

QUIT MESSING AROUND: DEPARTMENT OF DEFENSE ANTI-PROSTITUTION POLICIES DO NOT ELIMINATE U.S.-MADE TRAFFICKING DEMAND

*Christopher M. Brown**

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I. INTRODUCTION

Thirty feet outside the main gate of Camp Casey,¹ a group of soldiers wait for the cross-walk light to flash permission to walk. The traffic rolls steadily down the musky street, passing lines of small shops, hocking their various goods through large, garish windows. The soldiers are signaled to walk. They make their way across the street, under the overpass and down to a strip of bars known as the “ville,” or “down range.”² Gaudy bar lights flicker even at midday, while small rabbles of scantily-clad Filipinas and the occasional Russian peek out of the darkened windows, giggling and calling to passers to come into their bars.³ This area, which is off-limits to

* Nova Southeastern University, Shepard Broad Law Center, Juris Doctor, Candidate May 2012; U.S. Army 2004 to 2008; Arizona State University, Bachelor of Science in Kinesiology, 2004. The author would like to thank his family for all their love and support through the years. Also, the author would like to thank the ILSA Journal of International & Comparative Law and Professors Heather Baxter and Kathy Cerminara for their guidance in scholarship.

1. Camp Casey is approximately ten miles from the Demilitarized Zone in the Republic of Korea (South Korea), and approximately forty miles north of Seoul. *Camp Casey Enclave*, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/facility/camp-casey.htm> (last visited Sept. 29, 2010).

2. The author was enlisted in the United States Army as an infantryman from 2004–2008. From January 2006 through January 2007, the author was stationed at Camp Casey, which is located next to Tongduchon, the Republic of Korea (South Korea). Many of the author’s statements are derived from his personal knowledge and experiences while serving in the United States Army in the Republic of Korea. Any names of soldiers or their wives have been changed for confidentiality purposes. See also Donald MacIntyre, *Base Instincts*, TIME, Aug. 05, 2002, available at <http://www.time.com/time/magazine/article/0,9171,501020812-333899,00.html> (last visited Sept. 14, 2010) [hereinafter MacIntyre].

3. The author’s personal knowledge and experiences. See also MacIntyre, *supra* note 2.

Koreans,⁴ is swarming with these young women. Soldiers know them as “juicy girls,” “drinky girls,” or “juicies” or “drinkies” for short.⁵

Every soldier in Area I, before being allowed to go into the “ville” with a battle-buddy,⁶ must be given a tour of the bar area by his squad or team leader, who is typically a noncommissioned officer (NCO).⁷ During the tour, responsible NCOs explain the rules of conduct for the “ville,” punishments for violations of the rules, and of course, they address the swarms of females in high heels and miniskirts that accost every soldier that pass their bar.⁸ Some NCOs elaborate on the human trafficking brief that the soldiers received during in-processing. And some even admonish the use of the young ladies as prostitutes.⁹

The majority of the Filipinas near military camps in South Korea are there on entertainment visas.¹⁰ But the procurement and abuse of these visas has become the subject of international scrutiny and action.¹¹ The U.S. military and the Republic of Korea (ROK) recognize that many of the bars surrounding U.S. bases and camps in the ROK are staffed by trafficked

4. The author’s personal knowledge and experiences. See also MacIntyre, *supra* note 2.

5. The author’s personal knowledge and experiences. See MacIntyre, *supra* note 2. See also Jon Rabirotff & Hwang Hae-Rym, ‘Juicy Bars’ Said to be Havens for Prostitution Aimed at U.S. Military, STARS AND STRIPES, Sept. 9, 2009, available at <http://www.stripes.com/news/juicy-bars-said-to-be-havens-for-prostitution-aimed-at-u-s-military-1.8019> (last visited Sept. 14, 2010) [hereinafter *Havens*].

6. The Republic of Korea (ROK) is divided into seven commands. Area I encompasses Camp Casey. See Memorandum from Walter L. Sharp, General U.S. Army Commander, on U.S. Forces Korean (USFK) Command Policy Letter #6, Buddy System (May 25, 2006), available at <http://www.usfk.mil/usfk/Uploads/140/USFK%20CPL06.pdf> (last visited Sept. 29, 2010). In the author’s experience, the Battle Buddy System was always in effect. Further, Camp Casey and Camp Red Cloud both have mandatory “ville” tours for each soldier before they are allowed to leave the gate and explore with their Battle Buddy.

7. In 2006, when the author arrived in the ROK to report for duty, he was given a tour of the “ville,” as was the protocol at that time, before he would be allowed to go down there on his time off. The tour was to be given by a team leader, which was typically a sergeant (E-5) or above.

8. The author’s personal knowledge and experiences.

9. The author’s personal knowledge and experiences.

10. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 176 (2009), available at <http://www.state.gov/documents/organization/123357.pdf> (last visited Sept. 14, 2010) [hereinafter TIP REPORT 2009]. See generally *Havens*, *supra* note 5 (stating that the arrival of the Filipinas to the ROK is government sanctioned. In order to be allowed into the country on an entertainment visa, the Filipina women must first record a video of themselves singing and dancing. This video is sent to the Korea Media Rating Board for review.).

11. See Jon Rabirotff, Franklin Fisher, Hwang Hae-Rym & Franklin Fisher, *Philippines Stops Authorizing Women to Work at ‘Juicy Bars’ Near U.S. Bases*, STARS AND STRIPES, Feb. 5, 2010, available at <http://www.stripes.com/news/philippines-stops-authorizing-women-to-work-at-juicy-bars-near-u-s-bases-1.98618> (last visited Sept. 14, 2010) [hereinafter *Philippines Stops*].

persons.¹² While anti-human trafficking policies have become a prominent international political issue,¹³ the efficacy of the U.S. and ROK policies have been only moderately effective at best, as the focus is on prostitution, rather than the trafficking itself.¹⁴

Part II of this article depicts trafficking in persons, in general, and the use of trafficked persons as prostitutes in the ROK. It will also discuss how the U.S. military stationed in the ROK has created the demand, and therefore, must be part of the solution. Part III contains a brief narrative of the United States and Department of Defense (DoD) responses to trafficked persons legislation and policy, but is limited to discussing only what is pertinent to the U.S. military. Part IV discusses what effects the legislation and directives have had on the trafficking in persons in the ROK, while Part V will suggest more efficacious responses on the part of the U.S. government to truly eliminate United States involvement in the creation and maintenance of the demand for trafficked persons. This article will then conclude that while there has been progress to lower United States involvement with the use of trafficked persons in the ROK, to truly accomplish the United States objective, a new DoD policy must be instituted, then supplemented by an international cooperative approach.

The author was in the Army and stationed in the ROK from 2005 to 2006. Some of the observations in this Comment are from his experiences and time spent in the ROK. The bulk of service, though, was spent around Camp Casey and Tongduchon, ROK, the base town directly outside of Camp Casey.

II. HUMAN TRAFFICKING IN THE ROK

Trafficking in persons (TIP) is a multi-faceted crime. It robs its victims of human rights and freedoms, fuels global health risks, strengthens organized crime, and impedes development.¹⁵ Just as severe as the crime, though, is the impact of TIP on its victims. The victims may suffer abuse,

12. See *Havens*, *supra* note 5.

13. The U.S., ROK, and the Philippines have made anti-prostitution laws. TIP REPORT 2009, *supra* note 10, at 177, 240. See also Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, available at <http://www.state.gov/documents/organization/10492.pdf> (last visited Sept. 29, 2010) [hereinafter Victims of Trafficking Act].

14. See Exec. Order 13387, 70 Fed. Reg. 60697(f) (Oct. 18, 2005) (detailing the elements of the Uniform Code of Military Justice's (UCMJ) anti-prostitution regulations). *But see Philippines Stops*, *supra* note 11 (noting that the Philippine crackdown on promoters within the Philippines has drastically decreased the number of Filipinas in bars in some areas of the ROK).

15. TIP REPORT 2009, *supra* note 10, at 5.

both physical and emotional, rape, threats, and even death.¹⁶ Moreover, it is a threat to national security.¹⁷ Historically speaking, however, as long as soldiers have been in uniform, prostitution has been present just outside the organized military ranks.¹⁸

TIP is the third most profitable form of trafficking, right behind drugs and arms,¹⁹ and has been a problem in the ROK for some time. The ROK has come to be used as a major transit point by smugglers to traffic primarily Asian women for the sex trade and domestic servitude.²⁰ The ROK is a source country for trafficked persons for other nations such as the United States, Japan, China, Guam, New Zealand, and Australia.²¹ It is a destination country, however, for women from Russia, Uzbekistan, Kazakhstan, Mongolia, the People's Republic of China, the Philippines, Thailand, Cambodia, and other Southeast Asian countries.²² Brokers often target poor women and runaways in less industrialized countries.²³ The broker may pay off her debts, and then use the act to coerce her into signing a labor contract.²⁴ The broker may also recruit her, promising that she will be singing, dancing, and entertaining in other countries.²⁵ Some brokers even go so far as to hold "talent" auditions, where the young women go and

16. *Id.*

17. *Id.*

18. COMM'N ON SECURITY AND COOPERATION IN EUROPE, 108TH CONG., REPORT ON ENFORCING U.S. POLICIES AGAINST TRAFFICKING IN PERSON: HOW IS THE U.S. MILITARY DOING?, available at http://www.csce.gov/index.cfm?FuseAction=UserGroups.Home&ContentRecord_id=287&ContentType=B&UserGroup_id=69 (last visited Sept. 14, 2010) [hereinafter HEARINGS] (testimony of Hon. Christopher H. Smith, Chairman, U.S. Comm'n on Security and Cooperation in Europe).

19. Trafficking in Persons Report (2004) reports that trafficking in persons generated nearly 9.5 billion U.S. dollars in 2003, and is closely linked to money laundering, drug trafficking, document forgery, and other international crimes. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 14 (2004), available at <http://www.state.gov/documents/organization/34158.pdf> (last visited Sept. 14, 2010) [hereinafter TIP REPORT 2004].

20. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: REPUBLIC OF KOREA (2001), available at <http://www.state.gov/g/drl/rls/hrrpt/2001/eap/8336.htm> (last visited Sept. 14, 2010) (stating that in an effort to diminish human trafficking and promote women's rights, the Ministry of Gender Equality was established).

21. See TIP REPORT 2009, *supra* note 10, at 176. A source country is the country of origin of a group of trafficked persons.

22. *Id.* A destination country is the host country to the trafficked persons.

23. *Id.*

24. *Id.*

25. *Id.*

audition to be entertainers for clients, with the promise of better pay in other countries.²⁶

What happens to the young women when they arrive at their destination country is often very different from what is promised. Some employers withhold their passports or wages.²⁷ Some young women are subjected to sexual exploitation,²⁸ where upon arrival they are repeatedly beaten, raped, and starved until they consent to working as the employer desires.²⁹ Many are subjected to debt bondage, where the employer pays for room and board, but the young woman does not make enough to ever pay the employer back, thereby effectively working for free.³⁰ Some young women are subjected to involuntary servitude.³¹ Some young women are even sent to other countries after working for a period of time in a different location.³² And some young women are subjected to all of these atrocities at once.³³

Traditionally, the U.S. military has left the task of regulating prostitution patronage up to commanders,³⁴ yielding different results with each command.³⁵ After the Korean War and the deployment of U.S. troops to the peninsula, the supply of prostitutes grew proportionately to the demand created for them by the soldiers' presence.³⁶ Throughout the last century, the military was even involved in the regulation of prostitution,

26. *Philippines Stops*, *supra* note 11.

27. TIP REPORT 2009, *supra* note 10, at 176.

28. *Id.*

29. TIP REPORT 2009, *supra* note 10, at 14, 19, 22, 45.

30. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 200 (2010), available at <http://www.state.gov/documents/organization/142979.pdf> (last visited Sept. 14, 2010) [hereinafter TIP REPORT 2010] (reporting that employers withheld 20.5 million U.S. dollars in unpaid wages from 9,452 workers).

31. *Id.*

32. The author's personal knowledge and experiences; story of Ailyn, a former "drinky girl" who married a friend of the author. On file with the author.

33. TIP REPORT 2009, *supra* note 10, at 14, 19, 22, 45.

34. Jorene Soto, "We're Here To Protect Democracy. We're Not Here To Practice It": *The U.S. Military's Involvement in Trafficking in Persons and Suggestions for the Future*, 13 CARDOZO J.L. & GENDER 561, 566 (2007).

35. *Id.* at 566-68.

36. Mary Jacoby, *Does U.S. Abet Korean Sex Trade?*, ST. PETERSBURG TIMES, Dec. 9, 2002, available at http://www.sptimes.com/2002/12/09/news_pf/Worldandnation/Does_US_abet_Korean_s.shtml (last visited July 21, 2010). See U.S. DEP'T OF STATE TRAFFICKING IN PERSONS REPORT 27 (2007), available at <http://www.state.gov/documents/organization/82902.pdf> (last visited Oct. 1, 2010) [hereinafter TIP REPORT 2007] (stating that where prostitution is tolerated, there is a greater demand for trafficked persons, especially women and children).

through officially approved brothels, prostitution procurement, and tracking prostitutes with sexually transmitted diseases.³⁷ Some commands prohibited prostitution, as well as ploys that disguise prostitution, such as hiring “maids,”³⁸ but some commands looked the other way.³⁹

Presently in Korea, around the military camps and bases, the primary use for trafficked persons is in barber shops, massage parlors, and bars, especially.⁴⁰ These establishments are not the traditional brothels of history passed. Rather, it is prostitution adapted, sometimes called “industrialized prostitution.”⁴¹ Its primary adaptation has been to mask the prostitution, or the related sexual exploitation of these young women, behind the respectable façade of a legitimate business.⁴² However, the purpose these establishments serve is common knowledge.⁴³

For example, most soldiers are told upon arrival in the ROK that a barber shop with two barber poles indicates a haircut with a “happy ending,” meaning after the haircut, someone performs oral sex or has intercourse with the client.⁴⁴ For massage parlors, the prostitution is more covert. In the ROK, it is typical for a blind or visually impaired person to be a masseuse, as only they may become licensed masseurs.⁴⁵ What is not typical of a Korean massage, however, is a secret room to which clients are taken to have sex. In those massage parlors TIP and prostitution are often present.⁴⁶

37. Isabelle Talleyrand, Note, *Military Prostitution: How the Authorities Worldwide Aid and Abet International Trafficking in Women*, 27 SYRACUSE J. INT'L L. & COM. 151, 152 (2000) [hereinafter Talleyrand].

38. Commander Patrick Joseph Gibbons, *Redeeming Peacekeeping: Using the U.N Security Council to Internationalize the U.S. Military Ban on Prostitution Patronage*, 200 MIL. L. REV. 1, 34 (2009) [hereinafter Gibbons].

39. *Id.* at 35.

40. TIP REPORT 2007, *supra* note 36, at 30.

41. Talleyrand, *supra* note 37, at 154.

42. TIP REPORT 2007, *supra* note 36, at 27. A brothel will be placed on the off-limits list, as it will violate both the ROK and the UCMJ's anti-prostitution laws and anti-TIP policies. *See Havens, supra* note 5.

43. *See generally* Seth Robson, *A Red-Light Kind of Night*, STARS AND STRIPES, Aug. 1, 2004, available at <http://www.stripes.com/news/a-red-light-kind-of-night-1.22299> (last visited Sept. 15, 2010) [hereinafter *Red-Light*].

44. The author's personal knowledge and experiences; the author was informed of this phenomenon during his initial tour of the “ville.” *See also Red-Light, supra* note 43.

45. *Blind S. Korea Masseurs Win Case*, BBC NEWS, Oct. 30, 2008, <http://news.bbc.co.uk/2/hi/asia-pacific/7699114.stm> (last visited Sept. 15, 2010).

46. Recount of a peer's experience at London Massage in Seoul, Korea in 2006. On file with the author.

The bars and clubs near military bases have to be the most covert. If the Inspector General (IG) discovers that the bar is being used as a cover for prostitution, the bar or club will be placed on the off-limits list.⁴⁷ Categorically placing these bars and clubs off-limits could be devastating to the businesses, and the implications could be national, as normally they have government licenses to operate their businesses, and receive tax benefits for catering specifically to foreigners.⁴⁸

For clever bar and club owners, however, their trafficked persons work as strippers, and essentially escorts.⁴⁹ In 2004, for ten to twenty dollars, a soldier could buy a drink, approximately three ounces of juice, in exchange for the company of a “drinky girl.”⁵⁰ For the duration of her drink, she will sit and converse with the patron who bought it for her, at least to whatever extent her English capabilities permit.⁵¹ A soldier can also purchase her time. For example, if a soldier takes a liking to a particular “drinky girl,” he will pay the *mama san*⁵² an undisclosed amount so that he can take the “drinky girl” out for part of the day.⁵³ Sometimes there is a curfew, which requires the “drinky girl” to be back at the bar to solicit other clients for drinks. But what happens during the time spent away from the bar with the soldier is not the responsibility of the *mama san*. She may not “officially” rent out prostitutes, but she does facilitate an escort service.⁵⁴

47. See *Philippines Stops*, *supra* note 11. See also *Havens*, *supra* note 5; HEARINGS, *supra* note 18.

48. *Havens*, *supra* note 5.

49. Sex may be involved, even if it is never mentioned. The author’s personal knowledge and experiences; the author knew numerous soldiers who purchased the woman’s time to take her on “a date.”

50. *Havens*, *supra* note 5.

51. *Id.*

52. A *mama san* is a woman who works in a supervisory role in brothels and drinking establishments. Glossary of Military Terms & Slang from the Vietnam War, http://www2.iath.virginia.edu/sixties/HTML_docs/Resources/Glossary/Sixties_Term_Gloss_K_P.html (last visited Oct. 23, 2010).

53. Often, though, if a “drinky girl” does not sell her quota, she will be subjected to a “bar fine,” where she is pushed to have sex with a client to make up for the lack in drink sales. See *Havens*, *supra* note 5; *Philippines Stops*, *supra* note 11. A “bar fine” has also been defined as the fee a soldier pays for the “drinky girl” to have a “night off,” and generally sex occurs. See Emily Nyen Chang, Note, *Engagement Abroad: Enlisted Men, U.S. Military Policy and the Sex Industry*, 15 ND J. L. ETHICS & PUB POL’Y 621, n.151 (2001).

54. Statement made based on author’s observation that a bar owner can avoid being labeled a brothel if this bar owner does not officially condone the sex.

II. THE ATTACK ON HUMAN TRAFFICKING

The Victims of Trafficking and Violence Protection Act was passed by Congress in 2000.⁵⁵ The purpose of this act was to combat TIP, which the act calls a modern form of slavery, and to also ensure punishment of traffickers while protecting its victims.⁵⁶ In 2002, President George W. Bush published the National Security Presidential Directive Twenty-Two (NSPD-22).⁵⁷ Part of this directive was an adoption of a zero-tolerance policy for the participation in TIP by any government employee, military or civilian.⁵⁸ Included in this directive was a policy requiring all departments to develop policies to educate and punish employees who participate in TIP, whether the involvement was in the actual trafficking, or the solicitation of sexual acts from a trafficked person.⁵⁹ In 2003, a congressional letter was sent to the Department of Defense Inspector General (DoD IG) expressing concern about what the DoD was doing in response to alleged military personnel and contractor participation in sex trafficking.⁶⁰ NSPD-22 had ordered an expedited implementation of its policy.⁶¹ However, it was not until 2004 that the DoD distributed an instructional memo regarding a policy implementation as was ordered by the presidential directive.⁶²

Also in 2004, the DoD IG appeared before the House Committee on Armed Services.⁶³ In his opinion he stated that one of the main issues for the continued TIP problem was that leaders had failed to “promulgate and enforce principle-based standards for subordinates who create the demand for prostitution, generally, and for sex slavery specifically.”⁶⁴ As a partial reaction to the DoD IG’s opinion statement before the House Committee,

55. Victims of Trafficking Act, *supra* note 13.

56. *Id.* § 102(a).

57. DEP’T OF DEF., OFFICE OF INSPECTOR GEN., EVALUATION OF THE DOD EFFORTS TO COMBAT TRAFFICKING IN PERSONS 63–69 (2006) [hereinafter EVALUATION OF DOD EFFORTS 2006].

58. *Id.* at 66.

59. *Id.*

60. *Id.* at 57.

61. *Id.* at 69.

62. EVALUATION OF DOD EFFORTS, *supra* note 57, at 66. The 2004 Instructional memo was reauthorized and amended on February 16, 2007. The author does not intend to demonstrate that this is all the U.S. anti-human trafficking law, programs, etc. The author only includes what law is most pertinent to this article.

63. Joseph E. Schmitz, Inspector General of the Department of Defense, Implementing the Department of Defense “Zero Tolerance” Policy With Regard to Trafficking in Humans, Statement Before the House Committee on Armed Services and the Commission on Security and Cooperation in Europe (Sept. 21, 2004).

64. *Id.* at 5.

the Uniformed Code of Military Justice (UCMJ) was amended to criminalize prostitution.⁶⁵ Before the amendment, prostitution was punishable under the UCMJ by one of its catch-all clauses, but it was not enforced consistently.⁶⁶ Then, in 2005, as a response to the 2003 congressional letter, the DoD IG announced that it was launching an evaluative initiative to test the effectiveness of the newly implemented DoD programs.⁶⁷ With the criminalization of prostitution and its related practices under the UCMJ, and the education and awareness TIP programs promulgated by the DoD, the DoD had almost fully realized compliance in accordance with NSPD-22.⁶⁸

IV. PROSTITUTION DIMINISHED: IT'S NOT ENOUGH

In 2007, there were ninety-four million sex trade transactions in the ROK, which was down from 170 million in 2002.⁶⁹ The marked improvement has been credited to both the ROK's pursuance of an anti-prostitution agenda, as well as the UCMJ legislation that governs the U.S. soldiers on the peninsula.⁷⁰

The DoD IG reported that the United States Forces Korea (USFK) had made great progress in regards to their mission to educate service members

65. See Exec. Order No. 13387, 70 Fed. Reg. 60697 (Oct. 14, 2005). The UCMJ is a separate body of criminal law that governs military personnel.

66. Gibbons, *supra* note 38, at 35. See 10 U.S.C. § 892 (2000). This regulation proscribes the elements necessary for any soldier who fails to obey a regulation or order:

Any person subject to this chapter who—

- (1) Violates or fails to obey any lawful general order or regulation;
- (2) Having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or
- (3) Is derelict in the performance of his duties; shall be punished as a court-martial may direct.

67. See EVALUATION OF DOD EFFORTS 2006, *supra* note 57, at 80.

68. *Id.* at 28.

69. GI Korea, *Korean Prostitution Tops 14 Trillion Won A Year*, ROK DROP, Sept. 20, 2008, <http://rokdrop.com/2008/09/20/korean-prostitution-tops-14-trillion-won-a-year/> (last visited Sept. 24, 2010); Tom Henheffer, *South Korea Takes on Prostitution*, MACLEANS.CA, Feb. 18, 2010, <http://www2.macleans.ca/2010/02/18/south-korea-takes-on-prostitution/print/> (last visited Sept. 24, 2010) (both stating that according to the Korea Women's Development Institute, sex trade accounts for 1.6 percent of Korea's gross domestic product).

70. TIP REPORT 2009, *supra* note 10, at 177. "The ROK prohibits trafficking for the purpose of commercial sexual exploitation, including debt bondage, through its 2004 'Act on the Punishment of Intermediating in the Sex Trade and Associated Acts,' which prescribes up to ten years' imprisonment. . . ." These penalties are similar to those of other serious crimes, like rape. The ROK also criminalizes labor trafficking under the Labor Standards Act.

about illegal prostitution and TIP.⁷¹ The DoD IG's prediction of the USFK leadership's strong commitment to the NSPD-22 was found to be accurate when evaluating its efforts in 2006.⁷² But even with these marked improvements, there is evidence of TIP less than 200 meters off of military camps such as Camp Casey.⁷³

The USFK worked diligently to equate prostitution with trafficking in persons,⁷⁴ and has done so by designing the educational programs to correlate prostitution with trafficking in persons.⁷⁵ Since the response to NSPD-22 was to criminalize prostitution, correlating prostitution with trafficking in persons would seem to be an efficient way to promulgate the anti-TIP policy, as established by Congress and President George W. Bush. This method has been successful in respect to the anti-prostitution amendment to the UCMJ.⁷⁶ In fact, the DoD IG's 2006 evaluation found that participants in the "sensing sessions" did not identify any U.S. personnel involved in "actual trafficking."⁷⁷ However, if trafficking in persons is associated with only prostitution, essentially these results, at best, only indicate that the participants did not know, or admit that they knew, any soldiers whose off-base activities included the patronization of prostitutes.⁷⁸ While the sample population was a large percentage of the actual population,⁷⁹ the sample was primarily asked about soldier participation in prostitution, not trafficked persons working in other roles.⁸⁰

71. DEP'T OF DEFENSE, OFFICE OF THE INSPECTOR GENERAL, ASSESSMENT OF DOD EFFORTS TO COMBAT TRAFFICKING IN PERSONS: PHASE I—UNITED STATES FORCES KOREA 14 (2003) [hereinafter PHASE I REPORT].

72. *Id.* at 13; EVALUATION OF DOD EFFORTS 2006, *supra* note 57, at 28.

73. Jon Rabiroff, *South Korean 'Juicy Bar' Owners Hear Army's Concerns*, STARS AND STRIPES, Feb. 6, 2010, available at <http://www.stripes.com/news/south-korean-juicy-bar-owners-hear-army-s-concerns-1.98654> (last visited July 22, 2010) [hereinafter *Owners Hear*] (stating that USFK officials are working on a response to a question of whether the extreme measures taking by the Filipino government ought to prompt a USFK policy change towards juicy bars. Also stating that two local establishments in 2010 were placed on the off-limits list for TIP violations.).

74. EVALUATION OF DOD EFFORTS 2006, *supra* note 57, at 28.

75. *Id.*

76. See Exec. Order 13387, 70 Fed. Reg. at 60697 (Oct. 14, 2005).

77. *Id.*

78. The DoD IG used a Web-based survey which yielded approximately 10,000 responses. *Id.* There is no indication in the report that the DoD IG used any sort of statistical measurement tool to account for soldiers' tendencies to protect their peers. From the beginning of basic training until a soldier retires, soldiers are engrained with a sense loyalty to their comrades, which is taught through a variety of methods. Admitting one of their comrades had used a prostitute would very likely be a breach of that loyalty.

79. *Id.* The U.S. soldier population in the ROK was lowered to 28,500 soldiers in 2008. See Robert M. Gates, Secretary of Defense & Lee Sang-hee, ROK Minister of National Defense, U.S. Troop

It is clear that a business establishment must not be a front for a brothel in order to keep its name from the off-limits list.⁸¹ But there is still a niche in the market for trafficked persons, thus, the formidable demand is sustained. As illustrated earlier, a bar may not engage in prostitution, but there are other jobs that the trafficked persons may perform.⁸² During the course of a career as a “drinky girl,” for example, a woman may never solicit sex from soldiers, but she will solicit twenty dollar drinks in exchange for her companionship.⁸³ Although there is nothing illegal about soliciting ridiculously expensive juice, the underlying issue is that there is still a function, and thus a demand, for trafficked persons. Bar and club owners have found a way to continue the use of their trafficked persons in order to make a profit. Although the DoD has reported that it is in compliance with NSPD-22,⁸⁴ it has not efficaciously eliminated soldier participation in TIP, in the sense that when a soldier buys one of these women a drink, he has validated her reason for being there.

The criminalization of prostitution under the UCMJ, while a necessary improvement, does not strike at the heart of what Congress and the President sought to purge: U.S. troop involvement in TIP. Regarding only the sexual exploitation of trafficked women, in order to minimize and eliminate any U.S. troop involvement in this criminal activity, there must be zero demand for these women. If a demand persists, then the trafficking will continue, as it has proven to be a highly adaptable racket, as demonstrated by the juicy bars in the ROK.⁸⁵

The DoD has stopped short of systematically placing all juicy bars on the off-limits list, as they have done to other types of establishments.⁸⁶ Given that the ROK licenses and gives tax incentives to such

Levels in South Korea will Remain at 28,500 (Oct. 17, 2008), *available at* <http://www.america.gov/st/texttrans-english/2008/October/20081020121847eafas0.7119104.html> (last visited Sept. 24, 2010) [hereinafter Gates Brief]. The DoD IG’s sample population accounted for approximately one-third of the total number of soldiers stationed on the peninsula.

80. EVALUATION OF DOD EFFORTS 2006, *supra* note 57, at 88–91.

81. *Philippines Stops*, *supra* note 11. *See also Havens*, *supra* note 5.

82. Both ROK authorities and the DoD suspect that prostitution occurs at juicy bars, even if not overtly. But ROK governmental oversight is lacking, and the implications of placing all juicy bars off-limits could cause problems for both the ROK and the U.S. military. *See generally Havens*, *supra* note 5.

83. *Id.*

84. *See PHASE I REPORT*, *supra* note 71, at 13.

85. *See TIP REPORT 2004*, *supra* note 19, at 14.

86. *See Philippines Stops*, *supra* note 11. The DoD has long placed the “glass house” establishments off-limits. These establishments have large glass windows where prostitutes sit in the windows like meat hangs in a butcher shop window. *Id.*

establishments, and the large economic effect these establishments have on tourism, the DoD's hesitancy seems justified.⁸⁷

The DoD has further considerations, as well, besides just the economic implications of a ban on all juicy bars. In 2008, the United States and the ROK agreed that approximately 28,500 soldiers would remain in Korea.⁸⁸ The bulk of these soldiers spend at least some evenings and some of their free time at one of the approximately 200 entertainment establishments that receive a tax break for catering to foreigners.⁸⁹ In 2006, the vast majority of juicy bar establishments that were near base areas were staffed by Filipinas.⁹⁰ Should they be placed off-limits, none of the camps would likely be able to accommodate the recreational needs of so many soldiers.⁹¹ This lack of off-base venue alternatives would tax the military's resources, and would potentially be problematic for the USFK when dealing with restless, bored soldiers.

V. SUGGESTIONS AND PREDICTIONS

The DoD has viable options for exterminating U.S. troop involvement with TIP. One method for addressing U.S. soldiers' contact with trafficked persons can be derived from the actions of the Filipino government. There is evidence to suggest a correlation between the Filipino government denying promoter requests to recruit Filipina women to send to base-area bars and the recently lower amounts of Filipina women at these locations.⁹² The DoD, in an effort to suppress the flow of women to the base-area bars, could work with source countries whose women supply the trafficking demand. While the efforts of the Filipino government have made remarkable improvements, they only affect the U.S. soldiers' interaction with potentially trafficked Filipinas. Source country actions such as these do not eliminate the demand for trafficked persons; rather, they leave a void which can be filled by trafficked persons of other nationalities. One potential conflict with this idea, though, is that if there is not a DoD

87. *Id.*; *Havens*, *supra* note 5.

88. *Gates Brief*, *supra* note 79.

89. *See Havens*, *supra* note 5.

90. *See Philippines Stops*, *supra* note 11.

91. The USFK spent \$3.4 million to improve its morale, welfare, and recreation facilities in 2004, after taking a survey of soldiers to identify what areas needed funding prioritization. *EVALUATION OF DOD EFFORTS 2006*, *supra* note 57, at 27–28.

92. *See Philippines Stops*, *supra* note 11. Currently, promoters are supposed to get the approval of the Filipino government to recruit Filipina women. This article, however, reports that promoters and recruiters continue to find illegal methods for getting around the Philippine Overseas Employment Administration.

presence in the source country, it could be difficult for the DoD to work with public officials to take the appropriate, traffic-halting actions. Source country actions only protect their populations, and are not likely, in and of themselves, to eliminate the demand.

The DoD has touted another potential method as a goal to continue to fight TIP.⁹³ Recently, it attempted, albeit a weak attempt, to stifle the involvement of U.S. troops with trafficked persons.⁹⁴ The DoD, in pursuit of its anti-TIP mandate, would coach and “develop alternative business models that appeal to military personnel and promote entertainment that does not contribute to or attract demand for trafficked women.”⁹⁵ The business model by which the bars make a profit must be addressed. This, however, may prove to be difficult because some juicy bar owners believe that if there is no girl, then there is no customer.⁹⁶

In February 2010, U.S. Army officials met with local bar owners outside Camp Casey to address the Army’s concerns about TIP and other issues.⁹⁷ What basically ensued were the Army officials’ statements that there needs to be change.⁹⁸ The bar owners could interpret this statement as a warning, but the DoD did not offer any sort of guidance, resource, or alternative to help them change their practices. While it is not the responsibility of the DoD to teach local bar owners how to run their businesses, the DoD has an interest in their business practices. As mentioned earlier, the USFK could not likely cope with the recreational needs of all its soldiers should the juicy bars be categorically placed on the off-limits list. If the DoD’s objective is to eliminate all U.S. troop involvement in TIP, then it would behoove the DoD to propose valid alternative business plans to help realize its objective.

The UCMJ’s targeting of prostitution is not enough to truly eradicate U.S. troop involvement with trafficked persons in the ROK. To absolutely eliminate the U.S.-made demand for trafficked persons, it follows that the DoD would have to prohibit any sort of contact between soldiers and trafficked persons. The contact would have to be prohibited if it is the reason for which the trafficked person was brought to the establishment to

93. EVALUATION OF DOD EFFORTS 2006, *supra* note 57, at 27.

94. *See Owners Hear, supra* note 73.

95. EVALUATION OF DOD EFFORTS 2006, *supra* note 57, at 27.

96. *See Philippines Stops, supra* note 11.

97. *See generally Owners Hear, supra* note 86.

98. *Id.*

make money for their employer.⁹⁹ Since the DoD has limited regulatory power, especially in a foreign country, the only absolute behavior it can control is where soldiers spend their free time, as it has no official regulatory power over the Korean businesses that utilize trafficked persons.¹⁰⁰

For the DoD, to eliminate commercial contact between soldiers and trafficked persons, it would have to place every club with potentially trafficked people on the off-limits list. This is the most obvious way to keep soldiers away from trafficked persons. This idea is fraught with complications.¹⁰¹ What the DoD can realistically do, and what is actually in its control, is a policy change in regards to the juicy bars. If all juicy bars are placed on the off-limits list until they can prove that they harbor no trafficked persons and prostitution is strictly not practiced, then the DoD can ensure that U.S. soldiers are not involved with TIP. The burden of proof should fall on the bar owners. If they wish to maintain the U.S. soldiers' business, then they will adapt and prove their compliance.

What will be required of the DoD to ensure continued policy compliance will be frequent and random investigations into each establishment that soldiers are permitted to patronize. The very fact that the Filipino government has discontinued granting permission to recruiters for the recruitment of Filipina women for base-area bars in the ROK suggests that there are a number of human rights violations from which the Filipino government wishes to protect its citizens.¹⁰² Furthermore, the ROK would also have an interest in policing these establishments in conjunction with the DoD. Since these establishments are given tax breaks,¹⁰³ and the individual women are supposed to be cleared by the Korean government,¹⁰⁴ (not to mention the importance of these establishments to the national economy)¹⁰⁵ then the ROK should be negotiated with to help ensure compliance with both ROK and DoD anti-TIP policies. A policy change of this magnitude would, at minimum, require the vigilance and persistence of

99. For example, the "drinky girls" are brought to the base-area bars to flirt with service members and solicit drinks. This income producing contact with soldiers is their purpose in the establishment. See *Philippines Stops*, *supra* note 11.

100. The only regulatory influence the USFK has over ROK businesses is its ability to place an establishment on the off-limits list. Businesses that desire to keep the U.S. soldiers' business may have an interest in complying with the USFK demands.

101. See *supra* notes 99–100. See generally *Owners Hear*, *supra* note 73.

102. See generally *Philippines Stops*, *supra* note 11.

103. *Havens*, *supra* note 5.

104. *Id.* See also TIP REPORT 2009, *supra* note 10, at 176.

105. *Havens*, *supra* note 5.

both the ROK and the DoD.¹⁰⁶ Further sanctions may even be required by the ROK when an establishment is found to have violated the anti-TIP policies. Potential sanctions could include revoking their licenses to operate the business, fines, or any other measure that will convey the seriousness of the issue, and strongly encourage compliance.

At the administrative level, for a policy such as this to be effectuated, an appropriate decision-maker in the DoD will need to act on the belief or order that eliminating U.S. soldier involvement with TIP is more important than the temporary economic impact that a policy change may have on the ROK. It will require someone with the proper authority, vision, and commitment to the anti-TIP policies, who can also work with the USFK commanders to negotiate the necessary changes and compliance within the ROK.

A change of this magnitude must be thoroughly planned in order to minimize the potential negative effects on the ROK and the USFK. For example, as part of the policy transition, funds may need to be delegated to further the development of recreational alternatives for the soldiers during the transition period. It may need to include funding for the education of the local base-area bar owners and to help train ROK law enforcement in indicators of TIP.¹⁰⁷

VI. CONCLUSION

While the current legislation has undoubtedly affected TIP practices near military camps and bases in the ROK, it is not sufficient to accomplish the U.S. anti-TIP agenda. A change must also come in the USFK's educational policy. It is not enough to equate TIP with only prostitution. Many of the bars utilizing trafficked persons do not engage in prostitution to the effect of even being placed on the off-limits list. Yet, they still participate in the TIP cycle that Congress and President George W. Bush wished to address. Although the USFK may have realized compliance with NSPD-22 by associating prostitution with the TIP agenda, it has not sufficiently freed the U.S. soldiers of all demand-causing behavior. Therefore, to truly eradicate U.S. soldier involvement with TIP, it will be necessary to revamp the TIP awareness programs to include all forms of trafficked persons, and a policy change toward the juicy bars must become a reality. Only with a hard line drawn in the sand, can the United States truly exonerate itself of its involvement.

106. The U.S. DoD recognizes that it cannot solve the TIP problem by itself. PHASE I REPORT, *supra* note 71, at 14.

107. TIP REPORT 2010, *supra* note 30, at 201 (reporting that the ROK's lack of a system to identify trafficking victims among vulnerable groups limited its ability to assist victims).