with preference given to law enforcement efforts in developing and transition economies.³³ These stipulations favor state agencies and law enforcement and cut female victims out of the legal process. While the law enforcement fund has notable benefits, the provision nonetheless begs the question of whether assets rightfully belonging to victims would be so easily redirected if trafficking were a crime affecting white men. In reality, of course, it primarily afflicts poor women.³⁴

Women's Employment Rights and Economic Inequality

The sections of CEDAW addressing employment are also relevant to the analysis of the UN's current legal approach to trafficking in women and children. In Part III, Article 11, the Women's Convention asserts:

1. State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) the right to work as an inalienable right of all human beings; (b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service... (d) the right to equal remuneration, including benefits, and to equal treatment in respect of equal value, as well as equality of treatment in the evaluation of the quality of work; (e) the right to social security, particularly in the case of retirement, unemployment, sickness, invalidity, and old age....

The UN system has been criticized frequently for its contradictions on issues of the poor and women. On the one hand, the

UN created CEDAW and has provided a vital platform for advocating women's equality in the international order. However, the UN has failed to take a decisive stand on the failure of the dominant development paradigm (neoliberalism) to address structural inequalities and the adverse impact of austerity packages on women.

Although the deeper structural issues of women's social and economic rights are outlined clearly in CEDAW, the Trafficking Protocol hardly mentions the structural economic inequalities that create the endless supply of women vulnerable to the trafficking market in Africa, Eastern Europe, Asia and Latin America.

Although admittedly the problem of enforcement of economic and social rights at the international level is highly contentious, the Protocol's failure to give even minimal attention to the supply and demand aspects of trafficking is troubling. For example, the idea of sanctioning the clients of prostitution and thus taking a stab at demand is a difficult legal area to address internationally when the criminal target varies between pimp, procurer and prostitute in different national prostitution laws. Nonetheless, wholesale pardoning of the clientele is untenable for achieving the Protocol's long-term goal of eradicating trafficking. Just as the Protocol frames victims' protection using conditional phrases, demand-side issues could likewise be addressed — especially sex tourism operations and the widely reported trafficking markets surrounding UN Peacekeeping and US military missions. The total neglect of the issue of demand in the Protocol suggests that the UN instrument lacks a viable remedy for the deep-rooted causes of trafficking.

Another solution is suggested by scholars and activists from the liberal feminist camp. They argue that the legalization of prostitution is a viable strategy for learning more about the sex industry and for meaningfully extending rights and services to migrant laborers involved in sex work. This approach recognizes worldwide so-

cial, cultural and economic inequalities and the nature of transnational legal and illegitimate commerce. As mentioned earlier, while "exploitation of prostitution" is intentionally left undefined in the Trafficking Protocol, the binding language is restricted nonetheless to criminal sanctions of traffickers, and the Protocol does not contemplate a labor regulation approach in the least. Thus, there is no room for the interpretation of an empowered migrant woman who is operating in response to global economic realities affecting her and her family. Nor is there a realistic contemplation of whether such women are better served by prosecution of their traffickers or by labor regulations and more gender-sensitive approaches to local development and labor force models. Instead, the UN Trafficking Protocol simply allows for state discretion regarding the criminalization of prostitution.

As a result, the UN Protocol ignores the socio-cultural ramifications of criminalizing prostitution. In receiving countries where prostitution is illegal, trafficking victims are often stigmatized for their "immorality," which is compounded by their problematic status as illegal migrants. As Nora Demleitner explains in her essay on migrant women trafficked into prostitution, "Not surprisingly enforcement of anti-trafficking laws is often absent or low. When the laws are enacted, their impact often falls on women rather than the traffickers, replicating enforcement patterns against prostitution generally."³⁵ Overall, the realities of women working in prostitution — whether it be voluntary or forced — and the threats to their rights by traffickers, clients and law enforcement alike should be the focus of major research and policy attention. The Trafficking Protocol all but ignores this crucial issue of human rights and gender equity.

Conclusion

It is difficult to reconcile many of the issues this paper raises about the Trafficking Protocol: the use of conditional and

vague language when referring to persons who are trafficked has little meaningful effect, and the lack of concrete international anti-trafficking measures is practically unimaginable given the transnational nature of human trafficking. These grave shortcomings — in addition to the divide in the current anti-trafficking debate — have resulted in a UN instrument ill-equipped to deal with flexible networks of criminals who understand and take full advantage of the limitations of the modern State, the economic inequalities between origin and destination countries, and the particularly discriminatory approach to women in legal systems around the world.

In its current form, the Protocol overemphasizes the criminalized aspects of trafficking and relegates the rights and needs of women and children to a subordinate position in the international legal framework. The fact that the UN High Commissioner and NGOs have rushed to publish complementary documents reminding the international community of the need for a more integral approach to human trafficking³⁶ further calls attention to the disregard for women's rights and the double standard in international law.³⁷

This brief and preliminary assessment of the UN Trafficking Protocol and CEDAW illustrates the work that needs to be done to make these two pieces of international law mutually reinforcing and beneficial for trafficked persons. For international agreements to address the complexities of human trafficking, a significant effort will have to be made to embrace the realities that women face, particularly women in developing countries. Likewise, women must be recognized as subjects of rights, especially those relating to freedom of movement, employment and the right to legal counsel, private claim of action and restitution in criminal proceedings. Because trafficking predominately affects women, the anti-trafficking model will perpetuate "protective" notions of women's treatment in international law until changes are made in these areas.

ENDNOTES

19. The State Department has developed a three-tier system to reflect the extent to which governments comply with the "Victims of Trafficking and Violence Protection Act of 2000" passed by the US Congress. Tier 1 countries (e.g., Austria, Canada and the UK) comply fully with the Victims' Act minimum standards for the elimination of trafficking. Tier 2 countries (e.g., Angola, Philippines, Guatemala and Brazil) are making progress toward compliance. Tier 3 countries (e.g., Belarus, Bahrain, Greece, Israel, Saudi Arabia and Russia) are making no progress. We believe this three-tier system is instructive because it illustrates the range of variance among States in their responses to trafficking.
20. CEDAW contains an article on prostitution that calls on States to take measures to "suppress all forms of traffic in women and the exploitation of prostitution" (Article 6). This article was not intended to include all prostitution.
21. *Women Watch*, the Website of the United Nations Division for the Advancement of Women, cites only one declaration drafted after (and subsequently not included in) Hevener-Kaufman's work: the Declaration on the Elimination of Violence Against Women of 1993.
22. Hevener-Kaufman, Natalie. *International Law and the Status of Women* (Boulder, CO: Westview Press, 1983), 6.
23. *Ibid.*, 7.
24. For a full explanation, see Hevener-Kaufman, *International Law and the Status of Women*.
25. *Ibid.*, 22.
26. *Ibid.*, 9.
27. The original agreement was drafted in 1904 and extended through conventions in 1910, 1921, 1933, and 1947.
28. Hevener-Kaufman, *International Law and the Status of Women*, 12.
29. *Ibid.*, 18-22.
30. Interview with an official at the Midwest Immigration and Human Rights Center, April 15, 2004.
31. Ratna Kapur, "The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics," *Harvard Human Rights Journal* 15 (Spring 2002): 36-37.
32. Jordon, *The Annotated Guide*, 16.
33. The level of corruption and police violence against women in many countries targeted for these monies is a major concern; this stipulation in many ways further defeats a rights-based, feminist approach to trafficking. For a further discussion of this Convention Article, see Jordon, *The Annotated Guide*, 16.
34. Susan Tiefenbrun, "The Saga of Susannah, A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000," *Utah Law Review* 17 (2002): 111-113.
35. Nora Demleitner, "The Law at Crossroads: The Construction of Migrant Women Trafficked into Prostitution" in *Global Human Smuggling in Comparative Perspective*, eds. David Kyle and Rey Koslowski (Baltimore: Johns Hopkins University Press, 2001).
36. Examples of two such documents are *Human Rights Standards for the Treatment of Trafficked Persons*, coauthored by the Global Alliance against Traffic in Women, the Foundation Against Trafficking in Women and Global Rights; and the UN High Commissioner for Human Rights publication, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* ([http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.2002.68.Add.1.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.2002.68.Add.1.En?Opendocument))
37. For more information on these documents, see: http://www.globalrights.org/site/DocServer/Traff_AnnoProtocol.pdf?docID=203 and <http://www.gaatw.org/>

"Like other international treaties, CEDAW amounts to a bill of rights, rights that may too often be honored in the breach, not so very different from 'life, liberty and the pursuit of happiness'. We may not need those rights in exactly the same way as women facing honor killings or genital mutilation. But, as we are so quick to note on other fronts, when the United States stands up for a principle it sends a message to the world about how that principle ought to be valued. Yet while America signs off on trade agreements and refugee treaties, it refuses to join the world community in standing up for the rights of women."

- Anna Quindlen,

Newsweek, 21 March 2005

UPDATES: Convention on the Elimination of All Forms of Discrimination Against Women

In June the Massachusetts Joint Judiciary Committee held a hearing on HB706, which applies CEDAW and other international human rights treaties and standards "to attain social justice in the Commonwealth". An impressive list of endorsers had been amassed by the Massachusetts Human Rights for All Initiative — "a collaborative response of Amnesty International, the Coalition for a Strong United Nations, the Massachusetts CEDAW Project, Massachusetts Welfare Rights Union, Survivors Inc., and the Women's International League for Peace and Freedom to the opportunity HB706 offers for deepening our understanding of and commitment to universal human rights." Six people spoke in support; there was no public testimony in opposition.

Excerpts from written submissions to the committee:

"Human rights brings a human-centered approach to evaluating government performance and ensuring that policies and programs are responsive, efficient and fair.

. . . Anchoring our assessments of government performance in a model that cen-