

EXAMINING SAFE HARBOR LAWS FOR KIDS OF TRAFFICKING:  
UNITED STATES AND THE EUROPEAN UNION

by

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Thesis directed by Associate Professor Betsy Jose

### **ABSTRACT**

Erasure of borders created by globalization has largely fueled the trafficking of humans and forced the transgression to take on an organized crime nature, as was recognized by the 2000 United Nations Convention on Organized Crime (United Nations 2013). Human trafficking, — or modern day slavery (Buckley 2008; Polaris Project 2013, Richard 2004-2005), — is one of the biggest crimes plaguing the world today. Despite the crime's underground nature it is still an estimated 32 billion dollars per year industry (O'Connell Davidson 2011; United Nations 2013). Annually, an estimated 1.2 million children are trafficked worldwide (Buckley 2008), — with many suspecting the estimates might be higher in actuality but extremely hard to measure precisely.

The battle against human trafficking is being fought on both domestic and global arenas. This is the case for both the United States (Andrews 2004) and countries in the European Union (FRA 2009; Andrijasevic 2007). However, the nature of the crime makes it necessary to protect victims from both ends— by preventing possible trafficking and by identifying and protecting the victims (Hidalgo, Saddrudin, Walter 2005; Statham 2005). This is especially true of child victims who are in need to be identified, protected, and treated as children, not criminals. Safe Harbor Laws (SHL) aim to achieve these goals. This issue frames the research of the thesis by focusing on whether SHLs exist in the United States and the European Union which identify and treat child victims of trafficking as children and not as criminals, and, by studying the possibility of a

statistically significant impact on child victims with the passage of SHLs. The work aims to look into Safe Harbor Laws in the United States and the European Union and analyze their effectiveness by looking at the number of victims identified before and after the passage of SHLs. Conclusions from the research will be utilized to provide potential recommendations for the future of Safe Harbor Laws.

The form and content of this abstract are approved. I recommend its publication.

Approved: Betsy Jose

To Dmitro, Dad, and Mom. Thank you for everything.

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## **CHAPTER I**

### **INTRODUCTION**

Human trafficking, — or modern day slavery (Buckley 2008; Polaris Project 2013, Richard 2004-2005), — is one of the biggest crimes plaguing the world today. Erasure of borders created by globalization has largely fueled the trafficking of humans and forced the transgression to take on an organized crime nature, as was recognized by the 2000 United Nations Convention on Organized Crime (United Nations 2013). Despite the crime's underground nature it is still an estimated 32 billion dollars per year industry (O'Connell Davidson 2011; United Nations 2013). Annually, an estimated 1.2 million children are trafficked worldwide (Buckley 2008), — with many suspecting the estimates might be higher in actuality but extremely hard to measure precisely.

#### **Research Question**

The battle to combat human trafficking, to prevent it from happening in the first place, and to protect the most vulnerable populations, is being fought on both domestic and global arenas. This is the case for both the United States (Andrews 2004) and countries in the European Union (FRA 2009; Andrijasevic 2007). However, the nature of the crime makes it necessary to protect victims from both ends, by preventing possible trafficking and by identifying and protecting the victims (Hidalgo, Saddrudin, Walter 2005; Statham 2005). This is especially true of child victims who usually have no one to speak for them and are in dire need to be identified, protected, and treated as children. Safe Harbor Laws (SHL) are put in place to respond to the specific needs of child victims by making protection of and assistance to child victims of trafficking a priority. This issue frames the research questions: what kinds of SHLs exist in the United States and the

European Union and do they have a statistically significant effect on the number of victims?

### **Safe Harbor Laws and Importance of Research Question**

This particular research question and research itself aim to be victim-focused. The research takes a victims-first stance, concentrating largely on existing laws that aspire to identify and protect the victims. This is in contrast to the large amount of legislation both in the United States and the European Union and a vast body of literature covering the issue that focus largely on the perpetrator and punishment aspects of the problem. What this research will hopefully highlight is the growing need for victim-first legislation as well as victim-first theoretical literature. Ideally, it would help advance theoretical literature on the subject by providing some evidence for the shift of focus from perpetrator-punishment centered efforts to victim-protection centered ones.

Children constitute an estimated 50 percent of all trafficked persons worldwide (FRA 2009; Polaris Project 2013). A large portion of trafficked children are trafficked for the purposes of sexual exploitation while a great number are trafficked for labor purposes. While all trafficked children face grave injustice and danger, those trafficked for sexual exploitation often face dangerous conditions and unfair consequences after being identified (IBCR 2011; Richard 2005; Polaris Project 2013). This is because most child victims of sex trafficking are not viewed as children or victims but as criminals, and they are treated as such by states and their respective legislations, if at all (Adelson 2008-2009; Farrior 1997). For example, this could mean that when a prostitution ring utilizing child prostitutes is busted all the parties involved are charged with criminal behavior,

including child prostitutes. When this happens, trafficked and exploited children can be, and often are, prosecuted for prostitution. To compare, children trafficked for labor may not face criminal charges for engaging in labor, while children trafficked for sexual exploitation are often charged with prostitution. This is not to minimize the harm children trafficked for labor are subjected to, rather, it is simply to show that children trafficked for sexual exploitation require specialized attention in the areas of legislation and special services. This is why Safe Harbor Laws are important—they aim to address the specific and specialized needs of children trafficked specifically for sexual exploitation.

To prevent further harm being inflicted on children trafficked for sexual exploitation, practitioners argue that laws need to be implemented that provide a “safe harbor”—where children are not only protected from unjust criminal prosecutions but are also provided much needed help and treatment from trauma that trafficking conditions inevitably create. The Polaris Project, an organization leading the fight against trafficking by promoting laws, advocacy efforts, assisting law enforcement, and providing victims’ assistance, recommends that for such laws to be effective two main elements are required:

1. They should prevent minor victims of sex trafficking from being prosecuted for prostitution
2. They should protect child victims of sex trafficking by providing them with specialized services (a provision of SHLs) (Polaris Project 2013).

These two elements will be the main working definition of Safe Harbor Laws for the purposes of this thesis.

Prevention of the prosecution of minor victims includes defining child victims as victims of “abuse and neglect” (Polaris Project 2013) triggering a child protective response, not a criminal one; granting immunity from prosecution for prostitution if the victim is under 18 years of age; and/or diverting arrested children from “juvenile delinquency proceedings to child protective proceedings” (Polaris Project 2013). These steps would help ensure that needed assistance and protection come to child trafficking victims after they have been identified and might actually encourage victims to speak up by offering protection and fair treatment on a state/federal level. This, too, may lead to curtailing instances of trafficking and sexual exploitation by creating a high-risk – low-reward scenario for perpetrators, helping curb the demand for trafficked children (and perhaps trafficking altogether). This aspect will be explored and discussed further in the thesis.

Protecting child victims is an equally important duty of Safe Harbor Laws. Child victims of sex trafficking, and in some cases labor trafficking, might require “safe housing, long-term housing, mental health care, access to GED or other remedial education, and life skills learning” (Collete, Gozdziaik 2005; O’Connell Davidson 2011; Polaris Project 2013; Prios 2013; Richard 2005). Safe Harbor laws provide this protection by ensuring that child victims receive mentorship from persons who have been in such situations or trained professionals familiar with trauma associated with commercial and non-commercial sex trade; placement of child victims in proper pre-determined locations without “undue questioning from untrained law enforcement officers or other officials” (Polaris Project 2013), and placement of these victims in programs that treat the children with “respect and dignity” (Polaris Project 2013) and do not stigmatize them for

involvement in the sex industry. The protection part of Safe Harbor laws can help ensure proper treatment of child victims. Perhaps the most important part of the protection clause is the mentorship child victims would be able to receive from persons who have been in exact or similar situations. Their involvement in aiding the rehabilitation of child victims is crucial. Mentors, if willing, are able to provide exclusive insight into the child trafficking industry. Their experience could provide vital details to be included in state and federal laws that might otherwise have been overlooked or not included due to lack of knowledge.

### **Overview of Thesis**

As mentioned before, the main focus of this research and its importance lies in its focus on victims and protection instead of perpetrators and punishment. This is not to say that perpetrator-punishment literature and legislation will not be briefly discussed or referenced to, but it will not be the main focus of the paper. The thesis will be laid out in the following ways, each section being a separate chapter in the work.

The methodology for how the research was conducted will be laid out and discussed. This will include an explanation for case selection, a discussion of the data and methods of analysis, and a discussion about the limitations of the study. A brief discussion regarding the issue of trafficking will follow: spotlighting the scale of the problem as well as possible causes and contributing factors and limitations. This section will also include definitions for the terms that will be used throughout the thesis. A review of the theoretical literature on reducing trafficking through law will follow the discussion on the issue of trafficking. The next section will be a discussion of various

relevant laws. The section will aim to discuss and analyze some of the legislation concerning human trafficking in the United States and the European Union. This part traces some of the developments in human trafficking legislation in general and trafficking legislation that is focused on children. This discussion provides a better understanding of Safe Harbor Laws, their components, and their desired and possible effects. The case studies of the United States and the European Union will follow, each in its own chapter. These will try to delve deeper into existing Safe Harbor Laws present in the United States and the European Union as well as discuss their possible effects. Finally, there will be a discussion concerning the implications of Safe Harbor Laws in the two regions researched. All of these sections will be followed by recommendations that will be drawn from the research conducted and, lastly, a conclusion.

The hope of this research is, at the very least, to shed some light on existing legislature that is victim-centered more than perpetrator centered. Safe Harbor Laws aim to provide much needed protection to child victims of trafficking. Their effectiveness, however, may extend beyond the immediate help to victims. The laws, ideally, could serve as deterrents to child trafficking and perhaps trafficking altogether. It is without a doubt an uphill battle, but, it is a cause nonetheless worthy of the torturous climb to eradicate human, especially child, trafficking.

## CHAPTER II

### METHODOLOGY

#### Explanation of Case Selection

Although human and child trafficking are global issues, the United States and the European Union were chosen as cases for this study because of their oftentimes infamous reputation as destination regions for trafficking victims, including children, as well as domestic trafficking problems inside the regions themselves (Andrews 2004; UNICEF 2004). The regions' rather stable (and arguably prosperous) political, social, and economic milieus raise questions as to why human and child trafficking are still persistent in these areas. Understandably, the United States and the European Union have crafted laws and legislation corresponding to the challenges the regions face, as is the case with child trafficking. Researching present human and child trafficking laws in these regions, their components, and their effectiveness might provide part of an answer to the above question posed by the research.

#### Data

To identify approximate trafficking rates in the United States and the European Union several sources will be used. For the United States these sources will be, but are not limited to, *The Polaris Project*, *American Bar Association (ABA)*, and the *National Human Trafficking Resource Center (NHTRC)*, along with articles written about the subject. To get the scope of child trafficking in the European Union various resources will be used along with reports produced on human and child trafficking in the European Union. For the European Union these sources will be, but are not limited to, *European*

*Union Agency for Fundamental Rights*, and the *European Commission* (Organized Crime and Human Trafficking), along with articles written about the subject. To study Safe Harbor Laws information will be derived from reports available on such legislature, such as the *European Union Agency for Fundamental Rights* and the *European Commission*. A lot of the data used for the United States, child / human trafficking measurements and SHL data, will come from *Polaris Project* – an organization that leads the fight against “modern day slavery” (European Commission 2013; Polaris Project 2013). Also, available datasets that include prevalence of trafficking and services needed to protect and support the victims will be used—among them Sandy Ruxton's report and Gozdziaak and Bump's report on the prevalence of human trafficking (Gozdziaak and Bump 2008).

### **Methods of Analysis**

To compare Safe Harbor Laws (SHL) in the United States and the European Union the following methodology will be used. First, available datasets concerning prevalence (number of victims) will be researched and analyzed for both United States and European Union. For the United States these will be gathered from Tamar Birckhead's (2011) article, Susan Ferris' (2013) report, IMNRC (2013); and for the European Union,—USDOS Trafficking in Persons Report (2012), the UNDOS Trafficking in Persons Report (2012), FRA (2009), and the European Commission's data (2012). An analysis of existing SHLs will follow. The research is not looking for the particular term of Safe Harbor Laws. Rather, it is looking at existing sex trafficking legislature that pertains to child victims in the United States and the European Union. These laws are then evaluated based on the definition of Safe Harbor Laws outlined

earlier in the paper. This will be done by discussing existing SHLs in the United States and the European Union; analyzing the different components of SHLs, relying on the definition of Safe Harbor Laws outlined above; bridging together the trafficking figures and SHLs (before and after passage of SHLs) and analyzing the outcomes for both the United States and the European Union. It is also important to research when SHLs were / are introduced in United States and the European Union. This research will allow for an approximate analysis of the number of victims before and after SHLs went into law. These findings will then be analyzed to figure out whether or not SHLs are a powerful enough cause in decreasing the number of potential victims, protecting children afflicted by trafficking, and aiding in the recovery of victims. Analyzing the social services component of Safe Harbor Laws and their effect on the victims might provide deeper insight into what works and what does not when it comes Safe Harbor Laws. This might be beneficial in showcasing the most effective parts of the laws—parts that may be introduced and implemented in anti-trafficking laws in general, not just the ones pertaining to children. Then, a comparison will be made between the United States and the European Union in SHL implementation— followed by a discussion of possible cause of implementation vs. non-implementation.

## **Limitations**

### *Of Existing Data*

Due to the underground nature of the crime, the most obvious limitations are correctly identifying the number of victims of child / human trafficking, and current datasets may underestimate the number of victims (American Bar Association 2013;

Collet and Gozdziaak 2005; FRA 2009; Gramegna and Laczko 2003-2004; Laczko 2005).

In short, most of the research will be working with estimates. This is not, for all intents and purposes, a tremendous hindrance to the research and findings since the actual numbers (although nearly impossible to measure) are thought to be much higher than the estimates limited by the non-concreteness of the data.

This study is not unique in encountering the problem of limited data. Goodey (2008) discusses this problem in depth in his article. Goodey examines studies that have scarce or no numerical data. He offers examples of how this issue is addressed by other human trafficking research. For example, in one case discussed by Goodey, the authors came up with an index to measure the severity of human trafficking in the European countries they studied (Goodey 2008, 425). Their index relied on a word search, counting the number of times the various countries under consideration were mentioned in research articles in connection with human trafficking. The index then, was a measure of how likely a country was correlated with human trafficking, and it was created without any numeric antecedent data. Thus, this research methodology and the resultant index was one way that researchers circumvented the problem of the scarcity of numeric data on human trafficking in Europe. (Goodey 2008, 425). Similar to the example given by Goodey, this study aimed to circumvent the problem of limited data availability and reliability by working with the sources that were available, critically examining them, and creating an analytical strategy to continue with the research despite the hindrance.

### *Of Research Design*

It will be challenging to measure whether Safe Harbor Laws do in actuality reduce instances of child trafficking. Multiple other factors may be playing a role when looking in to the number of child victims before and after SHL passage. This particular research design is limited in that it cannot meaningfully explore various other possible causes that might be affecting the final outcome of the study. However, this can be partially addressed by studying the number of child victims identified before and after implementation of SHLs, ignoring (to put it bluntly) other possible factors. Although there exists much literature on the issue of human trafficking it is challenging, but not impossible, to gather information pertaining to SHLs in the United States and the European Union. This is most likely because the legislation is quite specific and rather new, in the United States especially. To work with this limitation the research will look into information that is available. In the United States, for example, only eight states have passed Safe Harbor Laws (ABA Commission 2013; Polaris Project 2013) while many others have some sort of legislation concerning children of trafficking. In the European Union there are no laws specifically labeled as Safe Harbor Laws; however, there exist plenty of other laws that concern children of trafficking and also fall in to the two categories outlined as definitions for SHL earlier in the thesis.

### *Of Extrapolation of Data and Findings and Subsequent Conclusions*

As discussed above, because of the covert nature of the crime of trafficking, it is challenging not only to get tangible figures of the crime, it is also difficult to craft laws that would effectively combat it and protect its victims. Because concrete figures are

lacking, conclusions drawn based on these figures are a bit extrapolated. Data that is available—such as existing laws and figures—is also applied to the whole region, solely for the purposes of the study. By applying available data and law information, along with the conclusions drawn based on these findings, to the whole regions of the United States and the European Union would mean assuming an universality in both data and findings for these regions. This means that the variables are stretched to blanket a whole region—they are not area-specific such as an American state- or European Union member state—so the findings will also be stretched out, extrapolated. These extrapolations are done out of necessity due to the nature of the available data.

It will also be challenging, as some literature notes (Adelson 2008-9; Ruxton 2007), to recommend legislation to combat child trafficking as well as offer proper prevention and protection to child victims. This research assumes that all children affected by trafficking, more specifically sex trafficking, are victims. Adelson (2008) importantly notes that corresponding legislation and law enforcement will vary depending on the definition of the position these children find themselves in—victim or offender. Besides, assumptions made because of extrapolation may lead to some variables being omitted from the equation (lack of or inadequacy of laws and legislation in countries that inadvertently allow for child trafficking, for example). Although recommendations based on observations and research will be made, they might not be all-encompassing.

## CHAPTER III

### TRAFFICKING

#### Introduction and Definitions of Key Terms

In order to appreciate the debates around existing Safe Harbor Laws in both the United States and the European Union definitions for terms will be provided. These definitions are utilized for the purposes of this research only. To stay consistent, the same working definitions of terms will be applied to both the United States and the European Union. For the purposes of this study, the definition of Safe Harbor Laws for both the United States and the European Union will be the one utilized by the Polaris Project as mentioned above.

1. Safe Harbor Laws (SHL) - those laws which aim to 1. prevent minor victims of sex trafficking to be prosecuted for prostitution and 2. protect child victims of sex trafficking by providing them with specialized services (Polaris Project 2013).
2. Trafficking – recruitment, transfer, or harboring of an individual(s) by use of force/threat/coercion for the purpose of exploitation. Exploitation includes forced labor, prostitution, slavery, servitude (O’Connell Davidson 2011, 456; UNODC 2004).
3. A “child” (also referred to in thesis as "minor") is any child or teen eighteen (18) years of age and under (IBCR 2011; O’Connell Davidson 2011, 456; Polaris Project 2013; Prois 2013).

Perhaps the most challenging will be to define “effectiveness” of Safe Harbor Laws on preventing / curbing instances of child trafficking.

4. Effectiveness of SHL in this case will consist of two parts: 1. Does the presence of SHL encourage more child victims to be identified? 2. After the implementation of laws or their equivalents does there seem to be a curb in child trafficking instances?

### **Exploration of Causes and Probable Contributors**

The presence of anti-trafficking laws and legislation that aim to combat the issue are not shocking; they have become a necessary answer to a severe problem. Laws have sprouted to battle this plague, to try and stop it, and, most importantly, to protect the ones unfortunate enough to be swept up in it. Anti-trafficking laws morph and adapt to the ever-evolving monster that is human trafficking. Safe Harbor Laws are no exception. SHLs seek to right some of the wrongs inflicted by human trafficking onto its most vulnerable populations—children. As noble as the fight is, it is nonetheless important to look at possible causes / catalysts for human trafficking as they might lead to clues about the roots of the problem as well as offer better and, - more efficient social and legislative solutions. (Golovanich 2013).

The gradual disappearances of international borders, along with the far reaching technological process, ironically make it easier for crimes to be carried out on grander scales and go largely unnoticed. The sale of humans is no exception. Women and child trafficking usually go hand-in-hand because of the often vulnerable positions of these two groups. Trafficking and exploitation of women and children for purposes of forced labor,

sexual slavery and prostitution, sadly, constitute a huge proportion of this illegal underground business. In essence, it has become easier to not only move persons across borders for exploitative purposes, but it has become more widespread and more lucrative. The dire situation begs the question—why in an increasingly more open world does a heinous crime such as human trafficking continue to flourish? No one theory provides one single answer; however, it is beneficial to explore as many territories as possible concerning the causes or catalysts for human trafficking.

Because trafficking is a human rights violation that affects countries around the world, it is important to look at the political environments and political systems of the countries as possible causes for cases of such trafficking. Political systems may play a role in either propagating instances of women/child trafficking or deterring them by encouraging more stable social and economic environments. Because women and children trafficking go hand-in-hand due to their often vulnerable positions in society, this literature review discusses both groups. The literature discussed below focuses on the issue of women and child trafficking in the United States and Europe.

Three main concepts stand out from this research—continued victimization of women and children, adding to their vulnerability being the most important one. The view of current political systems where the issue of human trafficking is prevalent as unstable by the polity and by the international community is the second important factor being focused on. The issue of homelessness among children and teenagers and its contributions to human trafficking in both the United States and European Union is the last theme discussed and one, perhaps, with the heftiest of consequences.

*Victimization and Low Social Status of Women*

It is evident that women and children are affected by trafficking the most, just by looking at the percentage of trafficking victims these two groups constitute. Corrin focuses on trafficking of women and children in Central Europe (CEE). He traces the increase of trafficking by discussing the issue both before and after 1990 and finds that trafficking of women in Central Europe rose after the fall of the Soviet Union (Corrin 2005). The study further suggests a relationship between gender and poverty, so that “women’s poverty appears to be the outcome of their socially defined roles, including their child-rearing responsibilities” (Corrin 2005, 546). Even in relatively egalitarian environments like the Soviet Union, women were still confined to “socially defined roles”—roles that after the fall of communism, it seems, left them more vulnerable to the throes of poverty and economic struggles (Corrin 2005, Buckley 2009). This is also evident in Tverdova’s study (2010) on human trafficking in post-Soviet states where the author discusses the socially weak positions of women in patriarchic societies as partly to blame for their inevitable vulnerability when it comes to trafficking.

Sandy Ruxton (2007) observes that child poverty and social exclusion have increased in the European Union in the past two decades. Children, particularly young children, are facing a higher risk of "relative poverty than any other group" (Ruxton 2007, 13). This is due to a number of factors and in some instances a combination of them. Parental unemployment and family structure—especially single parenting—arguably play some of the most important roles (Ruxton 2007). Instability in the family life of children caused by forces outside of their control leave many young children in poverty and in compromising positions. Poverty, unemployment, and harsh social and

economic conditions in countries outside of the European Union compel many people, a lot of them parents, to make the journey to European Union, where children are often faced with the same troubles described above. Similarly turbulent conditions leave children exposed to predators—tricking children by tantalizing tales of possible money-making opportunities abroad, or being abducted for the purposes of sexual exploitation (Ruxton 2007, 15). Children travelling or trafficked into the European Union are further confronted with hardships with little or no help or protection. Andrews (2004) also mentions the victimization of women in her article on U.S. domestic prosecution of American international sex tourists. The author finds that in most instances of child trafficking and exploitation the main motivator is money—some children are sold into slavery by their families for income; additionally, some women and children are abducted, forced or coerced into sexual slavery for the profit of others (Andrews 2004, 421).

Soderlund (2005) investigates the United States' fight against sex-trafficking and the rhetoric of abolition. Although the fight against sex-trafficking is not unique to the United States the rhetoric used to rile up the government and the people can be seen as such (Soderlund 2005). The author examines the language of abolition used by feminist-reared groups and, overall, argues that even though their tactics have been effective, feminist groups should still be very critical of the premises underlying claims of global sex-trafficking and U.S. based efforts to rescue prostitutes (2005). Soderlund's stance on the victimization of women stands out from the other views because it looks at the "language of abolition" and its use by the Bush administration. It uses rhetoric

comparable to the use of visual rhetoric—to directly tie sexually exploited women to modern day slavery. (Golovanich 2013).

*View of Political System as Unstable*

The question of political stability—and with it economic and social stability—is raised, or mentioned, in studies by Corrin (2005), Buckley (2008), Andrijasevic (2007), Tverdova (2010), Soderlund (2005), and Smith and Smith (2011). They discuss economic struggles, the inability of governments to provide “safety nets” (Tverdova 2010) and the inevitable vulnerability of women and children in a failing and unstable political environment. Andrijasevic, when discussing the reasons behind anti-trafficking campaigns in Europe, also offers political and economic instability after the fall of the Soviet Union as one of the main factors contributing to the increase in women and children trafficking in the European Union (Andrijasevic 2007). Buckley (2008) points out the inefficiencies and lack of organization in local governments that end up hurting the children or putting them in compromising positions.

In contrast, Soderlund offers an observation of the United States and its relatively stable political environment (2005). She does not delve into a discussion of sex trafficking in the country. The author rather notes the United States’ chaotic, albeit stable, political system has been hard at work at combating sex trafficking on a global scale. It has been proactive and, on quite a few occasions, successful (2005). This is particularly interesting in the context of this thesis. The two case studies of this research are the European Union—taking into account its individual Member states— and the United States, both regions viewed as relatively politically stable (Andrews 2004; Andrijasevic 2007). As mentioned earlier in the paper, this is one of the reasons these two regions were

selected. Intuitively, a politically stable country or region should not experience such high rates of human and child trafficking. Ideally, it should experience none.

### *Child Homelessness and Trafficking*

The "New Homeless" is a term that has emerged to identify the homeless populations that are not the typical "almost exclusively male, alcohol-dependent transients" (Greenhalgh and Minnery 2007, 644). Groups afflicted by homelessness now include the elderly, families, marginalized ethnic and migrant groups, women, children, and youth (Greenhalgh and Minnery 2007). In their discussion the authors explore the risks associated with homelessness and the need for protections and solutions these risks create. Women, for example, who are not able to be employed cannot participate in society, nor can women who have no or very limited access to education (Greenhalgh and Minnery 2007, 646). These women may be sole parents, bringing not only themselves but their children into the realm of homelessness. The risks homeless adolescents and children face are multiple. Sexual exploitation and sex trafficking are grave risks in themselves. The potential for abuse, disease, and even death they carry, though, create a whole another layer of danger for at-risk children and adolescents. Greenhalgh and Minnery's exploration of homelessness and policies concerning homeless in the European Union, United States, and Australia identifies the challenges that come with tackling this task such as definitions of homelessness and identification of particular groups. This, in turn, has the authors exploring practices and solutions in European Union, United States, and Australia and seeing whether these practices and policies are effective for all groups of homeless people.

Against the backdrop of globalization, "neoliberal reform" (Hall 2013, 2) and expansion, along with technological, social, and economic progress, children's rights continue to be ravaged. Among the physical and emotional vulnerabilities, many children are confronted with various other challenges, many of them outside of their control. Children very often become unintentionally thrown into the unforgiving adult world due to circumstances outside of even their parents' controls, such as war, severe economic decline, etc. These variables can produce a terrible aftermath for the children. Homelessness is one such example. Notably, homelessness is sometimes a consciously-made choice. However, taking into account children's not fully developed maturity and many other factors that lead to the possibility of homelessness, such as parental incarceration (Cardoso, Fong 2009), parental unemployment, a faulty family structure, abuse, etc., the observation of child homelessness in this context and the literature reviewed is not one of "choice".

Julia Hall (2013) dissects the United Nations Convention on the Rights of the Child, discusses its shortcomings, and its relationship with the United States. Although the author does not specifically focus on children affected by sex trafficking, Hall acknowledges the various struggling groups of children present in U.S. schools, among them: "children sorted by race, homeless children, transient children, child refugees, children as targeted by traffickers, and / or child migrant workers" (Hall 2013, 1). Hall, in her brief but thorough introduction, points out homeless children and children targeted by traffickers as vulnerable groups. Although Hall's research does not offer a direct link between homelessness and trafficking, it nonetheless recognizes the dangers homeless

children are susceptible to and the dangers children in compromising positions are faced with.

The Commission on Homelessness and Poverty sponsored a meeting for the American Bar Association in 2013 (ABA 2013). One of the focal points of the meeting was an initiative to raise lawyers' awareness about human trafficking and to "coordinate the bar's efforts to protect victims" (ABA 2013). Richard Wayman, an anti-homeless advocate, spoke at the conference. Wayman's speech centered around homelessness and sex trafficking and highlighted homelessness as a "significant contributing factor to sex-trafficking" (ABA 2013), especially among young girls and women. Wayman also offered reviews of studies that showed that long-term homelessness and violence in the lives of at-risk youths magnifies the risk for sexual exploitation (ABA 2013; ABA Commission 2013). Natalie McClain and Stacy Garrity (2010) arrive at the same conclusion in their article on the importance of arming nurses in identifying victims of sex trafficking and exploited adolescents. Garrity and McClain delve into a deep discussion of the possible risk factors and signs of sex trafficking to look for when caring for adolescents. Homelessness is at the top of the authors' list (Garrity and McClain 2010). The authors build a manual of how to handle "throwaway adolescents" (Garrity and McClain 2010, 246) and how to tell, using questions and observation during the screening process, whether the adolescent is possibly involved in sex trafficking and / or exploitation. Again, questions about housing and family are at the top of the list (Garrity and McClain 2010). Homelessness is distinguished as an important contributing factor to sex trafficking and exploitation.

### *Conclusions*

As mentioned in the beginning of the chapter, this discussion is largely focused on women and children, not children alone. This aspect is important because women and children are often in the same vulnerable positions socially— unemployment, homelessness, low or no education, etc. (Greenhalgh and Minnery 2007). Women are often seen as primary caregivers in a lot of societies (Tverdova 2010). This means that without proper social, economic, and legislative safeguards a lot of times women and children are left to fend for themselves; they are left in compromising economic and social positions, especially in politically unstable countries.

It would appear that children, more so than women, then become actors with almost no agency. They are more often than not completely dependent on caretakers— parents, women in the community, or the state. When one, or worse, all three fail, children are left in compromising positions and become relatively easy prey for traffickers and trafficking. However, Hall (2013) desires to give some of that agency back to children in vulnerable groups. Her approach is centered on schools, equipping them, and in turn the children that attend, with tools to empower and protect. Julietta Hua (2011) in her research on trafficking women's human rights also makes an argument for agency. Hua focuses largely on women gaining back this agency, not children in particular. As shown earlier in this literature review Hua's argument is valid and important in that the link between women and children being targeted and trafficked is undeniable. Greenhalgh and Minnery's (2007) research, on the other hand, is policy-focused. They dissect homelessness with its various definitions and affected groups in the European Union, United States, and Australia; they look into the existing policies in all

three regions and how policies are created, modified, or changed altogether to accommodate solutions to homelessness.

Many factors play a role in instigating child sex trafficking or providing for an environment conducive to trafficking of children, as is evident from the literature review. Crafting legislation and laws to address the issue with its numerous aspects is a daunting task. It is disheartening because of the sheer scope of the problem, not to mention the ever-evolving nature of child trafficking and trafficking in general. Nonetheless, while quite impossible to stay on top of the problem with the relevant legislations, it is possible to create legislation and laws that are complimentary, for lack of a better word, to the problem and its varying aspects. Creation of laws that look at and respond to the possible contributing factors, such as homelessness, low social status of women and children, contribution to the problem by other countries, etc., is a valid way to try to combat child trafficking. Focusing on particular aspects of a problem seems nit-picky and laborious, with no guarantee of a successful / effective turnout and almost a sure guarantee of another obstacle presenting itself. However, it is precisely this focus on particularities of a problem that, in the end, tackles its roots. Safe Harbor Laws aspire to do just that. SHLs identify a specific aspect of a problem, children of sex trafficking being treated as criminals and not children, and attempt to right the wrong. The cause is a worthy one.

## CHAPTER IV

### LITERATURE REVIEW ON REDUCING TRAFFICKING THROUGH LAW

#### Introduction

Human trafficking is a multi-faceted problem. Since it is a multi-billion per year industry, one of its facets is economic; since it often crosses domestic and international borders, the other of its facets is political; and, most importantly, since human trafficking affects persons and infringes upon their rights, another facet is social. It is because of these facets of human trafficking that the problem must be combated from all fronts. Apart from fighting human trafficking at the community level, such as encouraging reporting of suspected trafficking victims, building and maintaining shelters, etc., fighting human trafficking through law is equally as important. In reality, no single effort would be enough to battle something as vast as human trafficking. However, since this research is focused on human trafficking legislature, it is precisely what this section will concentrate on. Effectiveness of trafficking laws, along with effectiveness of community-based battles against trafficking, depend on many variables. This section will discuss trafficking legislature and its effectiveness in general and in the United States and the European Union.

#### Trafficking Legislature

Weisberg (1985) presents her findings on state and federal legislation pertaining to human trafficking and the trafficking of juveniles and adolescents. Although her argument is solely focused on the United States, Weisberg centers in on a few trends in trafficking law that have continued to grow and develop, both in the United States and the

European Union. Her argument, as most arguments on the issue, is heavily focused on the perpetrator-punishment side of legislature. However, albeit small, a portion of her exploration of federal and state trafficking law hones in on something very important—viewing juveniles as victims. This label, for lack of a better word, of a child prostitute / child involved in sex trafficking as “victim” comes with certain provisions. First of these is avoidance of punishment for the crime of prostitution (Weisberg 1985). “Victim”, in this context, also recognizes that there exist protective measures for the child as well specialized treatments and services that treat the juvenile as a victim and not as a perpetrator.

The second part of the definition for Safe Harbor Law is provision of specialized services to victims. This is a concept Weisberg touches upon in the section above. Weisberg points out the need for counseling and other social services such as housing expressed by prostitution and trafficking victims themselves (Weisberg 1985). The author makes a case for specialized services provision to victims of sex trafficking and prostitution by offering suggestions for services that victims asked for themselves—one of them being the “desirability of acquiring staff members who are ex-prostitutes and who are experienced with street life and victimization as well as with ways to cope...” (Weisberg 1985, 131). Getting prior victims involved in the rehabilitation of newly identified victims is a concept discussed earlier in this research. Weisberg’s acknowledgement of this, in 1985 nonetheless, points to a need of sex trafficking victims that is ever-present and rarely addressed. Carving out space for people who are familiar with the ways of life as a sex trafficking victim to be actively involved in the legislation

and rehabilitation process of future and present child victims of sex trafficking is a necessary tool that can prove quite effective if allowed to work.

### **United States and the European Union**

When Weisberg wrote her book in 1985, labeling juveniles as victims was a “trend in recent legislature” (Weisberg 1985, 205). Today it is the prevalent consensus. All states but Wyoming in the United States have child specific trafficking legislature (Heinrich, Sreeharsha 2013), and there exists an E.U.-wide trafficking legislature concerning children (Chandary 2011). All the efforts in the United States and the European Union are taken on and aimed at reducing trafficking with the help of the law.

Trafficking legislature in the United States is ever-evolving. The Trafficking Victims Protection Act (TVPA) of 2000 is discussed in more detail in the following chapter. The TVPA was one of the first major steps taken by the United States recently that recognized a “modern crisis” in human trafficking (Heinrich, Sreeharsha 2013). The Act provided new definitions and distinctions for trafficking. By doing so it recognized the numerous aspects of trafficking and the need for those aspects to be specifically addressed. One of the provisions of the TVPA was placing a high importance on providing protection and assistance to the victims (Heinrich, Sreeharsha 2013). Here again, however, a lot of attention is focused on the perpetrators of the crime and serving out punishments. This issue will be addressed in more detail a little later in this chapter.

In the European Union, the most comprehensive “antitrafficking instrument” (Chandray 2011, 83) is the Council of Europe Trafficking Convention of 2008. The Convention defines trafficking, but it also, similar to the TVPA, provides guidelines to

E.U. Member States on the provision of assistance, protection, and support to trafficking victims (Chandray 2011). Each Member State is responsible for implementing the guidelines laid out at the Convention as domestic law. Through this convention, emphasis was placed on the victims of the crime in the European Union, more so than in the TVPA. Victim-centered legislation is an important step in recognizing the specific needs of trafficking victims, as opposed to only focusing on the punishment for the perpetrators. Victim-centered legislation is also important because it acknowledges the other side of human trafficking that is not the perpetrators; it broadens the scope of the issue along with looking at other ways to combat it.

Putting protection of and assistance to victims of human trafficking as the number one priority shows a much-welcomed trend in the fight against human and child trafficking: one with a shift from a "punishment-centered" offender model to the victim-centered "welfare" model, as Chase and Statham (2005) observe in their work. European Union's Strategy Towards Eradication of Trafficking in Human Beings (EUSTETH) of 2013 is another instrument employed by the European Union in the fight against human trafficking. The effort and ambition of the EUSTETH is grand and much-encompassing. According to Directive 2011/36/EU each victim of trafficking is entitled to receive individualized, specialized services such as psychological help, medical attention, housing, counseling, and safe accommodations (EC 2012, 7). The European Commission is also funding initiatives that would help improve identification practices and processes of victims of human trafficking (EC 2012, 7). The EUSTETH and its provisions are discussed in more detail in the following chapter.

## Shortcomings and Conclusion

In both regions studied in this research, trafficking legislation is present at both federal and individual state levels. Both the United States and the European Union possess a “universally governing” piece (or pieces) of trafficking legislature—the TVPA for the United States and the 2008 Convention for the European Union. What the literature notes about the effectiveness of trafficking legislature seems both intuitive and counter-intuitive at the same time.

Intuitively, trafficking legislature and its implementation should be universal on both federal and state levels for both regions. It is legislation that concerns grave violations of human rights, a second-wave abolition of slavery. It is legislation that aims to identify and protect the victims of this horrendous crime first and foremost, after all. In this sense, lack of presence and implementation of anti-trafficking legislation is counter-intuitive. It is interesting, and a bit disheartening, to see that states in the United States and Member States in the European Union were not quick to sign on to this anti-trafficking legislation without question (Chandray 2011; Heinrich, Sreeharsha 2013). In fact, in the United States trafficking legislation, although present, is incredibly varied in each state (Heinrich, Sreeharsha 2013). The case is similar in the European Union, where despite a few anti-trafficking legislations passed by the European Union, not all Member States follow or implement them (Chandray 2011).

More intuitively, and perhaps more pessimistically as well, it is easy to explain why such gaps exist between federal and state implementation—sovereignty. Sovereignty is something each state strives for and protects first. The European Union state setup is

different from the one in the United States since E.U. Member States are all sovereign countries. The states of the United States are not. They do still portray, on a smaller scale of course, their sovereignty and their right to choose when it comes to legislation. This, to some extent, partially explains the vast differences in state-wide trafficking legislations and implementation (Heinrich, Sreeharsha 2013). E.U. Member States as well as states in the United States are free to interpret and implement trafficking legislature as they choose. This includes trafficking legislature, as each Member State in the European Union can, and does, interpret and define trafficking, protections, punishments, etc.

Lack of universal enforcement mechanisms as well as universal definitions and laws that could be almost free of progress-stifling interpretation is an issue that needs to be addressed by the United States, European Union, and the international community. Even though there is a visible shift in the laws and literature, more focus needs to be placed identifying and protecting the victims, without focusing on perpetrators and punishments. It seems even legislation with the most noble of intentions, such as the TVPA, still lays a lot of its focus on perpetrators and punishment. This is evident in the section where perpetrators are fined for their crimes, with the funds eventually going to victim support. However, a section this small still raises questions and incites in-state debates, most of which focus on the amount of money that would seem appropriate to fit the crime of trafficking (Heinrich, Sreeharsha 2013). This, while needed, inevitably leads the debate astray and away from what is important—the victims. Sizeable changes need to happen not only in trafficking laws but also in the ways these laws are viewed and discussed at federal, state, and local levels. Maintaining focus is essential.

## CHAPTER V

### RELEVANT LAWS

This section will identify and explore relevant human trafficking and child trafficking legislature. This will be done in three parts – the first part will explore such legislature in the United States, the second one will do the same for the European Union, and the last part will focus on international instruments available to both the United States and the European Union. The goal of this section is to provide for better understanding of relevant legislation that exists domestically and internationally. By doing so, this would allow a glimpse into how the respective regions identify, face, and remedy the issue.

#### **United States**

##### *Trafficking Victims Protection Act*

In October of 2000, the U.S. Congress passed the Trafficking Victims Protection Act (TVPA). The Act criminalizes "forced or deceptive movement of people in to exploitative conditions" (Peters 2013, 221) as well as provides services and benefits to victims of trafficking. It is the first comprehensive law to address trafficking in persons in the United States (Polaris Project 2013) and one that addresses prevention, protection, and prosecution (Freedom Network 2013). The TVPA, along with the Trafficking Victims Protection Reauthorization Acts of 2005 and 2008 provide tools to combat trafficking of humans both domestically and internationally (UNDOS 2013).

One of the provisions of the TVPA is its protection clause. This part of the Act offers protection and assistance to victims of human trafficking by providing housing, health care, job training, education, and ensuring that various other federally-funded social service programs are available as assistance to victims of trafficking. Another noteworthy part of the TVPA is its establishment of the T-visa. This visa is designed specifically for persons affected by trafficking. It allows trafficking victims to become temporary U.S. residents. The law also allows for victims of trafficking to apply to be in the Witness Protection Program. The TVPA permits persons to be eligible for federal or state services and benefits once the U.S. Department of Health and Human Services (DHHS) certifies them. Once certified, adult victims may apply for benefits, medical assistance, and social services. Importantly, the law differentiates between adult victims and those under eighteen years of age stating that victims under eighteen years of age do not need to be certified by the DHHS. Rather, the DHHS issues child victims letters of eligibility, letting providers know of the child victim's eligibility for services and benefits. (Freedom Network 2013).

The TVPA's prosecution component is also vital because it addresses child victims and their perpetrators. The act of human trafficking, thanks to the TVPA, carries with it considerable penalties since it has been made a federal crime. Perpetrators who traffic and exploit children under the age of fourteen for the purposes of sex trafficking may be imprisoned for life (Freedom Network 2013; Nguyen 2010). To be prosecuted for child sex trafficking, the government would not need to prove that the perpetrator "knew the child was under the age of eighteen" (Nguyen 2010, 212). Moreover, the law distinguishes and deals with "subtle means of coercion" (Freedom Network 2013) that

may be utilized by traffickers. These means include, but are not limited to, psychological coercion, - and the seizure of documents and deception (Freedom Network 2013; Nguyen 2010). Up to twenty years in prison can be awarded to traffickers who exploited and trafficked children between the ages of fourteen and eighteen without the use of coercion, fraud, or extortion (Freedom Network 2013).

The TVPA and its reauthorizations are significant in that they address trafficking in persons on multiple levels—prevention, protection, and prosecution. Instead of centering legislation around a single element, prevention, for example, the TVPA strives to deal with all three of the main components of human trafficking. The TVPA's significance is manifold. Among the aspects of the law discussed above, its reauthorizations in 2005 and 2008 were among the first to distinguish violence against and trafficking in women as an issue demanding special attention (Freedom Network 2013; Laws and Resolutions 2013; Peters 2010).

*H.R. 1732 - Strengthening the Child Welfare Response to Trafficking Act*

The Strengthening the Child Welfare Response to Trafficking Act (SCWRTA or H.R. 1732) was introduced to the United States Congress in April of 2013. The SCWRTA is a piece of legislation that desires to ensure that "child victims of sex trafficking and labor trafficking in the United States are identified by state child welfare agencies and receive the services they need" (Polaris Project 2013). What this legislation aims to accomplish by amending the Social Security Act is require state foster care programs (which receive federal funding) to report in their plan current efforts to "address the human trafficking and commercial sexual exploitation of children in their care" or report any / all future plans to do so; and make data collection on human

trafficking mandatory. Moreover, the Act will require the Department of Health and Human Services (DHHS) to "develop and publish" the following:

"best practices for training of child welfare employees and court employees on identifying all forms of child trafficking; 2. recommendations for how state welfare agencies can prevent human trafficking; 3. protocols for effective cross-collaboration between state agencies and non-governmental services; and 4. best practices to establish safe residential placement for trafficked youth"

(ATEST 2013, 1).

The DHHS will also be required by the SCWRTA to submit a report to Congress eighteen months after the enactment of the bill with a summary of practices and protocols, data, and evaluations of methods (ATEST 2013). The Act, if passed as a law, would ensure that comprehensive training and services to serve child victims of trafficking are present; it would also contain an assurance that there are provisions in place and procedures at hand to assess and identify victims of trafficking (Congress.Gov 2013).

The Strengthening the Child Welfare Response to Human Trafficking Act of 2013 is a very recent piece of legislature. Nonetheless, it is a "critical piece of legislature" (Polaris Project 2013) that, if made law, would be an important tool in making certain that child victims of labor and sex trafficking in the United States are identified and protected by state child welfare agencies and receive the specific services, benefits, and protection they need. The SCWRTA encompasses, although not entirely, a lot of the elements of Safe Harbor Laws by focusing on the most defenseless victims of trafficking—children. With its foundations laid in the Trafficking Victims Protection Act,

the H.R. 1732 has the potential to become as comprehensive and as invaluable to child victims of trafficking as the TVPA is to all trafficking victims.

### *Provisions*

That being said, SHLs may in reality be composed of several other complimentary provisions. Under the Federal Trafficking Victims Protection Act of 2000, sexually exploited children are constituted as victims of the crime (Polaris Project 2013; UNDOS 2013). Moreover, the TVPA provides for social assistance to the victims. However, even with the TVPA being federal legislature, not all states have enacted all the provisions of the TVPA and have been rather free to choose and craft human trafficking and child trafficking legislature. States may, for example, make laws pertaining to human trafficking / child trafficking / child prostitution that have provisions, definitions, and enforcements separate from federal ones. These differences include, but are not limited to, age-based immunization from prosecution, funding, and conditional diversion (Polaris Project 2013).

Age based immunization is in force in many states in the United States. While all states prohibit pimping, pandering, and prostitution (Polaris Project 2013), most have varying degrees of protection they can offer to minor victims of sex trafficking. A lot of them lack decent SHL-style legislation altogether. Michigan, for example, defines anyone sixteen years and older as being eligible to be prosecuted for prostitution—implicitly offering some protection to children under the age of sixteen and explicitly criminalizing anyone sixteen years of age and older (Polaris Project 2013). Arkansas' law recognizes that the existing legislature is unfit to deal with sexually exploited children and instructs

to direct all victims to welfare / social / housing services whenever possible (Polaris Project 2013).

Conditional diversions applied by some states' legislations are similar to age-based immunizations. Conditional diversions may sometimes deal with the age of a victim—e.g.: in New York and Minnesota children under the age of sixteen are eligible for conditional diversions instead of being granted immediate immunity (Polaris Project 2013). Many conditional diversion statutes, however, offer immunity and protection from criminality to victims if certain conditions laid out by the court have been met (therapy, rehabilitation, etc.) (Polaris Project 2013). Unlike Safe Harbor Laws, state statutes with conditional diversions do not offer blanket immunity to anyone under the age of eighteen. Rather, conditions are put forth to be met in order to gain immunity or have a record expunged.

Funding is another provision in state anti-trafficking and anti-prostitution laws. It is not surprising that funding efforts to combat child prostitution as well as funding services and assistance programs for victims carry with it a heavy price tag, in any state. Not all states place a monetary punishment on the perpetrators of the crime of prostitution and child trafficking (even some of the states with active Safe Harbor Laws do not). Others, however, do. Florida, for example, fines all pimps and johns found guilty of prostitution \$5,000 (Polaris Project 2013, 4). The majority of the money—\$4,500 to be exact—is then deposited in the Operations and Management Trust Fund of the Department of Children and Family Services (Polaris Project 2013). Some states elect to fine the perpetrators (pimps and johns) to take back their vehicle from the impound lot, plus, they are charged for the impounding of the car as well (Polaris Project 2013). This

punishment fee in the case of Washington can go up to \$2,500 with the funds then being deposited in prostitution prevention and intervention accounts (Polaris Project 2013, 3). Although not all states choose to have monetary punishments, those that do are providing a service to the victims as well as serving as an example to other states. Funding is an important element of providing fitting assistance services and programs to the minor victims of sexual exploitation.

Additional functions of Safe Harbor Laws include increased penalties for perpetrators; appropriate training for law enforcement; requiring investigations into cases that include prostitution of minors; and mandating access to safe housing or shelter (ABA Commission 2013). These functions are complimentary to the two main objectives of SHLs. Moreover, they provide precise explanations of and expectations from Safe Harbor Laws by specifying functions of the law that are no less important than its two main points. Functions such as offering proper training to law enforcement so that they are aware of how to spot a sexually exploited child and how to properly handle the child and the situation without causing any further harm can prove important when looking at the most effective aspects of SHLs.

Wayman (ABA 2013) discussed provision of safe housing and shelter to sexually exploited youth. His call to action included putting forth efforts to end child and youth homelessness—a contributing factor to child sexual exploitation (ABA 2013; Greenhalgh and Minnery 2007). What is most impressive about Wayman's plea is the effectiveness of providing housing and shelter to sexually exploited children and youth. One study he cites states that supporting one detention bed runs costs up to \$88,000, while running a whole safe-house with appropriate services costs around \$18,000 (ABA 2013). Providing

safe housing would help decrease homelessness and with it the risk of sexual exploitation, quite cost-effectively. Plus, not only would housing provide shelter and stability, it would be part of the protection from criminalization and incarceration offered by SHLs—instead of a detention bed, a child victim of sex trafficking can have a real bed.

## **European Union**

The European Union case differs from the case of the United States. Gathering research and data for the European Union proved more difficult than it did doing analogous research for the United States. Solely for the purposes of this thesis, the approach to research the European Union, then, became slightly altered as to best correspond to the purposes laid out in the United States section. The data presented and discussed below will be from several sources. Similarly to the United States, it is challenging to find concrete data on human trafficking as well as child trafficking victims data for the European Union (FRA 2009; UNODC 2006; UNICEF 2008). Legislation pertaining to child victims of trafficking in the European Union is not necessarily denoted in the research regarding the European Union as Safe Harbor Laws. To research existing laws in the European Union the two main points outlined in the definition of Safe Harbor Laws earlier in the thesis were used. Those provisions are to treat child victims of sex trafficking as children, not as criminals (decriminalization); and to provide proper protection to child victims of trafficking in the form of specialized services and programs appropriate for the victims' specific needs. Any additional provisions such as law enforcement training and conditional diversions present in United States Safe Harbor Laws have been omitted in the case of the European Union. This was done not only to

make the research and the findings more straightforward, but also because the findings and discussion of SHLs in the United States section of the thesis focused mainly on the two chief points of SHLs presented above.

*Article 24 of the Charter of Fundamental Rights*

Trafficking in human beings is prohibited by Article 5 of the Charter of Fundamental Human Rights of the European Union (CFHREU) (EC 2012; FRA 2009). The rights of the child are addressed in the Charter in Article 24 which states that: "1. Children shall have the right to such protection and care as is necessary for their well-being; 2. In all actions related to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration; 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests" (EC 2000). The European Union Charter stresses that all of the freedoms and protections guaranteed to all the people in the European Union. Article 24 is very succinct, but combined with Article 5 of the Charter, the provisions stress two very important points— that human trafficking is prohibited in the European Union and children and their needs require special attention. These principles are embedded in the Charter of Fundamental Rights that was adopted by all states of the European Union.

*European Union's Strategy Towards Eradication of Trafficking in Human Beings*

The European Union's Strategy Towards Eradication of Trafficking in Human Beings (EUSTETH) is an important piece of legislature for the region. In its opening statement the strategy states that human trafficking is a "severe violation of individual

freedom and a serious form of crime" (EC 2012, 2). The EUSTETH acknowledges that E.U. efforts to combat human trafficking have been ongoing since as early as the 1990's (EC 2012). The EUSTETH mentions the European Union's most recent initiative in the fight against human trafficking titled Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (EC 2012). Directive 2011/36/EU employs a "comprehensive, integrated approach" focusing on human rights and victims. It is also gender-specific. The Directive's main focuses are on law enforcement, crime prevention, and ensuring that victims of trafficking have opportunities to "recover and reintegrate into society" (EC 2012, 4). It is much too soon to speak of the Directive's effectiveness in the European Union since it was to be adopted by member states only in 2013.

The main goal of the European Commission with EUSTETH is to provide measures that will support the "transposition and implementation" of Directive 2011/36/EU by its Member States. The responsibility to address human trafficking will lie solely with E.U. Member States; the EUSTETH is present to show how the European Commission is going to support its Member States in doing so (EC 2012). Member State responsibility will consist of addressing the numerous areas of human trafficking: recruitment, protection of human rights, prosecution, investigation, and, most importantly, providing assistance to victims (EC 2012, 5). To guarantee that the concerns regarding human trafficking are addressed, the Strategy outlines five main areas (Priorities) of focus: Identifying, protecting, and assisting victims of trafficking; Stepping up the prevention of trafficking in human beings; Increased prosecution of traffickers; Enhanced coordination and cooperation among key actors and policy coherence;

Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings. The EUSTETH goes on further recognizing the various agents that need to be involved in the process, such as labor, housing, health and social and safety inspectors, police officers, asylum officials, and child victim support services (EC 2012, 6). The most noteworthy areas of focus of the EUSTETH are identifying, protecting, and assisting the victims, and increasing knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings. These areas of focus are most applicable to Safe Harbor Law definitions—decriminalizing child victims of sex trafficking and offering protection and assistance to the victims—even though EUSTETH areas are not solely focused on children but on all victims of human trafficking.

*Priority A - Identifying, Protecting, and Assisting Victims of Trafficking*

The importance of Priority A of the EUSTETH is two-fold. Identification of human trafficking victims is an important step in providing not only protection to the victims but also much needed assistance. The Priority's special focus on child victims, however, is critical. This is because not only are children more vulnerable as targets for trafficking, but, trafficked children are also in greater danger of being re-trafficked (EC 2012, 7). This urges special attention to be paid to child victims of trafficking across the board—by both independent Member States of the European Union as well as the European Union as a single legislative body. E.U. legislation provides for protection and assistance to children as well as child victims of sex trafficking. The EUSTETH, in addition, urges E.U. Member States to invest in strengthening child protection systems for victims of trafficking. Here, the Member States are encouraged to act in the child's

best interests—channeling Article 24 of the European Union Charter for Fundamental Rights—and address each situation individually by investigating whether certain actions (such as returning the child victim to his / her country of origin) would be in the best interest of the child. (EC 2012, 8). This is important because here, again, the victim's interests are put on the forefront of the response, reflecting Chase and Statham's (2005) position about a more "victim-centered" approach in the fight against human trafficking.

*Priority E - Increased Knowledge of and Effective Response to Emerging Concerns Related to All Forms of Trafficking in Human Beings*

While the effectiveness of European Commission's EUSTETH plan is strengthened only when all of the elements outlined in the report are at play, increasing knowledge of and effective responses to emerging concerns related to all forms of trafficking in human beings deserve special attention. Priority E consists of four main provisions. These encompass developing a European Union-wide system of data collection, developing knowledge related to the gender dimension of trafficking and vulnerable groups, understanding online recruitment, and targeting trafficking for labor exploitation. This Priority is important in the fight to combat human and child trafficking for several reasons. First and foremost, the Priority's emphasis on increasing knowledge to emerging concerns related to human trafficking is a recognition of the vast, adapting, and multifaceted field that is human trafficking. Priority E, in essence, highlights the ever-growing need for specific, targeted policies concerning human and child trafficking in the European Union (EC 2012, 14; Kurbiel 2004). Analogously to the shifting paradigm of the fight against human and child trafficking (offender and punishment-centered to victim-protection-centered), Priority E of the EUSTETH concerns itself with

finding out the different aspects of the problem and in so doing figuring out best ways to deal with these challenges. Implicitly, it acknowledges not only the ever-changing nature of trafficking, but also the presence of the many groups of trafficking, including children. By doing so, Priority E accepts that children affected by sex trafficking require certain sets of services and attention that correspond to their specific experiences, such as malnutrition, re-trafficking, and insufficient or total lack of housing and residency to name a few (Kurbiel 2004).

### **International Treaties**

The 1926 League of Nations Convention to abolish slavery was one of the first steps taken by the international community to stop the sale of humans and put a hefty price on those that try to do so (UNHCR 2012). The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others focused heavily on the acquirement and sale of humans for prostitution purposes (UNHCR 2012). This Convention emphasized the vulnerability of women and children when it comes to trafficking and prostitution and highlighted this in the Preamble by listing the international instruments that are in force and are specifically directed towards suppression of trafficking in women and children (UNHCR 2012). Finally, the 2000 UN Convention against Transnational Organized Crime and its protocols on trafficking in persons and migrant smuggling (UNODC 2013) brought the issue to light in modern times.

The Conventions of 1926 and 1949, along with numerous other international instruments, laid the foundation for the Convention of 2000. Even though the two

conventions focused largely on differing aspects—sale of humans for slavery purposes and sale of humans for prostitution—both focused on one important issue—the sale of humans. The 1949 Convention’s importance lies largely in its focus on women and children, their vulnerability, and the need for them to be protected. What both conventions did very well was highlight the issue of human trafficking as an actual, and very atrocious, problem facing the international community. This is also evident in the 2000 Convention against Transnational Organized Crime—containing the particular issue of child trafficking.

The 2000 UN Convention against Transnational Organized Crime is the international treaty that includes the issue of human trafficking in its context. The convention itself was focused on the issue of transnational organized crime and the abolition of it. Three protocols were added to the treaty—“against trafficking in illegal firearms, migrants and persons, especially women and children” (ODCCP 2000). These protocols have been drafted as special, separate instruments to fight these specific aspects of organized crimes. Because of the ever-growing, organized, and transnational nature of the crime of trafficking, especially women and children for sexual exploitation, a separate protocol was deemed necessary to help combat it. By doing this the treaty recognized human trafficking as part of the tremendous informal and illegal organization that is organized crime, but not as a separate human rights issue. It did, nonetheless, recognize it as an issue demanding special attention and specific instruments needed to fight it. This makes it an important step towards not only combating human trafficking but abolishing it altogether. Because the issue has been, in this case, included with the larger issue of organized crime (which it undoubtedly is) the arguments for its inclusion pertain largely

to transnational organized crime. The protocol would allow for the adoption of measures to prevent trafficking in persons, especially women and children, protect victims of trafficking and help return them to country of origin or a third country, and inform the public about trafficking and its negative consequences for both victims and traffickers (ODCCP 2000). The reasons outlined above, along with various others, are arguments for the inclusion of this human rights issue into the treaty.

Because this treaty is an international binding agreement and is only effective and productive if nations agree to abide by its articles, it might pose small threats to state sovereignties, in some nations' views. That being said, reservations about the inclusion of the protocol against trafficking in persons, including the treaty against transnational organized crime, have been presented. This issue has been addressed the most by the countries who have ratified the convention—most grievances are over Paragraph 2 of Article 15—pertaining specifically to the protocol on trafficking in persons, especially women and children, cooperation in sharing public information for the purpose of “preventing potential migrants from falling victim to organized criminal groups” (UNODC 2004, 62). Countries such as the United States have addressed their issue with the article and reserved rights to interpret it, and other parts of the treaty, as they saw fit—asserting their rights as states (UNODC 2008). A few other reservations have been voiced by some developing countries as new provisions, proposals, and ratifications to the treaty were being introduced. These developing countries started to “entertain fears that developed countries viewed the convention as an opportunity to impose approaches and solutions on their less powerful counterparts” (Vlassis 454).

## **Enforcement Mechanisms**

To enforce the rules laid out in the UN conventions and to protect the victims different countries have implemented different enforcement mechanisms. Both top-down and bottom-up mechanisms have been instituted (DeLaet 2005, Landman 2005). With top-down implementation states might sign on to international treaties proposed by international organizations, such as the United Nations. This is the case with human trafficking. The United Nations has recognized this human rights violation in one form or another, changing definitions and rules as times changed. Numerous, if not all, countries have signed on to the 1950 and 2000 Conventions, but not all have ratified the Conventions. This poses a problem—an un-ratified treaty is one that is not necessarily obligatory to the state that has signed it. It is a treaty that sounds like a good, noble idea, but one that has virtually no power. In a case when a treaty is not ratified, DeLaet argues, it is because it does not particularly serve any state interests, or, it might harm some state interests and threaten state sovereignty if it is ratified (DeLaet 2005). It is, nonetheless, still a powerful enforcement mechanism and a valid recognition of a human rights abuse.

Bottom-up enforcement mechanisms such as domestic laws are a great tool and important step in protecting victims of human trafficking. With a human rights violation that is as covert in nature as human trafficking is, it is often very hard to pin down both the perpetrators and the victims, making it challenging to put forth laws and enforcement mechanisms not only internationally but also domestically. However, domestic efforts are vital in combating human trafficking and providing protection to victims.

Apart from signing international treaties sanctioned by international entities such as the United Nations, states can implement other international enforcement mechanisms. For example, the United States now sponsors “regular coordination programs with European governments” (Brysk 2005, 44) to combat human trafficking along borders. States can create enforcement mechanisms by working together to protect particular human rights. These actions are on the international scale, but by having direct involvement might produce better results. Such was the case in the United States— 25 trafficking brothels were shut down during a two-year operation in San Diego (Brysk 2005, 44). This was possible because of United States’ involvement with European anti-trafficking alliances.

### **Protection of Trafficked Children as Positive Obligation**

Human rights are categorized as either “positive” or “negative” obligations. This does not denote the rights as good or bad, but rather is used to designate whether action or inaction is required by the state to fulfill these rights (DeLaet 2006). Child trafficking is a positive obligation—one requiring the state to take concrete steps to ensure the fulfillment of the rights in question (DeLaet 2006). It is a positive obligation because child trafficking directly violates the right to life, to freedom, to happiness, to education, and to safety. Direct and concrete action, in this case, is required from the state to ensure not only the fulfillment of these rights but also their protection. Arguably, this human rights issue could be seen as a negative obligation—the children have the right to be free of, or protected from, the state’s disregard (the state would have to stop being idle) and the fear caused by the state’s idleness. This case, however, is much harder to make because it is rather abstract. State involvement to combat this human rights issue is vital

and has to be done on local and national levels. It is a massive undertaking due largely and sadly so to the continuing high demand for trafficked children.

Distinction of human trafficking as a positive obligation is important because it directly obligates the state into action. The state's action or inaction, however, is completely up to the state, even if international conventions have been signed. This factor can be influenced by many things, one of them being whether or not a state is politically stable—a concept discussed in this research. Political stability could affect the ability of a state to make and, more importantly, enforce laws that would provide protection from human trafficking. A politically stable state could also provide for more favorable economic and social conditions—both variables that prove to play a vital role in instigating or deterring human trafficking (Buckley 2008).

## CHAPTER VI

### CASE STUDY: UNITED STATES

#### **Safe Harbor Law Data and Victim Data**

Table 1 depicts the states in the United States that have implemented SHLs - diversion, law enforcement training, decriminalization, specialized services, increased penalties. Table 2 will contain child trafficking data- total children trafficked, children identified and arrested before and after SHL implementation. Because the earliest date for SHL adoption is 2008 (Texas), this will be reflected in the data in Table 2.

Table 1 - States and SHL implementation (ABA 2013)

State	Decrim.	Diversion	Spec. Serv	Incr. Pen.	L.E. Train.	
CT	Yes	n/a	No	Yes	n/a	
IL	Yes	Yes	Yes*	Yes	n/a	
MA	n/a	Yes	Yes**	n/a	n/a	
MN	Yes	Yes	Yes**	Yes	n/a	
NY	n/a	Yes	Yes***	n/a	n/a	
TN	Yes	n/a	No	n/a	n/a	
TX	Yes	n/a	No	n/a	n/a	
VT	n/a	Yes	Yes*	n/a	n/a	
WA	n/a	Yes	Existing	Yes	n/a	

Table 1 is a representation of SHL and / or SHL elements present in the eight states that have passed the legislation. Specialized services to child victims of trafficking are available in all but three of the states, and decriminalization is available in five. Although Table 1 also depicts variables such as increased penalties for perpetrators, and law enforcement training, those categories are not the main focus points of SHLs in this

research. The state of Washington (E) is the only state with existing specialized services for child trafficking victims that is not seeking any changes to be made under SHL. This means that whatever anti-trafficking legislation Washington has in place would be the same legislation the state will use even if SHL went into law. No changes would be made to anti-trafficking legislation in Washington. The other states are either: Yes\* - have existing specialized services that are absorbed into the SHL legislation; Yes\*\* - have existing specialized services, but are working on multidisciplinary team assessments (meaning existing services are being re-evaluated and re-assessed with key players involved in the process, such as social services, etc.); Yes\*\*\* - specialized services exist, but state seek new ones under SHL.

Table 2 - Victim data (nationwide)

TOTALS	90,000-100,000** children in sex trafficking 250,000* children in human trafficking	1,500 children arrested for prostitution (Birckhead 2011)
	# identified	# arrested
Before SHL (2008)	577 / year (Cardoso 2009)	150 / year (Ferris 2013)
Since SHL passage (2008-on)	550 / year (IMNCR 2013)	150 / year (Ferris 2013)

Table 2 data is interpreted as follows. Because estimates of child trafficking victims range from 200,000 to 300,000 (Birckhead 2008), the total number of child trafficking victims in this table will be a rough average of the two numbers equal to 250,000 (designated by the \*\* in Table 2). It is estimated that approximately one in three

trafficked children is coerced into prostitution, that is why the approximated number of victims is equal to 90,000-100,000 children—designated by \* in Table 2 (Birckhead 2008). The number of child victims presented in Table 2 are nationwide numbers, not just numbers for the nine states that have implemented specific SHL legislation. This is done in this way because even though most states do not have legislation that is specifically SHL legislation, almost all have some kind of state laws with some provisions for children and / or victims of sex trafficking. In any case, the problem of child trafficking is nationwide regardless whether a state has implemented SHL legislation.

### **Implications**

The two central parts of Safe Harbor Laws are decriminalization of children and provision of special and appropriate assistance and services to the victims. Looking at the nine states that have implemented SHLs into state law, five out of nine states—Connecticut, Illinois, Minnesota, Tennessee, Texas—have decriminalization as part of their state law. This means that all children of sex trafficking aged eighteen and younger will not be viewed as criminals in Illinois and Tennessee; children aged fifteen and younger will not be criminalized for prostitution in Connecticut (with separate statutes applying to sixteen and seventeen year olds exonerating their ability to be criminally responsible); and children fourteen years and younger will not be criminally responsible in Texas. Minnesota is the odd-one-out in this group regarding decriminalization. The state (along with New York) provides for decriminalization for minors sixteen years and younger but only if conditional provisions are met. (Polaris Project 2013, 3-5).

Special services provision is present in all but three states that have adopted SHL—Connecticut, Tennessee, and Texas. Most states have existing statutes or programs that provide specialized services for sexually exploited children. These include (some partially) therapy, housing, education, and medical help. However, similarly to decriminalization, some states provide specialized services to victims only when conditional provisions are met. In Louisiana, for example, a child may be diverted to specialized services if the sexual offense the child is charged with is his / her first offense (Polaris Project 2013). In short, most states recognize that minors involved in sex trafficking are in need of some special attention and distinctive treatment, but, whether or not such treatment is carried out, or how it is carried out is left completely to the discretion of the state. This is done despite the TVPA (Peters 2013; UNDOS 2013).

The adoption of Safe Harbor Laws by the nine initial states is progressive and promising. It provides a glimpse into an important shift that is happening regarding trafficking legislature—one that is changing from a "prosecution and punishment" type to one that is more protection and victim focused. This is evident just by looking at the two main prongs of Safe Harbor Laws—decriminalization of victims and protection of victims. The fact that special services recognizing specific needs of child victims are present is a big and important step—even if the system employing these services is still a bit flawed.

The most striking feature of Table 1 is that the last column denoting law enforcement training (L.E. Train.) is empty for all nine states. This provision is particular to Safe Harbor Laws. Because perpetrators and victims of trafficking are often involved in many other illegal activities law enforcement undergoes training to spot both the

perpetrators and victims of these crimes (Human Trafficking 2014). Identification of victims as those of trafficking is a skill that law enforcement needs to possess in order to help curb the crime. Training law enforcement to recognize signs of trafficking will help identify and punish perpetrators (for the crime of human trafficking instead of a lesser offense), and will aid in assisting the victims further by identifying them as victims of trafficking (making services and programs available to them). Such training needs to happen despite the obstacles faced by law enforcement when it comes to human trafficking (Farrell, Fahy, McDevitt 2008). Obstacles such as perception of "choice" and compliance of victims when dealing with prostitution, and generally bad experiences and / or distrust of potential victims with law enforcement need to be addressed in training in order to better prepare law enforcement to combat human trafficking (Farrell, Fahy, McDevitt 2008). Reasons for the column being empty are several, one of them being that SHL implementation is a quite a recent phenomenon (this is portrayed by the fact that only nine states have adopted it so far, and only recently). The need for adequate law enforcement training is persistent and it will be interesting to see whether this need gets properly addressed by the states with Safe Harbor Laws in the coming years. As is visible from an analysis of Table 1, full SHL implementation—immediate implementation of all of the aspects of SHL—is a lengthy process, even if the states elect to have this specific legislature.

There are a few things to note about Table 2 before discussing the possible implications of Safe Harbor Laws. First and foremost: the numbers that were compiled for Table 2 come from various sources. This is because it is nearly impossible to gather consistent data for child victims identified / arrested / charged from a single source.

Second, the number of victims identified both for the Before and After columns are rough estimates per year. These numbers were pulled from different sources for the years 2008 and 2014. The purpose of this was to compare the number of victims identified right before the adoption of SHLs by nine states to the number of victims identified some years after all nine states have adopted SHLs. And lastly, the columns for number of arrests made were interpreted as follows: because data for arrests came from a single source for the years from 2008 to 2012 (Ferriss 2013), the total number of arrests (a bit over 500) was roughly divided by the four years from 2008 to 2012 ( $500 / 4$ ). It is acknowledged that these numbers are greatly simplified and approximated; this is done to fit this particular study only.

Perhaps the most notable aspect of Table 2 is the difference in child victims identified before SHL passage (2008) and after. The difference is (approximately) twenty-seven victims. What is interesting is that the difference, even one seemingly small, would commonly be expected as a higher number in the After column of the table. The opposite happened with this analysis. It seems that after the passage of SHLs the difference in child victims identified is not great, as expected. In fact, the number of victims identified decreases in the After column of Table 2. (To be fair, this number—550 victims / year— is the number given for victims identified so far in 2014 (MyArkLaMiss 2014). Since 2014 is not over, it is possible that the number of victims identified will grow as the year draws to a close). In the terms of this study—and by no means meant to diminish the graveness of the situation—the number of victims identified after SHL adoptions is not significant or high, lending little backing to the effectiveness (number of victims identified) of SHLs in the United States.

The situation with the number of children arrested for prostitution is similar. Even though extrapolations were present, the numbers are not very stirring in regards to SHL effectiveness. An average of 150 children have been arrested every year from 2008 to 2012. Taking into account SHL adoptions increasing after 2008 and up to 2013, these numbers are quite disappointing in providing proof as to the effectiveness of SHLs. Many factors may have contributed to this outcome and they will be discussed thoroughly in Chapter IV of the thesis. This, similarly to the numbers of victims identified, does not show much improvement in the situation concerning child victims of sex trafficking. If anything, the numbers from Table 2 make the efforts and the battle to combat child sex trafficking look stagnant instead of effective.

## CHAPTER VII

### CASE STUDY: EUROPEAN UNION

#### Safe Harbor Law and Victim Data

Safe Harbor Law data for this section came from various sources and was interpreted in the following way—since no specific SHL legislation for the following Member States of the European Union could be located, the SHL then became a combination of two main themes of SHL as discussed earlier in the Chapter. Those themes were 1. decriminalization of child victims of sex trafficking, and 2. provision / presence of specialized services and assistance to child victims of sex trafficking.

Table 3 - SHL data

	Decriminalization	Special Services
European Union	<p>Yes</p> <p>Decriminalization present in some E.U. Member States, but not all. (UNDOS 2012).</p>	<p>Yes</p> <p>Some kind of Special Services available for victims of trafficking in most E.U. Member States, with housing/shelter/medical help available to child victims of trafficking. (UNDOS 2012).</p>

Most of the anti-trafficking legislature was adopted in the European Union around the year 2000, with some international treaties still waiting to be ratified by some Member States. All 28 E. U. Member States have adopted the E.U. anti-trafficking legislature (designated by \* and \*\*), with some ratifying and adopting international and anti-trafficking legislature (Chapell 2013; EC 2012; FRA 2009), although different

implementations, or lack of proper implementation, are still present in many E.U. Member States. This is concisely presented in Table 3 above.

Table 4 - victim data (E.U.-wide)

TOTALS	1,500 * children in sex trafficking 4,000 ** children in trafficking	n/a - children arrested for prostitution
	# identified	# arrested
Before SHL (2000)	80 / year (USDOS 2012)	n/a
Since SHL (2000-on)	80 / year (USDOS 2012)	n/a

For Table 4 the data is interpreted as follows. The number of trafficked children in the European Union is derived in this way: estimates of human trafficking in the European Union range anywhere from 12,000 to 20,000 persons per year, the average of these numbers equaling to approximately 25,000. It is estimated that approximately 15-16 percent of all trafficking victims in the European Union are children. The number 4,000 is a rough 15-16 percent estimate from the total number of trafficked persons (25,000). The number of children trafficked for sexual exploitation (designated with \*) is an approximation and is derived by using the total estimate of trafficked children for the European Union (4,000-5,000; designated with \*\*) and assuming one-in-three children (Birkhead 2008) end up being trafficked for sexual exploitation. From this, it is approximated solely for the purposes of this study that one-third of all trafficked children in the European Union are in sex trafficking, hence the rough 1,500 figure.

## **Implications**

Noticeably, both Table 3 and Table 4 regarding SHL and victim data for the European Union were not as stirring as Tables 1 & 2 in the United States section. This is due to alterations, some simplifications that were done to accommodate the acute lack of uniform analogous data for the European Union. As Table 3, simplistically, indicates, Safe Harbor Laws are present in the European Union. They are not labeled as Safe Harbor Laws for reasons discussed earlier in the thesis. To reach this conclusion, information about various existing human trafficking and child trafficking laws and legislation in the European Union was strung together utilizing multiple resources. They do, however (and most importantly), appropriate the two telling signs of SHLs which are decriminalization and protection of child victims, and provision of specialized services and assistance to child victims. England, for example, is implementing several anti-trafficking legislations to assist victims of trafficking. It is employing identification strategies the groundwork for which has been laid down in 2011 (USDOS 2012, 358-9). While England's insufficient implementation of special services available to victims of trafficking has been highly criticized, the country funds several Non Governmental Organizations that provide special assistance and offer programs to trafficking victims (USDOS 2012 358-9). France provides psychological and medical services to its trafficking victims, along with housing and shelter, French language classes, job training programs, along with a small (\$150 / month) stipend (USDOS 2012, 160). Germany offers temporary residency and legal assistance to the trafficking victims it identifies each year (USDOS 2012, 167). Along with residency programs, the country has other specialized services available such as shelter, medical and psychological care, vocational

training, and counseling (USDOES 2012, 167). These cases display the slow-but-sure progress that has been made in the European Union regarding child victims of trafficking—it notes that children are in possession of certain rights and in need of special protections of those rights (Chappell 2013; EC 2012; Ruxton 2007). Steps have and are being taken by the European Union and by some of its Member States to ensure that children's rights are protected. This is portrayed (albeit crudely) in Table 3.

Data for the number of children identified in the Before and After columns of Table 4 was derived in the following way. By studying the Trafficking in Persons Report 2012 made by the U.S. Department of State and available for each country individually, three Member States of the E.U. were looked at—England, France, and Germany. These Member states were chosen because they are largely classified as destination countries for trafficking victims in the European Union (USDOS 2012). A total number of trafficking victims identified for years 2010 / 2011 were looked at and they were 300, 680, 610, respectively for each Member State (USDOS 2012). These numbers were then added, totaling (approximately) 1,590 trafficking victims, and divided by 3 to get an average. Taking into account the previously stated statistic that about 15-16 percent of all trafficking victims in the European Union are children, and that one-in-three of trafficked children are coerced into sex trafficking, the figure of 80 was the final figure received from analyzing the available numbers. This number was then an assumed estimate for child victims identified each year. The same approximations were done to reach the number of victims in the previous chapter for the United States.

Absence of numbers in the second half of Table 4 is indicative of the severe lack of data concerning human and especially child trafficking (Collette and Gozdziaak 2005;

FRA 2009; Laczko 2005; UNDOC 2006; UNICEF 2008). This is a great impairment to the study and drawing conclusions without sufficient results will be challenging. The only variable that is present to be analyzed is an approximated number of child victims identified every year—which is about 80 children per year. This statistic is significant because it shows about the same number for both the Before and the After columns of Table 4. This, marginally, may point to the fact that even with E.U.-wide anti-trafficking and children-specific legislation in place, the number of child victims identified does not change significantly from year to year. Factors such as varying implementation and interpretation of anti-trafficking laws (Ekberg 2004), lack of or extremely poor implementation (Chappell 2013; Chase and Statham 2005; USDOS 2012), failure to ratify new international legislation (Ekberg 2004; Farrior 1997), and the ever-shifting and adapting nature of human trafficking all may lend a hand in the findings discussed above. Many of trafficking victim estimates are assumed to be much larger in reality (Kurbiel 2004; Ruxton 2007). It is reasonable to assume that the number of children identified and arrested, and the number of children affected by sex trafficking in the European Union are higher in actuality. However, without any reliable data to substantiate this, the assumptions remain just that—assumptions. Further and more involved investigations into the topic are desperately needed.

## CHAPTER VIII

### CONCLUSIONS AND RECCOMENDATIONS

#### Comparing the United States and European Union

When comparing the issue of child sex trafficking in the United States and the European Union a few aspects stand out. First, the prevalence of child trafficking and child sex trafficking in both regions is vastly different: 250,000 children / 90,000 children and 4,000 children / 1,500 children, respectively. Relating this to total population size of the regions - 317 million and 505 million, respectively - raises more questions than it answers. If the number of children trafficked, in general and for sexual exploitation, is proportional to the total population of the region, then the numbers for the European Union should be higher than the numbers for the United States. Yet, this is not so. The number of trafficked children in the European Union is considerably smaller than the number of trafficked children in the United States.

Several factors can be used to explain this. The estimates of trafficked persons and trafficked children for the European Union vary anywhere from 20,000 total to 20,000 Member State (Birckhead 2008; USDOS 2012). The vast difference in these two estimated is staggering and interpreting them will, inevitably, provide varying results. In reality, as discussed previously, the numbers of trafficked persons and trafficked children are assumed to be much higher for both the United States and the European Union. This may allow for the number of identified child victims in the European Union to be higher than the number presented in Table 4. Here, too, the two eternal themes of this thesis come back—hardships caused by lack of and incompleteness of available data on the

topics of human and child trafficking, and extrapolation and drawing of conclusions based on the very limited data available. This only further highlights the need for more reliable data and literature on human trafficking to be gathered and presented, in similarly reliable ways. Furthermore, conclusions drawn based on the research and findings presented might be, in the grand scheme of the issue, too broad. As Ruxton (2007) notes in his research, there are numerous variables that affect the welfare of children and numerous factors that play a considerable role in placing children in positions susceptible to dangers such as trafficking. It is acknowledged, nonetheless, that discussion of all of the possible contributing factors would be the most beneficial. This, however, also highlights the hardships of doing so when dealing with a topic as sensitive as human trafficking. Another limitation of this study is its perceived simplification of the issue, especially when data and numbers are discussed. These simplifications might prove restrictive in some regards concerning the issue of child and human trafficking; however, they were necessary simply for the purpose of the study. This research aimed to address as many of these factors as are necessary and fundamental to the discussion of Safe Harbor Laws.

Similarly to the United States, the Before and After columns of Tables 2 and 4 point to a possible parallel between Safe Harbor Laws. The approximated numbers for both regions in these columns are as follows - 577 / 550 for the United States and 30 / 30 for the European Union. Since these are the only variables available for both regions, these are the only variables some extrapolated conclusions can be derived from. What these results show is that there is, so far, no substantial difference in identification of child victims of sex trafficking after SHL implementation. For the United States the

numbers also show no significant change in the number of arrests of child victims of trafficking. Interestingly, these same observations might suggest a very different picture. Perhaps the number of arrests is not decreasing or showing any statistically significant changes precisely because the laws are working. If the laws are being implemented in their intended ways then, possibly, more child victims are being identified. Then a conclusion might be drawn that the laws are somewhat effective. Testing this theory, however, would be challenging without acknowledging the multitude of other factors that might be affecting the outcome and implementation of SHLs.

The stagnant number of arrests might point to yet another explanation. People behind human and child trafficking operations have to be aware, at least a little bit, of present laws, anti-trafficking and otherwise. When new, more particular legislations go into effect—and this applies to multiple laws, not just trafficking ones—traffickers may get smarter about how they handle their victims. The stagnant number of arrests, in this case, then, might point to traffickers working around the legal system that is in place by adapting to their environments. This might point to them moving to states with less stringent legislations, or training their victims in new ways to avoid getting caught, or making punishments for getting arrested inhumanely severe. Sadly, this variable would be almost impossible to measure.

On a more promising note—despite many of SHL provisions not being available or implemented, the two main points of Safe Harbor Laws of protection and decriminalization, and provision of special services and assistance—seem to be present (in some form or another) in both the United States and the European Union. Although a treacherous road lies ahead for both regions to complete the work, the presence of SHLs

and similar legislation in United States and the European Union give hope for better and stronger protections to come to child victims of sex trafficking.

### **Recommendations**

Child sex trafficking does not happen due to one, or a couple, of causes. The causes that nurture this horrific crime are multiple and, ideally, should all be addressed in anti-trafficking legislations in order to form more effective laws and protections. To better serve child victims of sex trafficking, and all human trafficking victims, issues that nurture trafficking need to be focused on and dealt with. Homelessness is one of these issues (ABA 2013). Homelessness is one of the major contributing factors that increase the risk for sexual exploitation of children (ABA 2013; Greenhalgh and Minnery 2007) (not to mention disease and crime). Addressing child homelessness both in the United States and the European Union would mean providing safe, reliable, and stable forms of shelter and housing for child victims. This would, ideally, help decrease the risk of children being sexually exploited and reduce the risk of them being re-trafficked. Homelessness also plays into other contributing factors to child sex trafficking—low social and economic status of women and children. Women and girls comprise a majority of trafficking victims worldwide, including the United States and the European Union. Focusing on policies that would assist women and children that find themselves in socially and economically vulnerable positions would not only improve their overall wellbeing but hopefully also help deter traffickers and trafficking.

When crafting trafficking and especially child-specific legislation it is important to keep the best interest of the children at the forefront, as Article 24 of the EUSTETH

states. Only when the specific needs of children are recognized, proper protections and assistance may prove effective. For this to happen, it has to go back to complete and concrete data collection and analysis, as well as a development of better indicators of human trafficking (for identification and subsequent protection) (Gramegna and Laczko 2003-4). A seemingly impossible task given the covert nature of the crime of human trafficking and the effect it has on its victims. Issues such as unwillingness to come forward due to fear of punishment by the traffickers need to be addressed. It would also be very beneficial to shift the focus of the theoretical literature to victims instead of the usual perpetrators-centered versions. The lack of available literature concerning victims and protection was part of what made this particular research quite limited. In addition, what literature and legislation is available regarding victims, it more often than not comes along with perpetrator-punishment literature at the forefront. Victim-centered literature, research, and legislation should not be an afterthought, especially when dealing with a subject as sensitive as human trafficking. Addressing these various contributing factors, however, and crafting and implementing legislation that is effective in prevention, protection, and assistance would prove an even more problematic and demanding task than it already is.

## **Conclusion**

It is still a bit early to tell whether Safe Harbor Laws and their equivalents have had any real, statistically significant, effect on child sex trafficking (as can be seen from looking at the data for the United States and the European Union). To measure effectiveness of SHLs a few more years have to pass for the legislations to take deeper roots and be edited in ways that would correspond to the arising needs of the populations

the laws aim to protect. These challenges might include, among many other ones, the adaption of traffickers to SHL, and more detailed research into numerous other possible contributing factors. Safe Harbor Laws must keep evolving in such a way that would effectively offer prevention, protection, and assistance to child victims of trafficking. This in itself is a monumental undertaking.

Much more work still needs to be done to bring Safe Harbor Law and SHL equivalent legislation up to par to meet the specific needs of child sex trafficking victims. Many challenges lie ahead as well. It is hard to find a cause that is worth fighting for more than the one that aims to protect some of the most vulnerable—children.

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## APPENDIX

Table 5 - States and SHL revisited (Jekowsky 2014)

	Decriminalization	Diversion	Training	Task Forces	Victim Services	Penalties	Funding	Arrests
CT								1
IL								10
MA								5
MN								1
NY								20
TN								5
TX								78
VT								1
WA								20

Table 5 is similar to Table 1 from Chapter VI but with several other elements added in such as penalties, funding, task forces, and arrests. Arrests here are the telling part of the table. There are no victim numbers in Table 5, for the analysis numbers from Table 2 will be used. Jekowsky (2014) does a fine job categorizing the various aspects of Safe Harbor Laws now implemented in the nine states. An important part of Jekowsky's table, missing in Table 1, is the number of victim arrests in each state since SHLs came into law. It is evident why the author is un-optimistic in her piece—the number of arrests stemming after SHL implementation is still hefty. After all, New York, Texas, and Washington have 20, 78, and 20 arrests respectively (Jekowsky 2014). This piece of information, however, is two-faced, and should be considered carefully before any final conclusions are drawn. The first side of the arrest column in Table 5, and perhaps the most obvious one, is that the number of arrests (and supposedly convictions) does not decline with the passage of SHL—leading to a rather somber conclusion that SHLs have no effect on the number of arrests. The other side of the arrest column is the interesting

one for it might show the exact opposite of the column's first side. The second side of the arrest column in Table 5 might point to the fact that more victims are being identified because of SHL, therefore the numbers in the column do not change, and even grow, from year to year. This observation was discussed in the previous chapters.

Unfortunately, the line between the two sides of the arrest column in Table 5 is heavily blurred and its exploration might warrant its own thesis.

Moreover, decriminalization for children of sex trafficking, one of the central provisions of SHLs, is extremely slow to take hold. Only five out of nine states have some sort of decriminalization as part of their state law; all but Illinois and Tennessee have decriminalized prostitution for *all* children under eighteen years of age. It is possible that this is due to Safe Harbor Laws being rather new time-wise and rather specific and laborious legislation-wise. It would be beneficial and very interesting to see what the state laws would look like five years from now—how many other states have adopted SHLs, whether decriminalization occurred in the other four states that were first to sign on, and whether law enforcement training occurred at all and, if it did, what kinds of effects has it had.

All 28 Member States of the European Union have adopted some kind of anti-trafficking legislation. However, parallel to the United States case, the variance in implementation and legislation variance for each Member States is still present. There is, for lack of a better word, no real, effective uniformity concerning anti-trafficking legislation in the European Union. Steps are being taken by each Member State to combat trafficking, but these steps differ from Member State to Member State, even though the European Union has laid out anti-trafficking legislation as a single governing body. Just

like the states in the United States, each Member State in the European Union is free to carve out anti-trafficking legislation the state sees as suiting it best.

