

Out of Bondage

Defense Department should focus attack on global trafficking in people.

BY MARTINA E. VANDENBERG

Beginning this year, U.S. service members will face stiff penalties for patronizing a prostitute. The Bush administration, in a little-publicized move last year, proposed an amendment to Article 134 of the Uniform Code of Military Justice. The *Federal Register* notice, published in September 2004, outlined the maximum punishment for the offense of paying for sexual intercourse with a prostitute: a dishonorable discharge, forfeiture of all pay and allowances, and confinement for one year. The 60-day comment period ended in November.

The amendment sparked outrage among U.S. troops serving in Germany, where prostitution is legal. In contrast, conservative groups at home hailed the amendment, which the Bush administration claimed would cut the demand for trafficked women and girls around the world.

The Department of Defense has only recently acknowledged the insidious links between trafficking in human beings and the presence of U.S. troops and contractors stationed abroad. But the amendment misses the mark as a tool to combat the modern slave trade in trafficking persons for forced prostitution and other forms of forced labor. It focuses on the purchase of sexual services while ignoring the more heinous act of purchasing human beings. The Uniform Code of Military Justice does not criminalize trafficking. And, in any case, the code does not apply to the growing ranks of U.S. military contractors abroad.

An example from the Balkans a few years ago illustrates why this gap between punishing those who solicit prostitutes and criminalizing sex trafficking matters. A U.S. civilian employed by a Defense Department contractor in Bosnia and Herzegovina purchased a trafficked Moldovan woman and an automatic weapon in a package deal from a brothel owner. The contractor confessed to U.S. Army criminal investigators that he had paid \$740 for both. He quickly returned to the United States, but was never criminally prosecuted for the purchase of a human being as chattel.

Although the contractor claimed that he had purchased the

woman's "freedom," she told a quite different story. Interviewed by U.N. police officers, the young woman reported that she had been promised a job as a waitress in Italy, only to be sold three times and forced into prostitution. She identified the contractor as her final "owner" and reported that she had lived with him "like a prostitute." He held her passport.

Evidence collected by the United Nations, Human Rights Watch, and other nongovernmental organizations suggests that this is not an isolated case. More than one contractor, posted abroad to provide support to U.S. military and peacekeeping operations, has purchased another human being, forcing her to provide sexual and domestic services in his private residence. Other contractors have engaged in the facilitation of trafficking. In one case, a U.S. contractor paid bribes to local Bosnian police officers to "regularize" the immigration status of a trafficked Moldovan woman.

Individual contractors have admitted to purchasing women and keeping them in their homes while serving abroad. And local Bosnian police reports document involvement in trafficking by U.S. contractors.

But no U.S. contractor has ever faced criminal prosecution in U.S. courts or abroad for trafficking or for purchase of a human being as chattel. In most instances, once the purchase was discovered overseas, the contractor simply fled back to the United States on the next flight out. The lack of prosecutions exposes the shocking inadequacy of the U.S. government's response.

NOT JUST DEMAND-SIDE

In September 2004, the House Armed Services Committee and the Commission on Security and Cooperation in Europe held a joint issue forum, co-chaired by Reps. Christopher Smith (R-N.J.) and Duncan Hunter (R-Calif.). The hearing marked the first time that the Armed Services Committee had heard testimony on human trafficking. It provided U.S. officials with an opportunity to address this gruesome human rights violation and to advocate for an end to what amounts to impunity for U.S. contractors.

Unfortunately, that was not the Defense Department's agenda. Nor was it the agenda of the congressional panel. Instead, the hearing focused completely on the "demand side" of trafficking, an effort to end service members' patronizing of prostitutes.

With much fanfare at the hearing, the Defense Department announced a zero-tolerance policy on trafficking. But make no mistake, the Pentagon has actually adopted a zero-tolerance policy merely on prostitution. What we have seen in the field is not zero tolerance for trafficking, but zero tolerance for whistleblowers who report trafficking and zero prosecutions of traffickers.

AGENCY FOOT-DRAGGING

The climate of impunity should have ended in November 2000 with the passage of the Military Extraterritorial Jurisdiction Act (MEJA), a statute bestowing U.S. jurisdiction on crimes that would amount to felonies under U.S. law committed abroad by Defense Department contractors.

But credible reports from the field indicated that right up until the U.S. pull-out from Bosnia and Herzegovina in November 2004, the purchases of women by U.S. contractors continued. The Defense Department has failed to investigate trafficking allegations adequately, resulting in a dearth of prosecutions.

And even if the political will to investigate and prosecute had existed, the department neglected to issue the MEJA implementing regulations for four years. It was not until June 2004 that the deputy secretary of defense finally forwarded draft regulations to the Senate and House Judiciary Committees, as required under the legislation.

Congress has tried to fill the breach caused by Pentagon foot-dragging by adding language in the Trafficking Victims Protection Reauthorization Act of 2003 that would hold contractors accountable—by terminating their contracts—if a contractor "engages in severe forms or trafficking . . . or uses forced labor in the performance of the grant, contract, or cooperative agreement."

But this has not accomplished much. Indeed, the Defense Department has not yet incorporated a condition into existing contracts permitting the termination of grants to contractors that have engaged in trafficking.

Despite the congratulatory backslapping at the September joint issue forum, the Defense Department has only recently drafted a training program on human trafficking for service members. The department still has not developed mechanisms to track such cases or to ensure that the department's criminal investigators recognize human trafficking when they see it. The Pentagon still has no method for reporting the criminal behavior of contract employees or for assuring that those who commit these crimes will face prosecution.

This inaction is particularly curious given how long the problem has been known to exist. From 1999 to 2002, Human Rights Watch conducted research on trafficking in Bosnia and Herzegovina, resulting in a report (which I authored while a researcher there) entitled "Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution."

During that time, we uncovered at least eight cases of U.S. contractors who allegedly purchased trafficked women and girls as chattel. Four of those contractors worked for the Defense Department; four worked for the State Department as police officers serving with the U.N. Mission in Bosnia and Herzegovina.

Two different whistleblowers working for a U.S. contractor attempted to raise these issues with U.S. authorities while stationed in Bosnia and Herzegovina and found themselves summarily fired. The Defense and State Departments, which held the contracts, did little to investigate or to intervene. Not one of the accused contractor employees was ever charged in connection with the trafficking allegations.

Recently, Sarah Mendelson of the D.C.-based Center for Strategic and International Studies, who testified at the joint hearing, conducted an 18-month in-depth research project on trafficking and the U.S. military. Her findings, to be published this month, confirm—and go beyond—those of Human Rights Watch.

Mendelson found that many uniformed service members, civilian contractors, and civil servants continue to deny the links between trafficking and peace-keeping deployments. The report recommends the creation of a central, anti-trafficking office at the Defense Department to be directed by a deputy assistant secretary.

LOOKING TO CONGRESS FOR HELP

For some time, trafficking experts have advocated the passage of a new amendment to the MEJA that would extend contractor accountability beyond Defense Department contractors. Bush administration officials have repeatedly said that they were drafting such an amendment. In fact, on April 24, 2002, an administration official testified before a House subcommittee that "the Criminal Division [of the Justice Department] is currently drafting a proposed amendment to MEJA that would extend federal jurisdiction to include all U.S. government employees and contractors who work in a law enforcement capacity abroad." The promised amendment has never materialized.

But a recent bill proposed by Rep. Smith would do what the administration promised, permitting prosecution of all federal contractors under U.S. law and ending the virtual impunity of non-Defense Department contractors facing allegations of human trafficking. In a welcome development, Smith also has proposed an amendment to the Uniform Code of Military Justice that would criminalize trafficking in persons.

STEPS IN THE RIGHT DIRECTION

Defense Secretary Donald Rumsfeld issued a stern condemnation of human trafficking on Sept. 16, 2004, in a policy directive that included references to forced prostitution and forced labor. He acknowledged the insidious role that individual contractors have played in trafficking during peace-keeping operations.

But the Defense Department's actions up to this point do not match the secretary's ambitious rhetoric. Rumsfeld's stated commitment to take every step possible to combat trafficking in human beings has not translated into effective action. Trafficking victims continue to suffer in horrible isolation. The administration's concerted attack on prostitution has done little to bring perpetrators of trafficking to justice.

Without an aggressive enforcement strategy properly focused on prosecution of traffickers and aimed at all U.S. contractors, the stated policy of zero tolerance will make zero difference in the lives of trafficking victims. Zero prosecutions speaks for itself.

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