Guide to the UN Convention of 2 December 1949

for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

by
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Portrait of J. Butler by G. Richmond 1952

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I. Background of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

The Convention *for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* was adopted by the United Nations on December 2, 1949, one year after the Universal Declaration of Human Rights, in a climate of humanistic hope following the Second World War. The 1949 Convention was the result of an abolitionist and feminist struggle in England, begun and led by Josephine Butler in 1866. Whereas slavery had just been abolished in most of the European countries, Josephine Butler considered the system of prostitution to be a contemporary form of slavery that oppressed women and was injurious to humanity in general.

The system of the regulation of prostitution, set up under Napoleon III in France, and soon called the "French system," was established in many European countries in the name of public health and under the hygienist pretext of combating venereal diseases. French physician, Parent-Duchatelet, 19th century promoter of hygienism and regulation of prostitution, considered prostitution as a "sewerage system" and compared ejaculation to "organic drainage."

In reality, however, the regulationist system was based on a vision of society and human sexuality in which women were reduced to instruments of male pleasure. A vice squad was created to oversee the smooth working of the system. Not only could procurers and traffickers develop their operations with impunity, but the municipalities could also make money by levying taxes on the brothels. Women in prostitution were liable to violence, constraints, and health controls that were described as sexual tortures. Decrees against venereal diseases, particularly in England, permitted certain authorities to force women who were simply suspected of being prostitutes to undergo medical examinations, or even to be imprisoned.

Revolted by this situation of social injustice that increased the victimization of women in prostitution, and which she considered an extreme form of sexual discrimination, Josephine Butler started what she called the "big

"Robbery and murder are evils that have always existed, but no society ever thought of saying: Since we cannot eliminate robbery or murder, let us agree to a way of living that will submit them to certain regulations and monitoring so that, for example, the law will determine in what places, at what times and under what conditions stealing and killing are permitted." J.Butler 1875

crusade" to end the regulationist system of prostitution. In 1869 she wrote a manifesto supported by 120 signatures after which a group of doctors asked her to launch a campaign against the regulation of prostitution. This movement soon spread to the rest of Europe, the United States and the colonies. The abolitionist movement attracted both those who were religious and secular. Many intellectuals who defended the principles of secular humanism joined the movement, in particular Jean Jaurès and Victor Hugo in France. Women active in the campaign for female emancipation also joined the struggle to abolish prostitution.

Josephine Butler's writings particularly emphasized the responsibility of men and men's role in both purchasing and procuring women in prostitution. She assailed legislators and their double standard of justice – one for men and one for women — on which the regulation of prostitution was based. The issue of men's responsibility for promoting prostitution, and the critique of what Butler called "irrepressible" male sexuality that was used to rationalize the necessity for prostitution, would again be tackled by feminists during the first half of the 20th century.

In France, Madame Avril de Sainte Croix was a leading voice who carried the abolitionist arguments to the League of Nations in 1919. Marcelle Legrand Falco, founder of the French branch of the abolitionist movement in 1926, launched a campaign in France for abolition of prostitution, the civic rights of women, and women's economic equality. At that time major human rights associations, such as the League of Human Rights, also sided with the abolitionists. From its beginnings, the abolitionist movement lobbied governments to end the system of regulation. Early on, it was clear that regulating prostitution encouraged trafficking in women.

Gradually, the abolitionist movement achieved several victories.

- In 1883, the implementation of the British Contagious Diseases Acts (affecting women in prostitution) was suspended, and the Act itself was repealed in 1886.
- In 1885, the Criminal Law Amendment Act in England raised the age of consent to 16 and imposed penalties on procurers, brothels keepers, and other exploiters of prostituted women.
- In 1904, the first international agreement against the "white slave" traffic was signed in Paris, followed by others in 1910, 1921 and 1933.

- From 1912, European countries gradually started to adopt abolitionist policies.

After the First World War, the League of Nations in 1919 created a monitoring committee to investigate women's rights and sex trafficking. Governments and non-governmental associations submitted reports that simultaneously addressed women's wages, their economic situation and the situation of prostitution in various countries. Links were also established between prostitution, trafficking, and pornography, referred to as "obscene publications." At this point, it was clear from the reports of the committee and the resolutions of the Council and Assembly of the League of Nations, that countries that had adopted an abolitionist system of prostitution witnessed a decrease in the trafficking of women and a decline in venereal diseases. In France, it is significant that women's right to vote coincided with the closure of the brothels after the Second World War.

- In 1927 and 1932 the League of Nations set up two major inquiries establishing that the existence of brothels, and the regulation of prostitution, increased both national and international trafficking.

From these inquiries emerged the idea of a new international convention for the suppression of trafficking and prostitution. The drafting of the Convention began in 1937 but was suspended during the Second World War. Ultimately, the Convention was finished on December 2, 1949, under the new United Nations sponsorship and was entitled the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*.

II. Highlights of the Convention 2 December 1949

The *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* is one of the international human rights instruments of the United Nations that addresses "slavery and slavery-like practices." Although the preamble of the 1949 Convention sets forth the principle that prostitution and trafficking "are incompatible with the dignity and worth of the human person," it does not judge or penalize the victims of trafficking and prostitution. Women in prostitution are not considered as criminals to be scorned or punished but as victims to be protected. Rather, the 1949 Convention advocates punishment for those who "procure, entice or lead" others into prostitution. In following the spirit of the international abolitionist movement and the initial international

agreements on prostitution and trafficking, the Convention establishes a link between prostitution and trafficking.

1. The Convention takes the burden of proof off the victim and puts it on the perpetrators of the exploitation of prostitution and trafficking for prostitution

Those who "procure, entice or lead" others into prostitution are to be prosecuted (Article 1). Article 1 therefore covers procurers such as traffickers, recruiters, and other exploiters who have "procured, enticed or led away" any person for purposes of prostitution, "even with the consent of that person." Thus, the Convention does not put the responsibility of the criminal act on persons in prostitution. This is a crucial point because in many cases, procurers, recruiters and traffickers use a consent defence to argue that they should not be prosecuted.

In the same way, the Convention advocates punishment for anyone who "keeps or manages, or knowingly finances or takes part in the financing of a brothel;" or "knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others" (Article 2).

In certain countries, police have prosecuted women in prostitution for procuring, when they have rented an apartment and themselves engage in the act of prostitution on these premises. This policy contradicts the Convention, which instead provides protection for women in prostitution (Articles 15 and 16). Unfortunately, in some cases, Article 2 has been used as a tool of repression against women in prostitution, violating their elementary human right to housing.

2. Victims of prostitution may be parties to any legal proceedings against perpetrators

Women in situations of prostitution may be parties to proceedings against those who exploit them, according to the offences mentioned in Articles 1, 2, 3 and 4. This provision is also valid for foreign women in situations of prostitution.

3. Countries cannot regulate prostitution or subject women in prostitution to registration or other administrative controls

Article 6 of the 1949 Convention articulates a fundamental premise of the abolitionist position. The Parties to the Convention must "repeal or abolish any existing law, regulation or administrative provision" used to register women in prostitution or those who are suspected of engaging in prostitution.

Women in prostitution cannot be subjected to "…special registration or to the possession of a special document or to any exceptional requirements for supervision or notification." Countries cannot therefore make prostitution legal, or regulate it in any way. This article protects women because it does not consider them as delinquent persons who should be monitored administratively, including for health reasons. Article 6 would also prohibit States from recognizing prostitution as a labor and economic sector, or as legally regulated work, since labor laws entail administrative recognition, control, and regulation of prostitution.

France is the only abolitionist State that created such a center in fulfillment of these articles. When it ratified the Convention in April 1960, France set up the Office Central pour la Répression de la Traite des Êtres Humains (OCRTEH).

4. Centralization of information and investigations re trafficking and prostitution are encouraged

Articles 14 and 15 encourage States to establish centers to centralize information and investigations on trafficking in persons and the exploitation of the prostitution of others. Such services should "facilitate the prevention and punishment of the offences referred to in the Convention" and should be in contact with corresponding services in other States. Among the information that States are enjoined to share, subject to their domestic laws, are particulars relevant to prosecution, arrest, conviction, expulsion, description and methods of operation of offenders including fingerprints, photographs, police records and records of conviction.

5. Measures are included to prevent trafficking and prostitution and to protect and rehabilitate victims

States Parties that have ratified the 1949 Convention must take measures for the prevention of trafficking and prostitution and for the protection and the rehabilitation of victims. Countries are encouraged to use both public and private social, economic, educational, health and other related services to facilitate these goals (Article 16)

6. Protection of migrants helps prevent sexual exploitation

In order to curb and prevent the traffic in persons for purpose of prostitution, States must adopt measures for the protection of migrants, " in particular, women and children, both at the place of arrival and departure and while en route" (Article 17.1). States also agree to arrange for appropriate publicity warning about the dangers of trafficking (Article 17.2); ensure supervision

in public places, railway stations, airports (Article 17.3); and inform appropriate authorities about the arrival of persons who may be principals or accomplices in, but also victims of trafficking (Article 17.4).

7. Protection of victims of trafficking is a key provision

States must establish the identity and civil status of victims of international trafficking "with a view to their eventual repatriation" (Article 18). They must also undertake "to make suitable provisions for their temporary care and maintenance" (Article 19.1), and to repatriate persons who desire to be repatriated" only after "agreement is reached as to identity and nationality" and the place and date of arrival back to the country of origin (Article 19.2). The cost of repatriation shall be shared by the States where victims are in residence and by the States of origin, if the victims cannot themselves repay the cost of repatriation (Article 19)

8. Monitoring of employment agencies is highlighted

The Parties to the Convention must take "necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution" (Article 20).

The Final Protocol of the 1949 Convention states that the Parties to the Convention can adopt "stricter" measures to fight trafficking and the exploitation of others for purposes of prostitution.

In accordance with the Final Protocol of the 1949 Convention, a country like Sweden, which has adopted a law penalizing the purchase of sexual services, can become a contracting party to the Convention of December 2, 1949. Conversely, States Parties who have already ratified the Convention can also adopt a law similar to the Swedish legislation. Thus, States can carry on the prevention and the suppression of trafficking and of the exploitation of prostitution in an effective way. By penalizing the men who buy women and children for the exploitation of prostitution, countries can implement the vision of the 19th and early 20th century feminist abolitionists who challenged accepted definitions of "irrepressible" male sexuality and spotlighted male responsibility for promoting prostitution and trafficking.

III. Weaknesses of the Convention of December 2, 1949

1. Lack of a control mechanism

In spite of the provisions of the Convention requiring States to communicate to the Secretary General of the United Nations their "laws and regulations"

relating to the Convention, as well as all measures taken by them concerning the application of the Convention, and the obligation of the Secretary General to publish "periodically" "the information received" (Article 21), these provisions have not been followed. Thus many States who have signed the 1949 Convention are not adhering to its provisions, and some have even changed their laws, in opposition to the principles of the Convention.

In his 1996 report on the *Trafficking in Women and Girl*s (A/51/309), the UN Secretary-General noted the absence of a monitoring body and his concern that the lack of any enforcement mechanism would weaken the implementation and effectiveness of the Convention of December 2, 1949.

Indeed, all the UN Conventions that were written before 1960 do not have any monitoring or enforcement mechanisms. This is the case with the three conventions on slavery or slavery-like practices, such as those of 1926, 1956 as well as the Convention of December 2, 1949. David Weissbrodt who wrote an *Updated Review of the Implementation of and Follow-up to the Conventions on Slavery,*[1] states that the treaties "which prohibit slavery and slavery-like practices…did not incorporate procedures which are now considered to be indispensable for monitoring compliance with the human rights obligations." Moreover, "the slavery treaties do not designate a treaty body to receive and comment upon the reports. They have little effect on the achievement of the States' obligations and contain

The Working Group on Contemporary Forms of Slavery (WGCFS) is the only UN body charged with carrying out an annual report on the conventions related to slavery or slavery-like practices of 1926 and 1956 and the Convention of the 2nd of December 1949. The UN Voluntary Trust Fund on Contemporary Forms of Slavery allows the Working Group to bring individuals and organizations from various countries in the world to report on the situation of slavery or slavery-like practices, trafficking, and prostitution in their countries. The WGCFS is a very democratic and consultative body within the United Nations and allows victims of slavery and prostitution to testify each year. Unfortunately the WGCFS doesn't have the power to compel governments to report. Some governments, such as the Philippines do, however, regularly take part in the activities of the WGCFS.

[1] (*E/CN.4/Sub.2/2000/3), 26 May 2000, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-second session*

no effective implementation mechanism for the provisions in these conventions abolishing slavery." Weissbrodt emphasizes that "the true effectiveness of a treaty can be assessed by the extent to which the States Parties apply its provisions at the national level. The application of treaties generally refers to both the national measures adopted by States and international measures and procedures adopted to review or monitor those national actions…The right of all individuals to be free from slavery is a basic human right; yet this lack of an adequate implementation procedure does little to encourage Member States to establish safeguards against all contemporary forms of slavery."

Because of this lack of monitoring and enforcement of the slavery conventions, the Working Group on Contemporary Forms of Slavery in July, 2001 (E/CN.4/Sub.2/2001/30) "Expresse[d] its conviction that the adoption of a resolution by the General Assembly on the elaboration of an additional protocol to the three conventions on slavery and slavery-like practices would strengthen the effectiveness of these conventions through the establishment of an efficient monitoring mechanism." The Sub-commission on the Promotion and the Protection of Human Rights introduced this recommendation in its resolution of August 15, 2001, (E/CN.4/SUB.2/RES/2001/14).

The task of drafting a new additional protocol to the conventions relating to slavery or slavery-like practices of 1926, 1956 and 1949 could be given to the Working Group on Contemporary Forms of Slavery.

2. The buyer of "sexual services" is invisible.

The first abolitionists fought to put an end to the regulationist system of prostitution, and to establish the link between prostitution and the trafficking in human beings. The adoption in 1949 of a UN Convention on trafficking and prostitution constituted a victory after eighty years of fierce struggle. Nevertheless, the question of the "buyer" is not mentioned in the Convention, in spite of the fact that abolitionist feminists had historically called attention to the ways in which men created the demand for prostitution. Although early abolitionist feminists had assailed the double standard of justice that tolerated men buying women in prostitution as a "biological need" and that punished women in prostitution with scorn, registration and forced medical examinations, no provision penalizing the buyers was incorporated into the Convention.

Of course, in 1949, male violence against women was not the central human rights issue that it is today. Within the last 20 years, however, feminism has targeted male responsibility for woman-battering, rape, incest and other forms of sexual violence and abuse. It is time to spotlight the role of the buyer as a primary actor in the global sexual exploitation of women whose demand for the sex of prostitution generates and helps sustain the modern expansion of the sex industry. The buyer of "sexual services" should no longer remain invisible. The new UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime* does recognize the "demand" that encourages all forms of exploitation of women and children (see below).

The 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* constitutes a decisive step in the struggle for women's human rights. It could be strengthened further by a monitoring mechanism that recognizes the role of the buyer in creating the demand for prostitution that, in turn, generates global sex trafficking.

IV. National and regional legislation and international texts following the Convention of December 2, 1949

1. Consequences at the national level in countries ratifying the 1949 Convention

- **Files pertaining to persons in prostitution are prohibited**

States ratifying the Convention of the 2nd December 1949 must not only prohibit brothels but also any files on persons in situations of prostitution. For example, although France prohibited brothels in 1946, it maintained medical and social files on women in prostitution. France could ratify the Convention only after abolishing these files in 1960.

- **Consent is not a defence for perpetrators**

This provision of the Convention has two main effects in the prosecution of perpetrators of prostitution and trafficking: 1) the burden of proof is not placed on the victims; 2) the police can start an investigation without the complaint of the victim or her cooperation (pro-active method).

- **Prostitution cannot be recognised as work.**

In 1998, the government of Venezuela promulgated a law which prohibited the development of a legal union of "sex workers." Indeed, the Ministry of Labour of Venezuela indicated that the first goal of a labor union is "to promote the collective development of its members and of their profession." Thus this kind of a union would promote prostitution, which "cannot be considered work because it lacks the basic elements of dignity and social justice[2]. At the same time, however, Venezuela violates its ratification of the 1949 Convention by requiring all women in prostitution, even foreign women trafficked into the country, to possess a health certificate from the Ministry of Health, and to submit to a medical examination every 6 months.

- **No distinction can be drawn between "free" and "forced" prostitution"**

The Philippines Development Plan for Women 1987-1992 is strongly opposed to this distinction. Moreover, the Philippines Plan for Gender-Responsive Development 1995-2025 reaffirms that no distinction can be made between so-called "free" and "forced" prostitution. All "prostitution is a violation of human rights" (National Commission on the Role of Filipino Women, 1995, Chapter 18).

- **Trafficking for the purpose of prostitution and the "exploitation of the prostitution of others" cannot be dissociated**

In France, procuring for prostitution and trafficking for prostitution are not dissociated and follow the principal provisions of the Convention of 2 December 1949. Punishment for acts of procuring is 5-20 years of imprisonment. Punishments can increase in cases of torture and for acts of "barbarism."

2. Regional texts and standards.
Some regional texts include the principal provisions of the December 2, 1949 Convention.

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[2] Dr Janice Raymond. « Legitimating Prostitution as Sex Work: UN Labor Organization (ILO) Calls for Recognition of the Sex Industry. » N. Amherst, MA: Coalition Against Trafficking in Women (CATW), 1998: 4. Available at www.catwinternational.org

- Legal recommendations of the Council of Europe (No. R (2000) 11 underline that trafficking for the purpose of exploitation exists even with the consent of the victim.

- The proposed South Asian Association for Regional Cooperation (SAARC) Convention was widely inspired by the December 2 1949 convention principles. Prostitution is defined as "the sexual exploitation or abuse of persons for commercial purposes;" and trafficking is defined as "the moving, selling or buying of women and children [for prostitution] within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking."

3. International Conventions since the Convention of 1949

The 1949 Convention was taken as a normative reference in 1979 for the drafting of Article 6 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), and for the Convention on the Rights of the Child in 1989. In 1998, an Ad Hoc Committee was created for the elaboration of an International *Convention against Transnational Organised Crime*, with an additional *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.* The work of this committee was completed in Palermo in December 2000. The Protocol on Trafficking in Persons makes trafficking for prostitution, not simply for "forced" prostitution, a primary form of sexual exploitation and recognizes that trafficking can take place for other forms of exploitation, such as forced labour or services, slavery, servitude, and the removal of organs.

• **Article 6 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW, 1979)** stipulates that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." For the drafters of CEDAW, the language of the 1949 Convention was evident in not limiting prostitution to simply "forced prostitution," and in using the 1949 phrase, "exploitation of prostitution" of women. Significantly, CEDAW goes beyond the Convention of December 2, 1949 by introducing "all forms" of traffic in women and exploitation of prostitution of women, acknowledging that new forms of trafficking and sexual exploitation exist since 1949 and must be curbed.

• **Convention on the Rights of the Child (1989)** maintains the spirit of the Convention of 1949 in its articles 34 and 35 and adds other forms of sexual exploitation such as pornography.

• **Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime (2000)**. This new text follows the Convention of December 2, 1949 in recognizing that trafficking cannot be dissociated from the exploitation of prostitution. In listing various froms of exploitation prohibited by the Protocol, it initially targets *"the exploitation of prostitution of others or other forms of sexual exploitation."* The definition of trafficking also states that the consent of the victim to the intended exploitation is irrelevant, thus recognizing that the victim of trafficking should not bear the burden of proof. The Protocol also provides protection measures for victims.

For the first time in a UN Convention, the issue of the **demand** that promotes trafficking is addressed. In Article 9.5, the Protocol stipulates that States Parties "shall take or strengthen legislative or other measures…to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that lead to trafficking." The Working Group on Contemporary Forms of Slavery in its recommendations of 16 July 2001 (E/CN.4/Sub.2/2001/30), goes further and is "Convinced that the demand for sexual exploitation plays a critical role in the growth and expansion of the sex industry." The Working Group also notes the successful implementation of national legislation in Sweden that penalizes the buyer of sexual services.

However, the new UN Protocol on trafficking does not focus on all dimensions of procuring as defined in the Convention of the 2nd of December 1949, nor does it prohibit States from organizing and industrializaing prostitution, in particular by launching the administrative control and legal regulation of prostitution.

The two years of negotiations over the drafting of the new UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* gave a new impetus to the Convention of December 2, 1949. During these negotiations, the majority of States affirmed their commitment to the principles and terminology of the 1949 Convention. Since then, international or regional texts, such as the framework decision of the European Union related to trafficking in human beings (2001), and the

governmental Plan of Action of the World Conference Against Racism (September, 2001), have integrated some of the provisions of the new Protocol with those of the Convention of 1949.

The terminology used in international treaties and texts testifies to the linguistic concepts of the period in which they were drafted. Thus, the concept of sexual exploitation appears for the first time in a UN treaty in the 1989 Convention on the Rights of the Child. In a similar manner, the Working Group on Contemporary Forms of Slavery has widened its recognition of new tools of sexual exploitation. Since 1998, the WGCFS has noted the abusive use of the Internet as a tool for prostitution and other forms of sexual exploitation.

V. The war of words over the Convention of December 2, 1949

1. 1950-1980 – misuse of feminist arguments

The Convention of the 2nd of December 1949 was the result of eighty years of abolitionist, feminist, and humanist struggle. Abolitionists of this era thought this Convention constituted the beginning of a new attitude towards prostitution, and they believed there wouldn't be any risk of regression. Feminists went on to claim women's rights in the personal, political and economic spheres asserting self-determination for women, an autonomous sexuality, a refusal to be locked into marriage, and access to contraception and abortion.

In the beginnings of the most recent feminist campaign for equality, some famous feminists, such as Simone de Beauvoir, affirmed that marriage was prison and prostitution freedom. Suddenly the romantic idea of the prostitute, earlier described by certain authors of the 19th century and recurring in films of the 20th century, reappeared. The woman in prostitution became the symbol of the rebellious woman, the outlaw, she who controlled her sexuality and who was opposed to the moralistic and reactionary order. The structure of prostitution disappeared from critical view, and the role of the sex industry with its procurers, buyers and brothels all but vanished. Attention was focused on this fantasy of the prostitute as a "free" woman, having "power" over men because she could command payment for access to her body, in contrast to the married woman who was regarded as a "slave" to men and whose body, it was argued, was not her own. In the name of sexual freedom, the "right to prostitute" took the place of the "right to be free from sexual exploitation" and the "right to be free from prostitution."

Soon, both the sex industry and governments who did not ratify the Convention of 1949, such as the Netherlands, began using feminist arguments of "self determination" to legitimate women's exploitation in the sex sector.

2. 1979 - a new feminist abolitionist campaign

In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) constituted an essential step in the recognition of women's right to be free from sexual exploitation. That same year, Kathleen Barry gave new strength to the abolitionist and feminist fight by publishing *Female Sexual Slavery*, and in 1988, she and Dorchen Leidholdt co-founded the Coalition Against Trafficking in Women. During the 1980s and the 1990s, survivors of prostitution began to speak out and denounce the system of prostitution. All these efforts made visible not just the harm of prostitution to women but the role of the "buyer" in creating the demand for prostitution and in forming an integral part of the prostitution system. The new feminist abolitionist campaign addressed newer forms of sexual exploitation, including sex tourism and mail-order bride industries, as well as the different manifestations that prostitution takes in different parts of the world. The idea of a new international Convention against Sexual Exploitation was launched by the Coalition Against Trafficking in Women to address this new situation of the expansion of the sex industry worldwide.

Influenced by the efforts of Swedish feminists and their campaign against violence against women begun in the 1980s, Sweden passed a new law criminalizing the purchase of "sexual services." Coming into force in January 1999 as part of Sweden's new Violence Against Women Act, this law asserted that prostitution was a violation of women's equality.

3. 1980-2000 revisionism and manipulation

The 1980s saw a campaign to protect children through a new international convention, the *Convention on the Rights of the Child* (1989). At the same time, the world witnessed new geopolitical upheavals that transformed power relationships between States and that were accompanied by new economic and political movements. The AIDS epidemic also brought forth the old hygienist pretexts of the 19th century, with some governments and NGOs arguing that State legalization/decriminalisation of the sex industry was necessary to protect public health and reduce HIV/AIDS.

Other arguments surfaced in this context of arguing for legalization/ decriminalisation of the sex industry: trafficking was separated from

prostitution; child prostitution was regarded as a human rights violation but adult prostitution was privileged as a choice; and distinctions were drawn between "forced" and "free" prostitution. The 1995 Platform of Action from the Beijing World Conference on Women introduced the terminology of "forced prostitution" for the first time into an international text of reference. Thus, the burden of proof was shifted from the exploiters of women in prostitution to the victims themselves who would have to prove that they had been "forced." Subsequently, certain regional and international texts, reports submitted to the CEDAW committee, and reports written by the UN Special Rapporteur on Violence Against Women began using the language of "forced prostitution" rather than the 1949 phrase, "exploitation of prostitution."

The pro-prostitution lobby also launched a campaign to separate trafficking from prostitution. In 1997 the Netherlands, who assumed the presidency of the European Union, convened a conference for the purpose of adopting European guidelines against the trafficking in women.[3] Abolitionist and feminist organisations who refused to limit their interventions to trafficking, as if trafficking could be separated from prostitution, were prohibited from access to the NGO forum. Other conferences, particularly in Europe, followed this principle of censoring any discussion of prostitution from forums about trafficking. Basically, the argument was used that since prostitution was a contentious issue and countries had different legal systems, "we" could not all agree on the illegality of prostitution but "we" could "all" agree about trafficking. Shamefully, many governments and NGOs passively accepted this argument without debate and dissent. This separation of trafficking from prostitution began to appear in regional texts, such as the Charter on Fundamental Rights of the European Union that is the preamble to the Constitution of the European Union and that does not mention prostitution, affirming only that trafficking in human beings is prohibited (Art. 5).

In 1997, Anti-Slavery International published a report advocating the redefinition of prostitution as "sex work" on the international agenda. This report stated, wrongly, that the 1949 Convention criminalized women in prostitution. Later other NGOs, such as the International Human Rights Law Group, advocated women's right to prostitute and to contract with third parties (a.k.a. pimps) for promoting careers in prostitution.

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[3] The 1997 Hague Ministerial Declaration on European Guidelines for effective measures to combat trafficking in women for the purpose of sexual exploitation

In 1998, the International Labor Organization (ILO) published a report on the "sex sector" in Southeast Asia,[4] recommending a pragmatic approach to prostitution and stating that it was worth considering the possibility of recognizing, regulating and taxing the sex industry "to cover many of the lucrative activities connected with it." Three years later in 2001, the World Health Organization, through its Southeast Asia bureau, called for the legalization/decriminalisation of the sex industry and argued that this would help reduce the AIDS epidemic.

It has become fashionable to equate "modern slavery" only with traditional forms of slavery, such as forced labor, and to deny that prostitution and sexual exploitation constitute contemporary forms of slavery and slavery-like practices recognized by the 1949 Convention. Both governments and NGOs deliberately avoid referencing the 1949 Convention, deleting it from documents relating to trafficking, such as in the new UN Protocol on Trafficking. Although the 1949 Convention is one of the slavery conventions, only the Conventions of 1929 and 1956 are referenced as universal standards relating to slavery and slavery-like practices.

Within the last five years, the pro-"sex work" lobby has begun to talk about the right of women to "migrate for sex work." Not only the discourse on prostitution but on trafficking as well has been modified by the term "forced," as in "forced trafficking." The pro-"sex work" lobby is campaigning to distinguish between those who are trafficked under conditions of constraint and those who freely "migrate for sex work." In November 2001, the European Court in Luxembourg ruled that women in prostitution from eastern Europe have the right to "migrate for work" in the Dutch sex industry. This is one more victory for the traffickers who can now recruit women from eastern Europe to the Netherlands with impunity, even as they coach women to state that they are "self-employed entrepreneurs," as required by the Court's decision.

4. Revival of the feminist campaign for women's right to be free of sexual exploitation

In June 1998, 4 NGOs participated in a debate before the Working Group on Contemporary Forms of Slavery at the United Nations in Geneva. The

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[4] Lim, Lin Lean (ed.) 1998. *The Sex Sector, the Economic and Social Bases of Prostitution in Southeast Asia.*

aim of the debate was to air the opposing positions of groups who defended prostitution as work and those who maintained that all prostitution was a violation of a person's human rights. A joint text was to emerge from this debate, stipulating areas of agreement to be presented to the Working Group on Contemporary Forms of Slavery. Feminist abolitionists won a decisive victory in Geneva, insisting that prostitution as well as trafficking was included in the text, and that no language could be used which recognized prostitution as work or that supported its regulation.

During the negotiations for the Trafficking Protocol that took place in Vienna from January 1999 to December 2000, 140 women's and human rights organizations from all parts of the globe joined the Coalition Against the Trafficking of Women, the MAPP, the Association des Femmes de l'Europe Méridionnale, the Collectif Article Premier, Equality Now, the European Women's Lobby and the International Federation of Human Rights (FIDH) to advocate for new international anti-trafficking legislation that protects all victims of trafficking. The International Human Rights Network succeeded in integrating

Key dates in the recent history of global resistance to sexual exploitation and the system of prostitution

1986 - The Madrid Report: International Meeting of Experts on the Social and Cultural Causes of Prostitution and the Sexual Exploitation of Women, organized by UNESCO.

1988 – Creation of the Coalition Against Trafficking in Women (CATW).

1991 – The Penn State Report: International Meeting of Experts on Sexual Exploitation, Violence and Prostitution. Organized by CATW and UNESCO.

1992 – 2002 – Leadership, activism and research of the Coalition Against Trafficking in Women (CATW) in the campaign against sexual exploitation globally. Establishment of Coalitions in most major world regions.

1998 – The European Women's Lobby, composed of 3000 organisations of women in the European Union, adopts a motion against prostitution and trafficking. This motion was reaffirmed in 2001, with a new motion seeking to criminalize the "purchase of sexual services."

1998 – Pro-prostitution groups fail to influence the Working Group on Contemporary Forms of Slavery to promote prostitution as a woman's right.

1999 – Law prohibiting « the purchase of sexual services » enters into force in Sweden.

1999 - Creation of the International Human Rights Network, composed of 140 human rights organisations, advocate for a UN protocol against trafficking that will protect all victims of trafficking, not just those who can prove they have been forced.

2000 – The definition of trafficking in the new UN protocol on trafficking includes the provisions of the 1949 Convention

2001 – Madrid II, International Meeting of Experts on trafficking and prostitution - "The War of Words" - organized by UNESCO and the Movement for the Abolition of Prostitution and Pornography (MAPP).

the principles of the Convention of the 2nd of December 1949 into the new trafficking protocol.[5]

VI. Principal arguments against the Convention of the 2nd of December 1949 and answers

• ***Few countries have ratified it, and thus it has no effect***

In 1949, 59 countries were members of the United Nations vs. 189 in 2000. Each year since its adoption, countries have continued to ratify the 1949 convention. The first country to ratify the Convention in 1950 was Israel, and the last one was the Republic of Yugoslavia in 2001. At this writing, 73 States have ratified the 1949 Convention and 5 have signed it. The fact that ratifications continue until this day demonstrates that this convention is still a significant one for many States and that these countries associate trafficking with the exploitation of prostitution.

Chronological ratification of the Convention of the 2nd of December 1949*

1950	***Libéria***	**1959**	Egypt	**1982**	Cameroon
	Israel		Syrian Arab Republic	**1983**	Bolivia
1951	***Denmark***	**1960**	France	**1985**	Cyprus
1952	Cuba	**1962**	Burkina Faso		Luxembourg
	Norway	**1963**	Spain		Afghanistan
	Pakistan		Guinea		South Africa
	Philippines		Republic of Korea		Bangladesh
	Poland		Algeria	**1986**	Mauritania
1953	***Iran***	**1964**	Mali	**1989**	Yemen
	Haiti	**1965**	Belgium	**1990**	Togo
	India		Malawi	**1992**	Croatia
1954	Russian Federation	**1966**	Singapore		Latvia
	Ukraine	**1968**	Kuwait		Portugal
1955	Bulgaria		Venezuela		Seychelles
	Hungary	**1972**	Finland		Slovenia
	Iraq	**1973**	Morocco	**1993**	Bosnia Herzegovina
	Romania	**1976**	Jordan		Honduras
1956	***Myanmar/Burma***	**1977**	Congo		Czech Republic
	Belarus		Niger		Slovakia
	Libyan Arab Jamahiriya	**1978**	Lao Peoples Dem. Rep.	**1994**	Macedonia
	Mexico	**1979**	Djibouti	**1995**	Zimbabwe
1957	Argentina		Ecuador	**1996**	Azerbaijan
1958	Albania		Senegal	**1997**	Krygyzstan
	Brazil	**1980**	Italy	**1999**	Ivory Coast
	Japan	**1981**	Ethiopia	**2001**	Yugoslavia
	Sri Lanka		Central African Rep.		***Madagascar***

In italics, countries that have signed it but did not ratify it

Although the 1949 Convention remains a fragile instrument because it does not have a strong monitoring mechanism, nevertheless it has withstood many years of attacks from the captains of the sex industry, the pro-"sex work" lobby, and regulationist states.

[5] See « Guide to the New UN Trafficking Protocol » by Janice G. Raymond, published by the CATW, MAPP, EWL, AFEM and Article 1 at www.catwinternational.org

Furthermore, if one compares the numbers of ratifications of the 3 slavery conventions in the table provided in Appendix I, one sees that these ratifications reflect the number of countries in existence at that time. Only the 1956 convention has more ratifications, and this convention entered into force 7 years after the 1949 convention with many States recently having emerged from colonial status.

• It is not applied and thus has no utility

It is true that the Convention has no mechanism of control for its application. However, even treaties that have such mechanisms have not been applied fully or consistently. International treaties also have a symbolic value carrying a vision, message and frame of reference that embody the aspirations and values of a society. No one would say, for example, that the Universal Declaration of Human Rights should be abolished because no State fully or consistently applies its principles.

• It criminalizes women in prostitution

The 1949 Convention does *not* criminalize women in prostitution. The Convention penalizes traffickers, procurers, recruiters — all those who exploit women in prostitution. Some States that have ratified the Convention, however, have laws relating to solicitation that are used to charge, arrest and prosecute persons in prostitution. These laws have nothing to do with the Convention and in fact contradict it, since the Convention considers persons in prostitution as victims, and establishes a range of protection measures for them.

• It infantilizes women because it regards women as victims

Acknowledging that women are victimized in prostitution does not mean that women lack agency or self-determination. It means that self-determination is abused and constrained in ways that make it very difficult for women to exercise agency. The contemporary women's movement has taught us that women have been simultaneously victims, survivors and shapers of history. One would never say that victims of torture or crimes of genocide are infantilized by international conventions that recognize them as victims. Rather, the recognition of women's plight as victims of violence against women is one step towards deterring their future victimization.

• It stigmatizes women in prostitution

The stigmatization of women in prostitution is the result of historical, cultural and patriarchal prejudices. Rather, women in prostitution report that it is

the legalization/decriminalisation of the sex industry that enhances their stigmatisation. When women in prostitution must register as "sex workers," and/or undergo health exams, and/or be issued health certificates, they lose their anonymity and a permanent stigma is created of their status in prostitution.

- ***It marginalizes women in prostitution who do not have any access to basic human rights***

The Convention stipulates that States should provide victims of trafficking and prostitution with the means of reintegration into society. The right to live in dignity, to have access to resources, social security, a decent standard of living, and health care, among other rights, applies to all marginalized populations. It is not the 1949 Convention that marginalizes women in prostitution but rather their subordinate status as women who are treated as objects and instruments of male pleasure and who have no real political power.

- ***It adresses trafficking for the purposes of prostitution and does not cover trafficking for other purposes.***

The existence of other forms of trafficking, in particular trafficking for forced labor, should not lead to the rejection of the 1949 Convention because it does not specifically mention trafficking for other purposes. Likewise, countries should not reject the new UN Trafficking Protocol because it does not mention adoption trafficking. One admirable feature of the new UN Protocol on Trafficking is its recognition of other forms of trafficking without rejecting the exploitation of prostitution as a fundamental form of trafficking.

- ***It is moralistic***

To condemn the system of prostitution and the exploitation of prostitution does not mean that one judges and condemns women in prostitution. The word "moralistic" is associated with reactionary and repressive. Is it reactionary and repressive to advocate that exploiters, pimps and all those who benefit from the prostitution of others should be penalized? Is it reactionary and repressive to establish standards of justice that treat the perpetrators of prostitution and trafficking as criminal offenders? As we have seen, the 1949 Convention emerged from a feminist and abolitionist tradition that inveighed against the double standard of morality – one that permitted women to be utilized as instruments of male pleasure by subjecting them to police harassment, registering them as prostitutes and forcing them to undergo medical examinations while men who bought women in

prostitution were treated as "victims" of their "irrepressible" sexuality. The double standard of morality promoted by regulating, legalizing and decriminalizing the sex industry is modern-day moralism disguised as freedom.

• ***It is obsolete***

This is an argument of last resort, used against the 1949 Convention, when no other arguments prove convincing. It is as if the word, "obsolete," has its own referential value and, therefore, critics do not have to explain *how* the Convention is obsolete. The discourse of modernity somehow trumps substantive explanation. Is the Convention obsolete simply because it was elaborated some fifty years ago? On this basis, many human rights instruments, including the Universal Declaration of Human Rights, would have to be declared obsolete.

VII. What needs to be done

Trafficking and the exploitation of prostitution should not be separated

The fight against trafficking should not lead to the separation of trafficking from the exploitation of prostitution. Victims of trafficking should be protected and not regarded as either illegal criminal migrants or as those "migrating for sex work."

Encourage prevention of trafficking and prostitution by addressing conditions that promote sexual exploitation

In this context, countries must address globalization, racism, women's poverty, violence against women within the family and society, child sexual abuse, and male demand for the sex of prostitution.

Adopt policies and programs that educate men about the crime of sexual exploitation, as well as national laws that penalize the purchase of "sexual services"

The system of prostitution must be tackled as a whole and the "buyer" must be made visible as an integral part of that system. The focus on the ***demand*** side of trafficking and sexual exploitation is encouraged by article 9.5 of the new UN Protocol on Trafficking in Persons. Recent national legislation in Sweden provides a model for penalizing the buyers of "sexual services." Additionally, countries should adopt policies and programs,

especially for their military and diplomatic personnel who often engage in purchasing "sexual services" while abroad, and ensure that those who buy, recruit or traffic women in prostitution will be punished.

Implement and ratify the Convention 2 December 1949
Countries that have ratified the 1949 Convention should enforce it and bring their national laws into conformity with the Convention being careful to ensure that no national laws before or since ratification contradict the Convention's principles. Ratifying States Parties must repeal all laws and policies that organize and regulate prostitution, that recognize prostitution as work, and/or that criminalize persons in prostitution. Countries that have not done so should be encouraged to ratify the Convention of the 2nd of December 1949.

Promote the Convention of 1949
States Parties to the Convention should promote it in international forums and continue to affirm their position, as many did during the negotiations for the new UN Protocol on Trafficking in Persons, so that new international texts on trafficking and sexual exploitation do not contradict the 1949 Convention. Countries that have ratified the 1949 Convention are in the best position to encourage the development of a new Protocol that will monitor and reinforce the provisions of the Convention of the 2nd of December 1949.

VIII. Draw up an additional protocol to the conventions relative to slavery or slavery-like practices, including the 1949 Convention

It is a tragedy that in an age when contemporary forms of slavery are emerging in many parts of the world that the 3 conventions on slavery are not equipped to respond to this modern-day scourge and combat it.

The Sub-Commission for the promotion and the protection of human rights, following the recommendations of the Working Group on Contemporary Forms of Slavery (August, 2001), is convinced that monitoring and enforcement mechanisms are essential to strengthen governments' responses to slavery, servitude, trafficking in persons, and the exploitation of the prostitution of others. The 3 slavery conventions are in need of a mechanism that would strengthen the reporting system of countries who have ratified these conventions, with periodic presentation of national reports to the Working Group about how each country is complying with the provisions

of the conventions. A mechanism also needs to be added to facilitate individual reporting by victims, NGOs and other third parties.

In accordance with the resolution of the Sub-commission for the promotion and the protection of human rights of August 15, 2001 (E/CN.4/SUB.2/RES/2001/14), **it is urgent that the General Assembly of the United Nations adopts "a resolution on the elaboration of an additional protocol to the three conventions on slavery and slavery-like practices" in order to "strengthen the effectiveness of these conventions through the establishment of an efficient monitoring mechanism."**

This additional protocol would protect all victims of slavery and slavery-like practices as defined in the conventions of 1926, 1956 and 1949. As these conventions have the same weaknesses and are part of the same group of UN treaties, it is logical that this protocol apply to all three conventions.

This protocol would not only give these conventions a mechanism of application and control, but give the Working Group on Contemporary Forms of Slavery the tools it needs to monitor compliance with these 3 conventions. An additional protocol to the 3 slavery conventions could draw its inspiration from the new CEDAW Protocol. The CEDAW Committee could be used as a model in structuring the mission and the constituency of the oversight committee.

APPENDIX I

Table of States Parties to the slavery conventions and slavery-like practices

1. Slavery Convention of 25 September 1926

Fifty-nine **(59)** countries are parties to this convention (United Nations Treaty Collection, 9 October 01). The Protocol of 1953 amended the Slavery Convention of 1926 affirming that the "duties and functions" of the League of Nations with regard to the Slavery Convention "should be continued by the United Nations."

2. The Convention of the 2nd of December 1949 for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others

• Seventy-three (**73)** countries are parties to this convention (United Nations Treaty Collection, 9 October 01).

3. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 7 September 1956.

119 countries are parties to this convention, (United Nations Treaty Collection, 9 October 01).

AR=accession or Ratification R=definitive ratification S=Signature

States	1926			1949		1956	
	AR	S	R 1953	R	S	R	S
Afghanistan	1935		1955	1985		1956	
Albania		X		1958		1958	
Algeria				1963		1963	
Antigua and Barbuda	1988		1988			1988	
Argentina				1957		1964	
Australia	1927		1953			1958	
Austria	1927		1954			1963	
Azerbaijan	1996		1996	1996		1996	
Bahamas	1976		1976			1976	

Bahrain						1990	
Bangladesh	1985		1985	1985		1995	
Barbados	1976		1976			1972	
Belarus				1956		1957	
Belgium	1927		1962	1965		1962	
Benin	1962						
Bolivia	1983		1983	1983		1983	
Bosnia Herzegovina			1993	1993		1993	
Brazil				1958		1966	
Bulgaria	1927			1955		1958	
Burkina Faso				1962			
Cambodia						1957	
Cameroon	1962		1984	1982		1984	
Canada	1928		1953			1963	
Central African Republic	1962			1981		1970	
Chile			1995			1995	
China	1937						
Colombia		X					
Congo	1962			1977		1977	
Croatia	1992		1992	1992		1992	
Cuba	1931		1954	1952		1963	
Cyprus				1983		1962	
Czech Republic	1993			1993		1993	
Dem. Rep. Of Congo						1975	
Denmark	1927		1954		1951	1958	
Djibouti				1979		1970	
Dominica	1994		1994			1994	
Dominican Republic		X				1962	
Ecuador	1928		1955	1979		1960	
Egypt	1928		1954	1959		1958	
El Salvador						1956	
Estonia	1929						
Ethiopia				1981		1969	
Fiji	1972		1972			1972	
Finland	1927		1954	1972		1959	
France	1931		1963	1960		1964	

Germany	1929		1973			1959	
Ghana	1963					1963	
Greece	1930		1955			1972	
Guatemala	1983		1983			1983	
Guinea	1962		1962	1962		1977	
Haiti	1927			1953		1958	
Honduras				1993			
Hungary	1933		1958	1955		1958	
Iceland						1965	
India	1927		1954	1953		1960	
Iran		X			1953		
Iraq	1929		1955	1955		1963	
Ireland	1930		1961			1961	
Israel	1955		1955	1950		1957	
Italy	1928		1954	1980		1958	
Ivory Cost	1961			1999		1970	
Jamaica						1964	
Jordan				1976		1957	
Japan				1958			
Kuwait				1968		1963	
Korea				1962			
Kyrgyzstan				1997		1997	
Lao Peoples' Democratic Republic				1978		1957	
Latvia	1927			1992		1992	
Lebanon	1931						
Lesotho						1974	
Liberia	1930		1953		1950		1956
Libyan Arab Jamahiriya				1956		1989	
Lithuania		X					
Luxembourg				1983		1967	
Macedonia	1994			1994		1994	
Madagascar					2001	1972	
Malawi				1965		1965	
Malaysia						1957	
Mali	1973		1973	1964		1973	

Malta						1966	
Mauritania	1986		1986	1986		1986	
Mauritius						1969	
Mexico	1934		1954	1956		1959	
Monaco	1928		1954				
Mongolia						1968	
Morocco	1959		1959	1973		1959	
Myanmar/Burma			1957		1956		
Nepal						1963	
Netherlands	1928		1955			1957	
New Zealand			1953			1962	
Nicaragua	1927		1986			1986	
Niger	1961		1964	1977		1963	
Nigeria						1961	
Norway	1927		1957	1952		1960	
Pakistan				1952		1958	
Panama		X					
Peru						1956	
Philippines				1952		1964	
Poland	1930			1952		1963	
Portugal	1927			1992		1959	
Romania	1931		1957	1955		1957	
Russian Federation				1954		1957	
Saint Lucia	1990		1990			1990	
Saint Vincent and the Grenadines	1981		1981			1981	
San Marino						1967	
Saudi Arabia						1973	
Senegal	1963			1979		1979	
Seychelles	1992			1992		1992	
Sierra Leone						1962	
Singapore				1966		1972	
Slovakia	1993			1993		1993	
Slovenia				1992		1992	
Solomon Island	1981		1981			1991	
South Africa	1927		1953	1951			
Spain	1927		1976	1962		1967	

Sri Lanka				1958		1958	
Sudan	1927					1957	
Suriname	1979					1959	
Sweden	1927		1954			1959	
Switzerland	1930		1953			1964	
Syrian Arab Republic	1931		1954	1959		1958	
Tanzania						1962	
Togo	1962			1990		1980	
Trinidad and Tobago						1966	
Tunisia						1966	
Turkey	1933		1955			1964	
Turkmenistan	1997		1997			1997	
Uganda						1964	
Ukraine				1954		1958	
United Kingdom	1927		1953			1957	
United States	1929		1956			1967	
Uruguay		X				2001	
Venezuela				1968			
Yemen				1989			
Yugoslavia	1929		2001	2001		2001	
Zambia						1973	
Zimbabwe				1995		1998	

APPENDIX II

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 U.N.T.S. 271, entered into force July 25, 1951.

PREAMBLE

Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community,

Whereas, with respect to the suppression of the traffic in women and children, the following international instruments are in force:

(1) International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic, as amended by the Protocol approved by the General Assembly of the United Nations on 3 December 1948,

(2) International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, as amended by the above-mentioned Protocol,

(3) International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947,

(4) International Convention of I I October 1933 for the Suppression of the Traffic in Women of Full Age, as amended by the aforesaid Protocol,

Whereas the League of Nations in 1937 prepared a draft Convention extending the scope of the above-mentioned instruments, and

Whereas developments since 1937 make feasible the conclusion of a convention consolidating the above-mentioned instruments and embodying the substance of the 1937 draft Convention as well as desirable alterations therein:

Now therefore

The Contracting parties

Hereby agree as hereinafter provided:

Article 1

The Parties to the present Convention agree to punish any 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.

Article 2

The Parties to the present Convention further agree to punish any person who:

(1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel;

(2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

Article 3

To the extent permitted by domestic law, attempts to commit any of the offences referred to in articles 1 and 2, and acts preparatory to the commission thereof, shall also be punished.

Article 4

To the extent permitted by domestic law, international participation in the acts referred to in articles 1 and 2 above shall also be punishable.

To the extent permitted by domestic law, acts of participation shall be treated as separate offences whenever this is necessary to prevent impunity.

Article 5

In cases where injured persons are entitled under domestic law to be parties to proceedings in respect of any of the offences referred to in the present Convention, aliens shall be so entitled upon the same terms as nationals.

Article 6

Each Party to the present Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.

Article 7

Previous convictions pronounced in foreign States for offences referred to in the present Convention shall, to the extent permitted by domestic law, be taken into account for the purpose of:

(1) Establishing recidivism;

(2) Disqualifying the offender from the exercise of civil rights.

Article 8

The offences referred to in articles 1 and 2 of the present Convention shall be regarded as extraditable offences in any extradition treaty which has been or may hereafter be concluded between any of the Parties to this Convention.

The Parties to the present Convention which do not make extradition conditional on the existence of a treaty shall henceforward recognize the offences referred to in articles I and 2 of the present Convention as cases for extradition between themselves.

Extradition shall be granted in accordance with the law of the State to which the request is made.

Article 9

In States where the extradition of nationals is not permitted by law, nationals who have returned to their own State after the commission abroad of any of the offences referred to in articles I and 2 of the present Convention shall be prosecuted in and punished by the courts of their own State.

This provision shall not apply if, in a similar case between the Parties to the present Convention, the extradition of an alien cannot be granted.

Article 10

The provisions of article 9 shall not apply when the person charged with the offence has been tried in a foreign State and, if convicted, has served his sentence or had it remitted or reduced in conformity with the laws of that foreign State.

Article 11

Nothing in the present Convention shall be interpreted as determining the attitude of a Party towards the general question of the limits of criminal jurisdiction under international law.

Article 12

The present Convention does not affect the principle that the offences to which it refers shall in each State be defined, prosecuted and punished in conformity with its domestic law.

Article 13

The Parties to the present Convention shall be bound to execute letters of request relating to offences referred to in the Convention in accordance with their domestic law and practice.

The transmission of letters of request shall be effected:

(1) By direct communication between the judicial authorities; or

(2) By direct communication between the Ministers of Justice of the two States, or by direct communication from another competent authority of the State making the request to the Minister of Justice of the State to which the request is made; or

(3) Through the diplomatic or consular representative of the State making the request in the State to which the request is made; this representative shall send the letters of request direct to the competent judicial authority or to the authority indicated by the Government of the State to which the request is made, and shall receive direct from such authority the papers constituting the execution of the letters of request.

In cases I and 3 a copy of the letters of request shall always be sent to the superior authority of the State to which application is made.

Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the State to which the

request is made may require a translation in its own language, certified correct by the authority making the request.

Each Party to the present Convention shall notify to each of the other Parties to the Convention the method or methods of transmission mentioned above which it will recognize for the letters of request of the latter State.

Until such notification is made by a State, its existing procedure in regard to letters of request shall remain in force.

Execution of letters of request shall not give rise to a claim for reimbursement of charges or expenses of any nature whatever other than expenses of experts.

Nothing in the present article shall be construed as an undertaking on the part of the Parties to the present Convention to adopt in criminal matters any form or methods of proof contrary to their own domestic laws.

Article 14

Each Party to the present Convention shall establish or maintain a service charged with the coordination and centralization of the results of the investigation of offences referred to in the present Convention.

Such services should compile all information calculated to facilitate the prevention and punishment of the offences referred to in the present Convention and should be in close contact with the corresponding services in other States.

Article 15

To the extent permitted by domestic law and to the extent to which the authorities responsible for the services referred to in article 14 may judge desirable, they shall furnish to the authorities responsible for the corresponding services in other States the following information:

(1) Particulars of any offence referred to in the present Convention or any attempt to commit such offence;

(2) Particulars of any search for any prosecution, arrest, conviction, refusal of admission or expulsion of persons guilty of any of the offences referred to in the present Convention, the movements of such persons and any other useful information with regard to them.

The information so furnished shall include descriptions of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.

Article 16

The Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present Convention.

Article 17

The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present Convention, to check the traffic in persons of either sex for the purpose of prostitution.

In particular they undertake:

(1) To make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while en route;

(2) To arrange for appropriate publicity warning the public of the dangers of the aforesaid traffic;

(3) To take appropriate measures to ensure supervision of railway stations, airports, seaports and en route, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution;

(4) To take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, prima facie, to be the principals and accomplices in or victims of such traffic.

Article 18

The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law, to have declarations taken from aliens who are prostitutes, in order to establish their identity and civil status and to discover who has caused them to leave their State. The information obtained shall be communicated to the authorities of the State of origin of the said persons with a view to their eventual repatriation.

Article 19

The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law and without prejudice to prosecution or other action for violations there under and so far as possible:

(1) Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance;

(2) To repatriate persons referred to in article 18 who desire to be repatriated or who may be claimed by persons exercising authority over them or whose expulsion is ordered in conformity with the law. Repatriation shall take place only after agreement is reached with the State of destination as to identity and nationality as well as to the place and date of arrival at frontiers. Each Party to the present Convention shall facilitate the passage of such persons through its territory.

Where the persons referred to in the preceding paragraph cannot themselves repay the cost of repatriation and have neither spouse, relatives nor guardian to pay for them, the cost of repatriation as far as the nearest frontier or port of em-

barkation or airport in the direction of the State of origin shall be borne by the State where they are in residence, and the cost of the remainder of the journey shall be borne by the State of origin.

Article 20

The Parties to the present Convention shall, if they have not already done so, take the necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.

Article 21

The Parties to the present Convention shall communicate to the Secretary-General of the United Nations such laws and regulations as have already been promulgated in their States, and thereafter annually such laws and regulations as may be promulgated, relating to the subjects of the present Convention, as well as all measures taken by them concerning the application of the Convention. The information received shall be published periodically by the Secretary-General and sent to all Members of the United Nations and to non-member States to which the present Convention is officially communicated in accordance with article 23.

Article 22

If any dispute shall arise between the Parties to the present Convention relating to its interpretation or application and if such dispute cannot be settled by other means, the dispute shall, at the request of any one of the Parties to the dispute, be referred to the International Court of Justice.

Article 23

The present Convention shall be open for signature on behalf of any Member of the United Nations and also on behalf of any other State to which an invitation has been addressed by the Economic and Social Council.

The present Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

The States mentioned in the first paragraph which have not signed the Convention may accede to it.

Accession shall be effected by deposit of an instrument of accession with the Secretary-General of the United Nations.

For the purposes of the present Convention the word “State” shall include all the colonies and Trust Territories of a State signatory or acceding to the Convention and all territories for which such State is intentionally responsible.

Article 24

The present Convention shall come into force on the ninetieth day following the date of deposit of the second instrument of ratification or accession.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification or accession, the Convention shall enter into force ninety days after the deposit by such State of its instrument of ratification or accession.

Article 25

After the expiration of five years from the entry into force of the present Convention, any Party to the Convention may denounce it by a written notification addressed to the Secretary-General of the United Nations.

Such denunciation shall take effect for the Party making it one year from the date upon which it is received by the Secretary-General of the United Nations.

Article 26

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 23:

(a) Of signatures, ratifications and accessions received in accordance with article 23;

(b) Of the date on which the present Convention will come into force in accordance with article 24;

(c) Of denunciations received in accordance with article 25.

Article 27

Each Party to the present Convention undertakes to adopt, in accordance with its Constitution, the legislative or other measures necessary to ensure the application of the Convention.

Article 28

The provisions of the present Convention shall supersede in the relations between the Parties thereto the provisions of the international instruments referred to in subparagraphs 1, 2, 3 and 4 of the second paragraph of the Preamble, each of which shall be deemed to be terminated when all the Parties thereto shall have become Parties to the present Convention.

FINAL PROTOCOL

Nothing in the present Convention shall be deemed to prejudice any legislation which ensures, for the enforcement of the provisions for securing the suppression of the traffic in persons and of the exploitation of others for purposes of prostitution, stricter conditions than those provided by the present Convention.