

**Submission of the
New South Wales Young Lawyers Human Rights
Committee**

To the Joint Standing Committee on Treaties:

**Inquiry into the Protocol to Prevent, Suppress and
Punish Trafficking in Persons, Especially Women and
Children, Supplementing the United Nations Convention
Against Transnational Organized Crime**

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The Secretariat
Joint Standing Committee on Treaties
Canberra ACT 2600
AUSTRALIA

20 February 2004

Dear Committee Members,

Inquiry into the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime

The Human Rights Committee of NSW Young Lawyers (**YLHRC**) is a group of young lawyers and law students who are concerned with a range of human rights issues in both Australia and abroad.

We are grateful for the opportunity to make submissions to the Committee. We have explored the aims and goals of the Protocol as well as steps already taken by the Australian government to incorporate the provisions of the Protocol into Australian law

1. Introduction

Australia signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime ("**the Protocol**") on 11 December 2002. Upon signature, Australia made the following declaration:

"The Government of Australia hereby declares that nothing in the Protocol shall be seen to be imposing obligations on Australia to admit or retain within its borders persons in respect of whom Australia would not otherwise have an obligation to admit or retain within its borders."¹

On 25 December 2003, the Protocol entered into force under Article 17, on the ninetieth day after the date of the deposit of the fortieth instrument of ratification, acceptance, approval or accession.

2. Government's concern – border security

As demonstrated in Australia's declaration upon signature, the Government is concerned that the Protocol may be interpreted to impose new obligations on Australia to admit or to retain within Australia persons that may be a victim of trafficking. The concerns of the Australian government is not unique, and reflects the

¹ United Nations, Signatories and Declarations to the Protocol, online at http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html#declaration accessed on 18 February 2004.

insistence of government of developed countries on retaining their right to enforce their borders against illegal immigrants, whether or not they are the victims of trafficking. As the Summary to the Protocol acknowledges:

“The legal status of trafficked persons and whether they would eventually be returned to their countries of origin has been the subject of extensive negotiations.”

However, the YLHRC submits that this concern is overstated. The Protocol is clearly aware of the contentious nature of this issue, and the articles in relation to the protection of trafficked persons clearly express deference to domestic legislation in relation to migration. The key provision in relation to permitting victims to remain in the receiving State is heavily couched in contingent terms. Article 7 requires that States that provide assistance and protection to the victims of trafficking to also “consider” adopting “appropriate measures” that permit victims of trafficking to remain in its territory “temporarily or permanently” in “appropriate cases”. The Article deliberately avoids imposing any obligation onto States, except to require the States to “consider” the possibility of allowing victims to remain in their territory, and “give appropriate consideration” to humanitarian and compassionate factors in such consideration.

Moreover, the Protocol is intended to strengthen the ability of States to control its borders and prevent the infringement of its borders by organised crime. Article 11 requires the States to strengthen border controls as may be necessary to prevent and detect trafficking in persons. The State is required to adopt legislative “or other appropriate measures” to prevent means of transport operated by commercial carriers from being used in trafficking. As such, rather than being a threat to Australia’s border integrity, the Protocol has the potential to reinforce the right of the Australian government to control border security and requires the strengthening of security measures.

3. Reasons for ratification

The YLHRC submits that the Government should ratify the Protocol. It is submitted that the ratification of the Protocol will confer the following benefits onto the Australian community:

a. Commitment to the prevention of trafficking in persons

The Protocol defines “trafficking in person” by reference to “exploitation” (Article 3(a)). Exploitation is defined as, “at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, force labour services, slavery or practices similar to slavery, servitude or the removal of organs”.

This definition is targeted to the worst effects of organised trafficking in persons, and addresses, in particular, the exploitation of women and children. Ratification of the Protocol will demonstrate Australia’s commitment to the protection of women and children. It also demonstrates a willingness by the Australian Government to confront and combat an illegal but lucrative global

industry, worth an estimated \$10 billion a year. Further, ratification will demonstrate Australia's commitment in preventing further tragedies such as the 27 year old woman from Thailand, Puangthong Simaplee, whose human rights were grossly abused.²

b. International cooperation in prevention of trafficking in persons

Ratification of the Protocol will also demonstrate Australia's willingness to cooperate with the international community to combat the horrific consequences of trafficking in persons and to prevent gross abuses of human rights by criminal organizations. It will allow Australia to share in intelligence and information gathered by the international community in relation to trafficking. Further, ratification of the Protocol is consistent with Australia's interests in retaining border security.

c. Leading role in the prevention of trafficking in persons in the region

Each year, an estimate 1000 women, mostly from South-East Asia, are "sold" to Australian brothels.³ As a developed country in the region, Australia is a receiving country for victims of trafficking in persons. It is crucial that Australia play a lead role in the region the combating the exploitative trade and protect the interests of the women and children that are committed to servitude and sexual slavery. Through ratification, the Australian government signals to the region our commitment in defeating the lucrative and illegal trade, and our intolerance towards those who commit gross human rights violations and exploit vulnerable people for financial gain. If Australia does not take a leadership role, the effectiveness of the international regime will be compromised in the Asia-Pacific region.

d. Human rights reputation

More than forty other States have now ratified, accepted or approved the Protocol. Ratification will ensure that Australia maintains its reputation as a country that respects and promotes human rights. It will also ensure that Australia is not compared unfavourably in respect of its commitment to human rights with any State that has already ratified the Protocol.

3. Conclusion

It is recommended that Australia ratifies the Protocol. The Protocol is consistent with Australia's interest in maintaining a secure border and to promote observance of human rights. Through ratification, Australian can take a leading role in the fight against transnational organised crime that profits from the exploitation of vulnerable people. The Protocol does not in any way derogate from Australia's sovereignty, including the right of the government to admit or retain persons in accordance with domestic law. Rather, ratification will allow Australia to participate in the

² Leonie Lamont, "Sold at 12: nightmare ends in death" in *Sydney Morning Herald*, 13 March 2003.

³ Paul Kalian, "The human cost of slave trade" in *Sydney Morning Herald*, 23 October 2004.

international effort to combat trafficking in persons, and to protect and assist victims of trafficking with full respect for their human rights.

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