

# A DECADE OF THE TRAFFICKING IN PERSONS REPORT

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## HEARING BEFORE THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE: U.S. HELSINKI COMMISSION ONE HUNDRED ELEVENTH CONGRESS SECOND SESSION

JULY 14, 2010

Printed for the use of the  
Commission on Security and Cooperation in Europe



Available via <http://www.csce.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2015

95-205

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# **A DECADE OF THE TRAFFICKING IN PERSONS REPORT**

**JULY 14, 2010**

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## **A DECADE OF THE TRAFFICKING IN PERSONS REPORT**

**JULY 14, 2010**

COMMISSION ON SECURITY AND COOPERATION IN EUROPE,  
*Washington, DC.*

The hearing was held from 10:00 a.m. to 12:25 p.m. EST, SVC 203/202 Capital Visitor Center, Washington, DC, Benjamin Cardin, Chairman, Commission on Security and Cooperation in Europe, presiding.

*Commissioners present:* Hon. Benjamin Cardin, Chairman, Commission on Security and Cooperation in Europe; Hon. Darrell Issa, Commissioner, Commission on Security and Cooperation in Europe; Hon. Chris Smith, Commissioner, Commission on Security and Cooperation in Europe; and Hon. Laura Richardson, Commissioner, Commission on Security and Cooperation in Europe

*Witnesses present:* Luis CdeBaca, Ambassador at Large, U.S. Department of State Office to Monitor and Combat Trafficking in Persons; Maria Grazia Giammarinaro, Special Representative and Coordinator for Combating Trafficking in Human Beings, Organization for Security and Cooperation in Europe; Jolene Smith, CEO & Co-Founder, Free the Slaves; and Holly J. Burkhalter, Vice President for Government Relations, International Justice Mission.

### **HON. DARRELL ISSA, COMMISSIONER, COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

Mr. ISSA. Good morning and welcome all to this hearing on trafficking in persons report. And our testimony today. I'm Congressman Darrell Issa. Congressman Smith and I did not expect to running the, initially, the hearing today. So if you'll bear with me as I kind of limp my way through introductions and so on, I hope you'll forgive me.

The Helsinki Commission hearing on "A Decade in Trafficking in Persons Report, The Link between Revenue Transparency and Human Rights." In the chairman's role as chairman of the Helsinki Commission, he has worked extensively with Cochairman Alcee Hastings and Chris Smith, among other colleagues, to end modern-day slavery. The Helsinki Commission's lengthy history and contribution to U.S. anti-trafficking legislation and compliance, coupled with its close engagement with actors throughout.

And with that, I will turn this over to the chairman. It's your opening statement.

**HON. BENJAMIN CARDIN, CHAIRMAN,  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

Mr. CARDIN. Congressman Issa, great job. Let me just compliment you first. Welcome everybody. It's nice to see as much interest in this hearing as it really does deserve. And I want to compliment my colleagues. I am going to turn the gavel over to Congressman Smith because there has been no person in the Congress who has worked harder on this issue of trafficking than Congressman Smith. He brought this issue to the United States Congress and to the Helsinki Commission.

And as Congressman Issa was saying, this is modern-day slavery. It is, I think, the best example of carrying out the comments of the 1975 Helsinki Final Accords dealing with human rights, to deal with workable ways. And as a result of the leadership of the Helsinki Commission, this issue was brought not only to the attention of the OSCE but to the entire world.

As a result, we were able to get action within the OSCE, where every country has an action plan to deal with trafficking, whether it's an origin country, a destination country or a transit country. All three are involved in the problems of trafficking. And you cannot hide behind the fact that there is not a problem in your country if you are a transit country or you're an origin country or a destination country.

And the TIP report, which was action passed by the United States Congress, implemented by the State Department, is the most effective tool and unique tool for diplomatic actions against countries that need to improve in dealing with this issue. So today we really continue the attention of the Helsinki Commission to make it clear that this is our highest priorities in dealing with human rights. And we now have a tool that we think has been improved over time.

As you know, the TIP report this year for the first time evaluates our own country, the United States, in its progress on dealing with this issue. Every country can do better, including the United States of America. The challenges continue to be difficult, but thanks to the work of the Helsinki Commission, thanks to the work of Congressman Smith, thanks to the attention that the OSCE has given to this issue, thanks to the work of our ambassador, we are making progress and are affecting the lives of many, many people who otherwise would have been undetected and we are very proud of that record.

And with that I'm going to turn the hearing over to Congressman Smith to act as chairman. I have to leave briefly to go up on the Senate floor to give a speech at some moment, but I will turn it over to Congressman Smith.

**HON. CHRIS SMITH, COMMISSIONER,  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

Mr. SMITH. Thank you very much, Mr. Chairman. And thank you for your leadership. It's been a very collaborative effort on all human rights issues, including human trafficking. And thank you for your leadership. I think members of the staff certainly know it and maybe some of the audience—we just returned from Oslo for the OSCE parliamentary assembly.

And frankly, it was a very productive one. There was not just one but several supplementary items. I offered one myself on human trafficking. Much of the conversation, especially in committee three dealing with human rights and humanitarian issues, was focused on trafficking. I mean, if there was a zeitgeist of this conclave, it was trafficking and efforts that needed to be deployed and employed to mitigate and hopefully end modern-day slavery.

By way of background—and I know Ambassador Luis CdeBaca knows this, but Ms. Giammarinaro, welcome. It's so great to see you, the special rep for the OSCE. The TIP report almost didn't happen. In 1998 I introduced a Trafficking Victims Protection Act, held a whole series of hearings at the time. As Chairman Cardin knows, I chaired both the human rights and humanitarian—and international ops subcommittee of the foreign affairs and the Helsinki Commission. And we had a number of hearings on it.

We heard from victims and probably the most compelling testimony we heard of all testimony was from the victims who told us of the degrading, horrific experiences that they underwent. And these were the brave women who came forward to tell us. Others were so broken, we went and visited them in places like St. Petersburg and elsewhere and heard their stories. And that helped move the legislation, but it was a bipartisan piece of legislation.

Sam Gejdenson was the principal cosponsor. I was the prime sponsor. And we rewrote it five times. I mean, we kept getting new ideas. Holly Burkhalter will remember how many times we got another idea, we put it into the text. We finally got the markup, we passed it in the House and then it almost died in the Senate. It took a full year for the Senate to even take up the legislation. Then we got into a House-Senate conference committee that lasted almost to the sine die of that Congress, the end of that Congress, without being enacted.

There was opposition and support within the Clinton administration. Some people thought at the State Department we should not have sanctions that are visited upon countries that show egregious behavior with regards to human rights—that was Madeleine Albright's opinion. I respect it, but disagreed respectfully. But through a left-right, conservative-liberal coalition, we were able to the Trafficking Victims Protection Act signed into law. And it has been 10 years now that this TIP report has been issued and it has gotten better every year in my opinion.

In addition to the analysis of other countries, we also put into place up to life imprisonment for those who traffic. The hardest hurdles we had to deal with on my side of the aisle was it was those who did not want the T visa. They thought that the asylum provisions in the bill would lead to an exploitation of trafficking claims.

We thought it would never happen. If anything, women were reluctant to come forward and tell their stories. That was the experience that we thought was reality and certainly it has turned out to be the case. The T visa is not being implemented in the way that many of us would like, but hopefully, hope springs eternal, we'll do more. We also put money in here for shelters, but we know we have a gaping hole on shelters domestically.

Last year, Doctor, you'll find this very troubling, Shared Hope International did an analysis working with other NGOs and found that about 100,000 American girls, runaways—and Luis CdeBaca was at that launch when we explained and heard from Shared Hope International and Linda Smith, former Congresswoman, who was one of the leaders there, among others—the average age is 13, 100,000 of our young girls, average age 13, runaways, who are compelled into slavery, sometimes within 48 to 72 hours after their running away. It's a terrible blight and obviously a waste and a terrible impact on those girls' lives.

So we're doing more domestically, as we ought to. And in the '03 act and the '05 act—and you'll find this, I think, interesting—we focused on peacekeepers. I held a series of hearings on what the U.N. peacekeepers were doing in the DR Congo and elsewhere and it was a terrible, terrible situation, where young girls were being—again, 13 and 14 years old were being exploited for a loaf of bread or something far less. So that's another issue that we have included in our analysis, as well as in our policy.

Let me just say that we have made real, significant, I think, progress within the OSCE. Twenty-one OSCE countries are now what we call “tier one.” Bosnia-Herzegovina is perhaps the best example of progress. Having started at tier three in 2001 and attaining tier one just this year. Georgia went from tier three—in other words, an egregious violator—to tier one this decade and is completely surrounded by countries that are either tier three or tier two watch list.

In the OSCE region, we do not have any countries that are yet officially tier three, but have many who have been on the watch list for more than two years, which means they must move up to tier two or down to tier three in the next reporting cycle. These countries include Azerbaijan, Moldova, Russia, Turkmenistan, Tajikistan and Uzbekistan. This year, 2010, is a pivotal year for these countries and we must make sure they have all the support that we can offer to help them move up rather than down this scale. And why do we do that? For the sake of the victims.

Tier one countries can also get stuck and stop improving. The point of plateau is often maintained by a consistent demand for victims, making trafficking lucrative for organized crime and too prevalent for law enforcement to completely stamp out.

We have many challenges before us in the next decade of anti-trafficking work, but perhaps one of the most important is ending the demand that drives trafficking. We must increase public awareness, not only of trafficking that is occurring around them, but also of buyer responsibility—women and children are not commodities—and perhaps add a section to the report highlighting how a country addresses the demand issue.

Let me finally say that at the conference, I included two provisions among many in my supplementary item, Mr. Chairman, as you know, that deal with two best practices that we need to replicate everywhere and especially, Doctor, within the OSCE region.

One deals with the airline partners against human trafficking. We held a briefing/hearing two weeks ago and heard from American Airlines—which is taking the lead, among others, but they are the leads—on trying to empower flight attendants especially, but

the entirety of the flight crew, to be aware of the signs of human trafficking, what trafficking looks like.

And if it doesn't look right, pass that information on to the captain, who signals law enforcement so that when these young women—and they're usually women or children—are deplaning, proper law enforcement can at least ascertain whether or not there is a trafficking situation.

One of the flight attendants said that there were a half a dozen Russian women, didn't look right. This man just—it just didn't smell right. Sure enough, as they deplaned, all six of those women were trafficking victims and were saved.

The other idea is the international Megan's Law. Megan Kanka was a 7-year-old little girl who was brutally slain in my hometown of Hamilton Township, New Jersey, in 1994. This young girl—didn't know, as did her parents, that across the street, a convicted pedophile lived and lurked. He got her into the house, raped her, and brutally murdered her. And that led to the enactment of in all 50 states and the District of Columbia, of Megan's Law. We now have a registry of about 700,000 sex offenders.

And in one of my bilaterals with a Thai delegation, I remember asking them—this was four years ago—if we told you that so-and-so, who has been convicted of pedophilia, is heading out to your country, what would you do? They said, no way that person gets a visa.

We began working on Megan's Law that day. It is out of the Foreign Affairs Committee, has been waved on by the Judiciary Committee. We understand Justice has some problem and whatever it is, we'd better work it out or we'll have this Congress end again without Megan's Law being enacted. Notice and information does empower and it will have the ability of ending the secrecy and the impunity that these people operate in.

And finally, working with Holly, we do have a very important compact piece of legislation—well over a hundred cosponsors. We're trying to get that out of committee as well to provide significant amounts of money with Congress that enter into a compact, work out best practices and they will get enhanced funding to put into place a strategy to end trafficking within their country.

So we've got a lot of things on the burner. If they sit on the burner, shame on us that we have not moved them forward to end this cruel practice. And thank you again for both of your tremendous leaderships.

Mr. CARDIN. Let me just observe something that Congressman Smith stated and that is, we, the U.S. delegation has regularly brought the issue of trafficking up at the parliamentary assembly. But this year was a little bit different. We found that many other delegations brought up the issue of trafficking, which means this is clearly a priority in many countries, which is a very healthy development and one that we think will yield great results in protecting those victims. Congressman Issa?

Mr. ISSA. Thank you, Mr. Chairman. And I'll be brief. I'd like to hear the testimony as soon as possible. When I came to Congress 10 years ago, trafficking tended to be looking at Thailand and the sex vacations and so on. And as time went on and we began looking around the world—and I'm getting to the TIP report—it be-

came obvious that perhaps the least excusable offender of human trafficking is the United States. And until this year, we were not on the report.

Inexcusable because of the 12 million people from outside our country who are here outside our laws, almost all of them came at least based on a promise of a better life, came on the promise of good things to the richest country in the world. And yet a great many of them were deceived. And in my own district, many of them never made it here because coyotes abandoned them in the desert, sometimes out of fear of apprehension, sometimes as part of a plan.

So concentrating around the world should never be the exclusion of taking a country that is probably the most unconscionable country not to deal with all forms of trafficking, including the importation either for sex or for general labor. And the United States is certainly a magnet of people who come with promises and often those promises are incredibly false.

So as I look forward to the testimony and I look forward to working on areas around the world in which the countries have not paid attention yet, I hope we always remind ourselves that we have been the source of the dollars often for bringing people and encouraging trafficking from all kinds of countries around the world.

And Congressman Smith was talking about a flight attendant who said it didn't look right with one Russian man and six Russian women, no surprise that often we are the magnet for that kind of activity. And so although they are the victims, we have to take some of the blame if we're not more comprehensive in our thwarting those attempts.

So with that, Mr. Chairman, I yield back and look forward to the testimony.

Mr. CARDIN. Well, our first panel consists of two individuals whose positions were part of the effort of the Helsinki Commission not only to make sure these positions exist but to have the resources and support necessary to accomplish their important work. The bios of our two witnesses are included in the information that has been made available, so I'm just going to introduce them with their titles so we can proceed. And after that, I will turn the gavel over to Congressman Smith and I regret I do need to leave to be on the Senate floor.

The first witness is Luis CdeBaca, the director of the State Department Office to Monitor and Combat Trafficking in Persons. And our other witness is Dr. Maria Giammarinaro, who is the OSCE special representative and coordinator for combating trafficking in human beings. Ambassador CdeBaca, glad to hear from you.

**LUIS CDEBACA, AMBASSADOR AT LARGE, U.S. DEPARTMENT OF STATE OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS**

Mr. CDEBACA. Thank you, Sen. Cardin. And also to Representative Smith and Representative Issa on behalf of all the members of the commission. We'd like to thank you for your leadership and your commitment to ending modern slavery. The last 10 years has, as you've set forth, seen many successes in this fight.

With more cases and more victim care has come a deepening of our collective understanding of this crime, both as far its scope, as far its type, as far as whose doorstep it should be attributed to. No longer simply being seen as the business of the trafficker and their victim but instead how, as Mr. Issa suggested, we ourselves often find, through the demand and the policies that we have in place, things that puts government and civil society on the hook as well.

I'd like to highlight some of these understandings that 10 years' worth of report have given us. And in first doing it, I think that taking us back to those early days may be illustrative. I think that when many of us started working on this in the 1990s, trafficking in person was a little-understood crime that was perpetrated in the shadows.

And if people thought of it at all, they thought of migrant women trapped by false promises only to find themselves in brothels and strip clubs, whether in Thailand, whether in Western Europe. The notion of the victim as a kidnapping victim as opposed to the victim as someone who had found themselves in a situation that they could not get out of. Victims who were enslaved in their own countries were largely left protected, such as it was, simply by exhortative international norms that had little if any reach inside of their national borders.

As Ann Gallagher writes, "In the 1990s, the discourse began to look at human trafficking per se, not just as an incidental consideration when dealing with other issues." Typically it was seen as an adjunct to migration policy, the legal or illegal regulation of prostitution or the work of human rights mechanisms around the world.

Instead the understanding of the crime in the mid-1990s and since then has developed such that, again, quoting Ann Gallagher, "The concept of trafficking international law does not just refer to the process by which an individual is moved into exploitation; it extends to include the maintenance of that person in the situation of exploitation." This shift to the conception of modern slavery, I would say, is the defining of the last decade of this fight and is reflected in the last 10 trafficking in victims' reports.

I appreciate the nod, Mr. Smith, as far as the constant improvement. I thought that I would actually bring, for old time's sake, a copy of the first TIP report.

Mr. SMITH. Can you tell if it was done on a selector?

Mr. CDEBACA. It looks like it might have been originally. I think one of the things that we've seen and it's not just that the report is perhaps more authored and more comprehensive, but we also have a more comprehensive understanding of what trafficking is. Not just this notion of focusing on the enslavement as opposed to migration or movement, but also what the solution is—the three-P paradigm that you were so instrumental in helping us develop: prevention, protection and prosecution.

I certainly knew as a young prosecutor that unless we had protection measures for the victims and unless we had prevention efforts in place that I would never be able to prosecute our way out of this. I think speaking for my colleague at that point, as a judge in Italy in the late 1990s, I know that this was something that Dr. Giammarinaro and I and others talked about, that we could not

simply use law enforcement tools, that we had to have prevention and protection.

But so too, we can't simply have an underground railroad manned by NGOs who help victims and never bring them forward for the traffickers to be punished. An interlocking paradigm. And that's the Palermo protocol and that's what the United Nations brought us as we were able to successfully get that in place at the same time as the TBPA.

But too often we see a convention ratified, laws passed to conform and then—what else? To make it real takes coordination across agency lines, cooperation across governments and the engagement and leadership of regional fora like the OSCE. And frankly, it takes oversight and attention by parliamentarians, whether it's, for instance, Mr. Issa, the resolution on DHS and DOJ's efforts that I was able to help your staff with when I was still on the Judiciary Committee staff—or there's so many things that you've done, Mr. Smith, over the last few years.

What that does is it propels the work of the international fora. It propels the work of the international fora. It propels the work of the agencies because they know that it's not simply going and occasionally dusting off the agency copy of the Palermo protocol. We've seen too many countries where that is the norm and I think that as we get more and more parliamentarians involved, it's less likely for that to be the only bureaucratic response.

And we've seen results. Trafficking Victims Protection Act has three reauthorizations, the ongoing attention, the Palermo protocol, offices such as mine and that at the OSCE. But more importantly, the action plans and the laws that have come online in countries around the world. The victims who have been rescued and the offenders who have been prosecuted.

Without the trafficking in victims report over the last 10 years, I would suggest that we would have no real way to assess the progress that's been made, no baseline standards, no information about the number of laws that are out there, whether they're sufficient, whether there are victim care in place and no way to have meaningful diplomatic engagement.

I certainly do not subscribe to what some unfortunately were saying in '98 and '99 to you, Mr. Smith, as far as the effect of the rankings and the effect of the naming. We have seen that as one of the most effective tools. It brings countries to the table in a way that a report that simply drifts off into the wind like a dandelion seed perhaps to take root or not does not do.

And so we think that this is something that the secretary is committed to. As she said in June, the easiest way to get off tier three or tier two watch list is not to complain or to try to work the system; it's for countries to act.

Now, we've talked a little bit about—I think you raised Bosnia and Herzegovina and that is a government that acted. It acted, but it didn't act alone. It acted because, in many ways, not just the United States but more importantly the OSCE, the Helsinki Commission. The partnership with the nongovernmental organizations in Bosnia, the convictions of the traffickers—I would lay that not only at the good work of the Bosnian government, but also for the OSCE's trafficking office, specifically at the time, the stability pact

taskforce, which was funded and staffed in large part by the United States through the Helsinki Commission.

It didn't just provide technical assistance, but rather through the convening authority, the OSCE kept the heat on Bosnia and other countries in the Balkans to actually do something. The OSCE made sure that terms such as "national action plan" or "national referral mechanism" wasn't just an international buzzword but instead something that triggered international and lasting change.

I mentioned some trends and I will try to very briefly touch on two of them because the heightened understanding of the problem that we've seen that's reflected in this report is something that I think we've seen in the U.S. but we're starting to hear this from our international partners as well.

And one of those trends is the feminization of labor trafficking. Labor trafficking for many years, either because we weren't really looking at it or we weren't seeing what was in front of us or because of various political winds, was once thought of as the male counterpart to sex trafficking of women.

Labor was for men; sex trafficking was for women. You dealt with them separately and that was how things got done in a lot of places. But like their brothers, husbands and sons, women are trapped in fields, farms, factories, mines, homes and often suffer the dual demons of both forced labor and rape.

False promises. This is something that we've seen for men in labor trafficking. The stereotype is the man who is lured through a false promise of a good job only to have a huge recruiting fee or to have to pay off a smuggling fee. Well, we've seen that as well as we looked at this status in the field—as we look at what's going on out in the enforcement community—we've seen that as well with women.

And so we're hoping that that new fraud in foreign labor recruiting crime that was part of the 2008 reauthorization will not only be used successfully in the case that's going to trial in Kansas City this fall, but also will become a model that we can take to the outside world—because that issue of fraud in foreign recruiting, what those coyotes are telling people, what those folks in the other countries, should be a crime no matter where the person ends up enslaved. And if we have to reach out to South Asia or if we have to reach out to Latin America to apprehend the people who give those lies and commit that fraud, then we will do so.

I also want to point out—and I think that this is something that hopefully will be addressed in some of the other testimony—the idea that some of the worst abuses occurs behind closed doors in involuntary domestic servitude. In some ways, these are the most vulnerable victims because unlike people in other sectors, they often do not come in contact with anyone who might take pity on them, who might help them out, who may get them to law enforcement.

We've seen cases of victims in domestic servitude here in the United States, within 10 miles of where we said, who have been held captive for 20 or more years wasting away, resigned to the idea that they will die in that home, that no one will come to find them.

I was pleased to be able to participate in the recent gathering in Vienna hosted by Judge Giammarinaro that brought experts together to confront this heinous practice. And I'm glad that last month, the United States delegation to the ILO was able to get strong language included in the negotiations over the domestic servant convention that will hopefully come into force next year.

Going forward, the Obama administration is wholly committed to combating every type of trafficking, whether sex trafficking, forced labor, at home or abroad, no matter the citizenship or immigration status of the victims. And we do that in continuation of the spirit of partnership and the work of our predecessors.

I personally, I think, have a reputation for being fairly impatient. And I think that we should be impatient because we owe it to the survivors, the brave survivors who testify against their traffickers, to the NGOs who often put themselves in harm's way to serve these victims, to the agents that go out and dismantle these cases.

But we also have to be impatient because of the specter of those countless people who are currently still in bondage, waiting and wondering, not even knowing whether or not we're looking for them. I think we can all be impatient. As Sen. Cardin said, we can all do better. I thank you for your support. I apologize for the length of this opening statement, but it's an important thing that I share your passion on. Thank you so much.

Mr. SMITH. Ambassador CdeBaca, thank you very much for your testimony and for your leadership. And you could have taken more time if you'd liked. Dr. Giammarinaro.

**MARIA GRAZIA GIAMMARINARO, SPECIAL REPRESENTATIVE AND COORDINATOR FOR COMBATING TRAFFICKING IN HUMAN BEINGS, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE**

Dr. GIAMMARINARO. Thank you very much. I am honored to testify today before the Helsinki Commission. And I would like to thank you for your kind invitation, but also for holding this important hearing and for your dedication to this challenging issue. This session is mostly dedicated to the Trafficking in Persons Report and, first of all, I would like to say that in the daily work of my office, the TIP Report constitutes an extremely valuable source of up-to-date information.

We welcome the inclusion of the U.S. as a country of assessment. And for the first time, we have an overview of what is going on in one of the largest destination countries and one of the most active in the fight against trafficking.

I also appreciate the attention the 2010 report pays to important issues such as labor trafficking, protection of victims' rights and implications of migration policies, as well as to preventive actions, such as those addressing loopholes in labor recruitment, transparency and worker protection throughout the supply chain. And I'm pleased to see that our policy approaches are in line with one another.

Since 2000, the OSCE has adopted, as you know, important political commitments to continually strengthen our efforts to combat trafficking in human beings. And in 2003, the special representative was established as a high-level mechanism to promote the im-

plementation of OSCE commitments in the participating states. And I'm honored to carry out this task now and I'm personally committed to make trafficking in human beings even more strategic in the OSCE commitments in the future.

I would like to touch upon two issues: my assessment of the state of play of the anti-trafficking struggle in the OSCE area and, secondly, the challenges we face.

What is the state of play? It is undeniable that many efforts have been made by governments during the last 10 years. There is stronger political will to prevent and combat trafficking and this is reflected in the works—more and more, the works of the U.S., of the OSCE Parliamentary Assembly and the works of the permanent council. Not only this; necessary institutional machinery has been set up almost everywhere. And this means coordination mechanisms. This means monitoring mechanisms and national action plan, in addition to legislation.

However, not always these actions, the concrete actions are consistent with declarations, especially in terms of resources allocated, capacities developed and actual implementation of the action defined in the action plans. Despite the progress, we cannot be satisfied. I tend to belong to the same category of important people as Luis CdeBaca. And as special representative, I think it is my duty to promote further improvement.

And of course, the starting point is to be clear and open about what is not still going on very well, what we have to improve. Concerning the protection of victims' rights—and I start from this important issue because we know very well that victims bear incredible human suffering as a consequence of trafficking in human beings. Trafficking for sexual exploitation, of course, severely undermines and devastates the freedom, dignity and health of victims, mostly women and girls.

But also, trafficking for labor exploitation—and this is less obvious—very often causes equal levels of human suffering as a result of inhuman working conditions and living conditions, humiliation and starvation. Children are subject to these and other forms of exploitation and bear scars as a result of being deprived of education, health care and basic human nurture and protection.

And I think that, concerning the health consequences—very often what we see in courtrooms and in shelters, victims of trafficking, both adults and children, often share a similar profile to victims of torture. And this is the reason why the protection of victims' rights remains paramount in the antitrafficking struggle, as Luis CdeBaca said.

And Joe has advocated for a human-rights-based approach, which has been reaffirmed by the OSCE political anti-trafficking commitments since 2000. This approach has subsequently been endorsed by the Council of Europe and, more recently, by the European Commission and the CIS Model Law. However, the rate of victim identification is extremely low compared to the estimated scale of trafficking. It's still very low.

Too often, trafficked persons are either not identified as victims of crime or are misidentified as regular migrants and deported. Despite the increasing trend of reported cases, the criminal-justice response is still largely inadequate. And not only in terms of the

number of convictions: Often, prosecution only reaches individual, final exploiters.

And in the meantime, trafficking proves mostly a business of organized crime and mostly run by flexible criminal groups which are connected at the international level. Corruption, reinvestment and money laundering remain largely undetected. It is, therefore, imperative to handle every single case with the aim of dismantling the entire transnational criminal network and hit the proceeds of crime.

We have to admit that, although commitment and action have been taken, trafficking in human beings is not still considered—and this is my assessment—not very optimistic. It is not still considered a strategic issue and does not raise the same level of concern as other human rights issues such as torture or other transnational treats, such as drug trafficking.

I'm convinced that in my capacity I have to promote a different perception of trafficking in human beings. Trafficking should not be considered as a marginal phenomenon concerning only sexual exploitation or involving the profile of certain victims only. This is still the current perception, the common perception of trafficking.

On the contrary, trafficking for any illicit purpose is a massive phenomenon of modern-day slavery, an organized crime business and therefore a threat for national and international security. It is imperative that anti-trafficking legislation and policy established over the past years now work on a much larger scale, especially in the field of labor exploitation. I think this is the real challenge we have to face. We have the tooth, but we have to use that in a more effective way.

My office concerning labor exploitation is dedicated to facilitate deeper knowledge of this side of trafficking in human beings. We have conducted work on trafficking in the agricultural sector and, more recently, trafficking for the purpose of domestic servitude. And I'm really delighted that domestic servitude was addressed by the TIP report of 2010 as a crucial issue.

Before concluding, I would now like to touch upon three crucial areas where, in my view, substantial improvement is needed. And these areas concern, of course, the three P's: protection of victims' rights, prosecution and prevention. Protection of victims' rights: Over the last decade, the OSCE approach to promoting human-rights-based responses to trafficking through the national-level mechanisms has received increased recognition. Such mechanisms, however, have not been universally established or have not proven really effective.

I therefore strongly advocate for early identification of and unconditional assistance to trafficked persons. In other words, a victim must receive immediate assistance and support as soon as there is the slightest indication that she or he might have been subject to trafficking. This approach has recently been confirmed by the European Court of Human Rights.

In the recent case of *Rantsev vs. Cyprus and Russia*, the court established an obligation to protect not only victims, but also persons that might have been trafficked or are at risk of being trafficked. And this means that we have to lower the threshold of iden-

tification and granting of resident status. Without that, assistance is not even possible.

Another challenging area is the protection of victims' rights in criminal proceedings. Victims should receive free legal counseling and representation in criminal, civil and labor proceedings to be able to claim their rights. In particular, the right to compensation is a crucial element of an empowerment strategy enabling trafficked persons to gain ownership of their lives and their destinies.

The second challenge is prosecution. A priority is to deal effectively with trafficking as organized crime by enhancing national capacity and international cooperation in transnational cases. And my office is really committed in capacity—in working with governments, especially concerning capacity-building and training for law enforcement, prosecutors and judges.

Furthermore, trafficking cases, especially for labor exploitation, are rarely qualified as such. Prosecutors and courts often apply related minor offenses, such as the withholding of wages or harboring of aliens. A real challenge for law enforcement, prosecutors and judges is to understand that a person, although she or he has not been locked up in an apartment or in a workplace, could nevertheless be coerced to stay in an exploitative situation because she or he has no real and acceptable alternative.

Finally, the third challenge is preventing. And I would like to touch here only on one aspect, namely, awareness-raising. Trafficking is modern-day slavery and it is a widespread phenomenon. Awareness-raising should therefore aim to build something similar to an antislavery, abolitionist movement in which intellectuals, parliamentarians, artists, educators and students, private sector, the media and members of the general public should feel committed. And I thank you for your attention.

Mr. SMITH. Thank you, Dr. Giammarinaro. Thank you very much for your testimony, for your leadership within the OSCE. Let me just ask, first: Kazakhstan, obviously, is the chair-in-office this year. I was one of those in the minority view, as it turned out, who felt they should not get the chair-in-office until they had attained at least a minimal respect for human rights, including trafficking.

They have been downgraded, as Luis CdeBaca will tell you, this year, to a watch-list status because there has been deterioration. And I'm wondering, you know, what your contacts have been with Kazakhstan.

I mean, if you're chair-in-office, you should be setting the standard. You're up there, you know, in neon lights, saying we're the leader. When it comes to human rights, they have been clear laggards, but sadly, actually getting worse in the trafficking area. So what's your sense on Kazakhstan?

Dr. GIAMMARINARO. The chairmanship-in-office, the Kazakh chairmanship, has identified child trafficking as a priority, so we feel committed to work with them because of course, it is important to keep trafficking high in the agenda.

And this means that Kazakhstan is ready to work with us to improve the situation, the internal situation.

Actually, we are now carrying out a country assessment in Kazakhstan and a visit—I will pay a visit in the fall to have direct contact with the authorities because of course, our country assess-

ment is part of the work we carry out, together with governments, to promote the implementation of the commitments. So it is important that Kazakhstan, you know, accepted to submit the data, the figures and all the information available to carry out this country assessment. So we look forward to work with them to promote further improvement.

Mr. SMITH. Ambassador CdeBaca, your sense on Kazakhstan, why they were demoted?

Mr. CDEBACA. Well, I think it's important to applaud and encourage the kind of work that Kazakhstan has been doing at the OSCE, while at the same time making sure that we work with the Kazakhs as to what they're doing back home. This is not unusual, to have a country that may have leadership, say, for instance, in the U.N. system or the OSCE system, through their ministry of foreign affairs.

But then you have to look at what the home ministry, the interior, the police, et cetera are doing. You know, one of our big concerns on Kazakhstan is the need for victim protection and identification. And we do think that the visit of the special representative is going to have a salutary effect on that.

I think at the end of the day, Kazakhstan is a destination country, as well as a source country. And yet you only have three foreign victims identified last year, only 12 Kazakh victims of forced labor. And one of the big things that's a problem in Kazakhstan is not simply the cotton harvest—which, I think, a lot of people have paid attention to in all of the Central Asian republics—but even, you know, forest work and other things like that.

So I think that's, at the end of the day, sharpening their victim identification—there are a lot more sex-trafficking victims out there than the three foreign victims that they were able to identify. And we hope that with the work in the OSCE, that they'll—much like we saw with the Balkans—that the Central Asian republics will start that upward trend.

Mr. SMITH. Let me just ask Dr. Giammarinaro again a couple of questions to you. In our TIP Report, Holland is a tier-one country. And I, for the last 14-or-so years, have had an ongoing disagreement with the Dutch especially as to the number of women who are, I believe, trafficked into Amsterdam.

Two-part question: One, your sense of the number of women who are sold like commodities in Amsterdam, although there've been some changes, I know, in their policies. Many of them are foreign women. And their own rapporteur some years back suggested that there were elements of coercion—with regards to force, fraud and coercion—with their presence there.

I go to many countries around the world and go to shelters and meet with their parliamentarians and their executive branch on trafficking. I was in Brasilia, I guess it was four years ago. I spent a week there talking about these kinds of issues. I made a trip one day into Rio de Janeiro and, of all things, it turned out that there was a woman who was rescued—a Brazilian woman—who was there, who was on her way to Amsterdam.

And in a like manner, I was in Lagos a couple of years ago, and Abuja, but in Lagos, I went to a trafficking shelter and met with a number of trafficking victims who had been rescued, both from

African countries, but also from Italy. And in Rome, I went to a series of shelters there and met a number of Nigerian women.

And I guess the question would be, with regards to your mandate, you know, obviously the OSCE region is not hermetically sealed. There are people coming in and out from all over the world. How much do you expend effort, or do you think your vision should be, to talk to countries like Nigeria, or talk to the Brazilians or others, which are supplying—again, I hate the sense of the commodity called a woman—to their sex exploitation? Do you have those kinds of conversations?

Dr. GIAMMARINARO. At the moment, my first commitment is to deal with OSCE area, which is an area in which the floods of trafficking are enormous. And of course, we have to deal also with relatively new phenomena such as internal trafficking, which has been underestimated everywhere.

And now we have reports from, for example, in Germany, in the U.K., in the Netherlands, in Belgium, cases of internal trafficking for sexual exploitation are more and more reported. Internal trafficking for labor exploitation exists in many countries of the OSCE area and, in particular, in Central Asia.

Of course, a further, you know, development of our activity could be to have an improved and enhanced dialogue with countries of origin of floods of trafficking coming to the OSCE area. And of course, some countries are particularly important because Nigeria is a source country for sexual exploitation of victims that are trafficked everywhere in the OSCE area. So I look forward to this further development.

Mr. SMITH. I appreciate that. And let me ask you, with regards to the police—Holly Burkhalter will be speaking in the second panel and she works with the International Justice Mission. And we were writing the first law and established the minimum standards by which a country is judged—including our own—tier one, tier two, tier three and now watch-list as well.

He was emphatic in testimony, as well as when we were in drafting sessions, that you've got to include the police. You've got to keep that focus on the police. If there's an Achilles heel, it's not necessarily a lawmaker or somebody in the foreign ministry, although they can be weak links and enablers. It is usually in the police.

And I'm wondering if you find in your work, as well as with the work with the Strategic Police Matters Unit. Do you focus on the fact that the police—you know, they're the ones who can be bought off? They're the ones on the scene. I remember Gary Haugen from International Justice Mission—a tape and he showed these little girls—it was India—but he showed how the police had just enabled the whole thing. They're on the watch for the pimps and the traffickers.

And one anecdotal that our commission dealt with a few years ago: We got actionable information from Montenegro that, at a brothel, there were six Ukrainian women. And the NGO that called us said, please, don't send in the local police. They're part of the problem. So we called the President of Montenegro. He sent in his special police. They rescued all but one, who was unfortunately trafficked to another place.

But it underscored for me, forever, that if you don't get the police right, you don't get any of it right. And I'm wondering what your sense on the police is.

Dr. GIAMMARINARO. Yeah, absolutely. I can forward the data, if you like, but I can say that we pay a lot of attention to the training for the police. And there are activities going on in many countries of the OSCE area.

Together with the specialized unit for the police and the secretariat, we are carrying out different training, various training in different countries. And also, the field operations have projects, which focus, again, on capacity-building and, in particular, the training for law enforcement.

And this is because identification of victims very much depends on the skill of local police, of the normal police officer, which in every unit should be able to identify indicators of trafficking. And this is, you know, the main goal. Of course, this takes time because we have started with the high-level officials and now, the next challenge is to reach in a more general way the front-line law enforcement.

But absolutely, this is a priority. And we are trying now to involve more prosecutors' offices because law enforcement is largely on board. Prosecutors have not been so active in the field of trafficking human beings and it is true that there is still a big problem of interpretation and implementation of criminal law.

Because as I said, one of the problems is that prosecutors and the courts try to find evidence of coercion. And they should simply understand that coercion could be exercised by subtle means; for example, by means of abuse of a position of vulnerability. And this concept needs to be more, understood. And therefore, the criminal law should be implemented in a more wide and correct way.

Mr. SMITH. Let me just conclude with—and I know we'll be meeting later and I'd like to take this up with you further—but if you could consider at least looking at this Megan's Law concept, which I know the U.K. has. We have it.

It's not perfect, but it goes to the demand side. It goes to the secrecy of individuals who have already shown themselves. They've been convinced of this terrible crime and they recommit these crimes again. So for the sake of children and vulnerable persons, the Megan's Law, at least, is a good crime-watch tool. And most European countries don't have it and it seems to me they should.

The second would be on the issue of the military: In 2002, President Bush issued a zero-tolerance policy. We worked very closely with them on that. But as we saw with the U.N., when they did likewise, I actually had a hearing in which several of our witnesses said zero compliance. It is an open question whether or not militaries are training, making their recruits and everybody up the line of command knowledgeable about what is happening here.

And we just had another problem, as Luis CdeBaca knows, where we thought we had the issue in South Korea under more control that these so-called juicy bars, as they call them, seem to be a conduit for selling women, especially Filipino women. So the military is always a problem.

The real laggard, in my opinion, in the OSCE is Russia. They've always been a problem with regards to their military. They have

been reluctant at OSCE conferences to talk about, you know, buy-in with best practices for that kind of exploitation. Maybe you might want to speak with the Russian—whether or not their military's doing anything to try to combat human trafficking.

And I'll never forget, I visited a trafficking shelter in Sarajevo. A nice shelter, good shelter, but when I mentioned any kind of faith-based component—either a visiting clergy, a Muslim imam or a priest or anyone—it was like a foreign concept. I mean, they weren't really against it. They had never even thought about it.

Your predecessor and I had many arguments about the importance of faith-based shelters. And I've been in shelters all over the world. I do think those that aren't faith-based do a wonderful job, but those that are faith-based also meet a deep wound, especially in a woman, that might be helped with a spiritual component.

At least it ought to be included and not excluded, which, again—your predecessor was adamant. We had arguments many times with regards to that. And I'm wondering what your feeling is on faith-based shelter.

Dr. GIAMMARINARO. Concerning the demand, the demand side should be absolutely addressed, both for the demand of sexual services and the demand of cheap labor because these are drivers of trafficking. How?

I'm very much convinced that one thing is education and culture. I think that if we want to really address prevention in the long term—prevention of trafficking—we have to promote a culture of equality and respect for relationship between the sexes because this is the real problem behind.

Concerning further action, I think that the suggestion—it is not a binding provision, but it is included in the Council of Europe convention on trafficking in human beings, concerning the criminalization of users that knowingly use services accepted from a trafficking person, can be a useful tool to address the demand. Of course, one aspect that should be addressed, more and more address, is the demand of cheap labor because this is also one thing that we should look better into.

Concerning the military, the code of conduct of the military, we have just started to develop, to think about that. We have commissioned a study because we want to understand what actually happens on a daily basis and if the zero tolerance and the code of conduct are really effective. It is, of course, something that is absolutely crucial and it is on our agenda, so we will take action in this field.

Concerning the shelter, frankly speaking, I'm a bit hesitant concerning the idea of a faith-based shelter. Personally speaking, I have a high appreciation of some faith-based organization, including the Italian Catholic nuns with whom I have worked a lot. And they do a fantastic job, for example, in Nigeria because as you know, Italy is one of the countries of destination of Nigerian girls.

In my view, it is clear that every shelter, whatever it is, be it a government shelter or a shelter run by an NGO the rights of victims should be respected. Their freedom of religion should be respected. And they should be offered all the services concerning the possibility, the actual possibility, of practice of their faith or their religion.

So I think that we should pay attention to this problem because it is one aspect of victims' rights. So I think that from this point of view, I would certainly, you know, pay more attention than in the past to this aspect.

Mr. ISSA. Doctor, I'd like to follow up on that by rephrasing the question. Do you support that if there are multiple NGOs offering shelter, that faith-based, or NGOs who are faith-based is maybe a better way to put it, should be included in the opportunity—or another way of putting it, not excluded from consideration. This is something we deal with even in the United States, which is, in many cases we have faith-based organizations who are not fighting to proselytize.

They're simply fighting not to be excluded from being equally eligible to, if you will totally secular organizations. In our case, Catholic Charities simply wants to have the same opportunity to offer homeless people shelters. They're not trying to convert, but they do want to be included.

So in that way—because you did seem to give Mr. Smith a little bit of the same answer that your predecessor did, perhaps more diplomatically. I just wanted to know, do you support that they not be excluded simply because they come from a faith-based background?

Dr. GIAMMARINARO. Definitely, yes. I think that no organization should be excluded or discriminated on the basis of their cultural identity. So definitely, I think that faith-based organizations should not be excluded or discriminated. But I think that they have to ensure the same level of respect of victims' rights.

In other words, what is the reason why I don't like the expression faith-based shelter? Because this suggests the idea that all the people that are in the shelter should be selected or subjected to a certain cultural or religious approach. If every organization ensures to victims the same level of respect of their rights, I think that this is, you know, the basic requirement for admission to funding. And of course, we couldn't tolerate any discrimination from this point of view.

Mr. ISSA. Thank you. The problem of, for example, Mr. Smith mentioned Kazakhstan. And I noted that when you look at Kazakhstan and you look at Russia, they look very similar. And as you go through each of the former Soviet satellites and assets, they all look very similar.

Would you say that we're dealing with a culture in which you're really not dealing—even though you're dealing with individual countries and trying to get them to break away—you're dealing with, to a great extent, post-Soviet Russian influence in the region?

Dr. GIAMMARINARO. The legacy, of course, is there. It is undeniable that there are commonalities. But there are also big differences. And actually, according to my mandate, I have to work with every government and try to achieve the best results I can in a cooperative setting.

Mr. ISSA. And the reason I was asking is, if we don't succeed with Russia—and we have not succeeded with Russia—isn't it, in a sense, a ripple effect, that by not getting Russia to improve—and I've been to most of the 'stans. Most of them, along with most of the other countries, have deliberately implanted huge amounts of

Russians during the Soviet period who are, in many cases—in some cases, ostracized, but in some cases, very much still in control.

Isn't the linchpin to this whole thing getting Russia to make a material change so that the culture that they created, particularly as to prostitution, can be, over time, justified for a change? And conversely, if you don't change Russia, don't you, in a sense, have to peel off each of these with a much greater effort?

Dr. GIAMMARINARO. If we don't succeed, we will think about that.

Mr. ISSA. Ambassador? I saw your head shaking, so I'm guessing that the Russia-centric is part of your radar.

Mr. CDEBACA. On several levels. I think that, first of all, just as we have to deal with the Commonwealth countries in a particular way because of a shared understanding of how much a judge can do, as opposed to the prosecutor or the legislator, in the British legal system, the post-Soviet legal system and updating that, I think, has had some very particular impacts in the antitrafficking fight.

A few countries have tried to take steps to consider what we'd consider a more European or a more American-style antitrafficking law. But it's the context of a Russian legal tradition.

Mr. ISSA. Russia's gift included this curse.

Mr. CDEBACA. Well, the gift of the legal tradition, one of the things that it did is it kind of stamps out entrepreneurial behavior on the part of what we would look to as the leaders in the fight. Typically, it's your up-and-coming police colonels or your up-and-coming folks in a ministry somewhere.

And yet, especially in the policing and the prosecutor's office, if they don't have the authorizing legislation first to allow them to go out and act upon the penal code, then it's illegal for them to do so.

And they also don't have discretion. They have to charge the crimes that are in front of them. And so you don't have a situation like here in the United States, where a prosecutor can use their discretion to not charge the victims with a prostitution offense, knowing that they were enslaved by their pimp. In a lot of the former Soviet states, that's one of our first hurdles, is to try to teach prosecutorial discretion.

So I think that there's a lot of remnants. Certainly, we also see in all of the 'stans, the cotton harvest—which is, again, one of the big problems there as far as labor trafficking—is because of how the Russians, when they were in control, would staff the cotton harvest, taking all the kids out and sending them into the fields.

Mr. ISSA. Let me follow up on that. In many cases, in my understanding, in all of those regions the people who are doing that—the children who are doing that—it's actually not illegal for them to do it. Isn't that true? We face the problem that unlike forced prostitution, denial of human rights, kidnapping—all the things that are either implied or literally occurring in most human trafficking—child labor is a concept that we have here at one level. And in India, it's a very different level, isn't it?

Mr. CDEBACA. To some degree. I think that there's a gradation. Child labor, you know, has many different facets. I think that even those who work almost wholly within that paradigm, the child labor paradigm, under the ILO conventions, will admit that at the end of the spectrum is the prohibition against enslavement. In the

trafficking office, we tend to put all of our time and effort into that portion.

Mr. ISSA. Right, but in this report, it appears as though you don't differentiate as to whether the use of child labor up to 17.

So is one of the shortcomings in the TIP Report, perhaps, which we can't say in every case, you know, that 900 people were taken out of school between seven and 17 in violation of their law? I didn't find that as I scanned through a number of those. And it concerned me only that if it's in their violation of their law, then they have made the effort to say, our standard is X. And then they certainly should be judged harshly. But it didn't appear to be there. Is it there, but just not written?

Mr. CDEBACA. It's there but not written. And I think that's something that we can look at. There have been—some of the teachers and some of the school administrators have been punished in various of the 'stans for doing this. So it is punishable. It is just not usually punished. So it does violate their law. They're not supposed to be doing it. And we take great pains to try to differentiate the kids that are sent to the fields without threats versus the ones who are—

Mr. ISSA. Yeah, and I realize you have a limited amount of words that you can put into each of these, but that would be helpful. Let me ask you just two more questions that are more about initiatives. What efforts, particularly for the State Department, can we bring to bear for harmonization?

It appears as though, as I look through the TIP Report—but just in general, as I've traveled throughout the years on foreign affairs and so on—the first thing we have to do is define things in a way in which a violation of our law and a violation of their law become both the same violation.

I remember when we were dealing, early on in my life here, with Thailand and creating a situation in which we could charge somebody who got an airplane ticket to go have sex with a child in Thailand and we could charge them here in the United States. And that wasn't that hard, except that it was alien to our historic.

And so we created it. But my understanding is a great many countries have not signed on to that. So how can we make that protocol to where anyone who gets on an airplane for sex tourism is equally in violation and the like?

Mr. CDEBACA. I think there's a couple of things, both as far as the substantive law—the Palermo Protocol gives us a good hook for that. The minimum standards pushed countries toward it. One of the things that we often get from tier-three and tier-two watch-list countries is, you know, that they passed a law that they thought would comply with Palermo in, maybe, '03, but they just took the Palermo language and just slapped a penalty on it.

I was a prosecutor for a long time and that's not really how you do it. Our criminal laws, in the federal system, are actually thought out as to what the prosecutor needs to prove in front of the jury and in front of the judge.

Mr. ISSA. And sometimes what the judge's jury instructions must be.

Mr. CDEBACA. Exactly. And the jury instructions are certainly a challenge, but we have the common law that fleshes that out. So

it's knowable; it's provable in court. The Palermo Protocol was not negotiated for that purpose. So a lot of countries are not coming back to us because they've seen the number of cases that the U.S. has done.

We've done more cases than any other country in the last 10 years, under these involuntary-servitude statutes, as updated by the TVPA. And so countries that are doing countries under other laws that don't really match, they look at that and they say, well, how can we get a law for that? So we're working with those countries to get the substance.

As far as some of the procedural issues, especially extraterritorial jurisdiction, this is something that we're certainly raising. We're getting more traction, frankly, with, again, the common-law countries, but we also get some traction with a number of the other source countries. So it's a discussion that we have with Germany, with Switzerland, et cetera. We're starting to see more and more countries step up and punish their folks when they commit crimes in other countries.

I think it really is the wave of the future when it comes to slavery and involuntary servitude because the trafficking—especially after this European Court of Human Rights decision in the case against Russia and Cyprus—it really shows that this is a responsibility of the state, to protect trafficking victims. And I think that that responsibility goes with your nations, no matter where they are.

Mr. ISSA. Doctor, in the United States we often talk, do we have a nexus? Do we have a hook that gives us jurisdiction? The federal government talks about it. The states talk about it. When there's an interstate activity, often the challenge is that part of the crime is in one state, but it's not a crime fully and another part's in another state. So we have a federal umbrella.

However, when it comes to things like the Holocaust, we made a global decision that crimes against humanity would be triable virtually in any country on earth, that no country would lack the ability to try, nor would there be, in most cases, an absence of extradition capability. We don't seem to have it in human trafficking. Is there a path you can see, particularly with the European Union and the new entrants and the wannabe new entrants, like Turkey and so on?

Do you see the opportunity to create a global or a near-global alliance, where any person who is in any way involved in human trafficking—even if it's not fully a crime, but over multiple countries would be a crime—would create enough nexus for any signatory to be able to attempt to prosecute or to extradite, as we would with crimes against humanity?

Do you see that as something that we should be looking at in the long run, so that no one could run; no one could hide? The norms of a country, if you ignore a crime, wouldn't change the fact that evidence gathered could then be ultimately used, if that person or anybody involved left that country and went to a third country more sympathetic or more willing to prosecute?

Dr. GIAMMARINARO. I'm absolutely in favor of the enlargement of the extraterritorial jurisdiction. I don't know if it's feasible, the idea of a universal jurisdiction, but I can say that I will continue

to advocate at least for an enlargement of the extraterritorial jurisdiction in cases in which the crime is committed abroad, by a national or an habitual resident, or the victim is a national.

Because my idea—and I have been—and until three months ago, I was seconded to the European Commission and I drafted the new proposal of the European Commission, where this principle is reflected and I issued an opinion. The European parliament is even more onboard on this idea of enlarging the extraterritorial jurisdiction.

But just to say that something is moving on, on this field, it is true that there is a reaction from governments, of course. For good and bad reasons they resist to the idea of an enlargement of extraterritorial jurisdiction.

But in the case of trafficking, I think it is absolutely necessary because we have to face, for example, the phenomenon of criminal groups that move from a country to another country and commit horrible crimes. And these groups, for example, have established the center of their criminal interests in a country which is not the country of nationality. And this country where the most important part of the criminal activities takes part because the organization is there should take responsibility for prosecuting these people even when they commit the crime of trafficking abroad.

So for trafficking, there is even specific reason why extraterritorial jurisdiction should be enlarged. I try all the time to support that trafficking is one of the most serious crimes in the international arena. It's a crime against humanity in the International Criminal Court statutes. This deserves universal jurisdiction. We could start to advocate this. Of course, we know that this will be a long, long wait.

Mr. ISSA. Well, I'm going to close by just saying because of my primary ongoing conversations with the European Union and its members, I, for one, would think that if we cannot have, if you will, a Geneva Convention-equivalent, as it is on war crimes, if we can't have that between members of the European Union and the North American alliance—at least Canada and the U.S.—then you're right, we won't achieve it.

But it would seem almost impossible that we wouldn't be able to get a trans-Atlantic agreement that would at least allow for the concept of you-try-or-you-deport, and that the extradition improvement, or greater ability to extradite, would be a great impetus for prosecutors including here to say, oh no, it's too much trouble to do that, and there are all these questions.

So before the State Department endlessly gets into it, the answer is, well, you have the ability to prosecute. If you prosecute, the State Department is out of it; if you fail to prosecute, then extradition could be inevitability.

And my goal would be at least to have a dialogue and hopefully that can be taken back to the secretary that it seems like we could start it between the U.S. and the European Union and then take it and expand it to countries who are not as likely to be tier one.

Mr. CDEBACA. Mr. Issa, if I may.

Mr. ISSA. Yes, Ambassador. Are you saying the administration listens?

Mr. CDEBACA. Well, we'll see. I think—not having looked at this in that depth, but I will when I get back and we will raise this as far as the dialogue—it's very interesting because the two primary founding principles of international law were slavery and piracy. And the United States and Britain with the 1808 Slave Trade Act actually declared that we had—and Britain declared that they had—extraterritorial jurisdiction to prosecute those who they caught moving slaves across the Atlantic.

And we see that in Somalia with the pirates right now. We see that, potentially that's something that we could look at as far as the trafficking situation.

Mr. SMITH. Let me just conclude with a couple of very quick questions. First, we're trying here in the United States to energize the corporate world with both carrots and sticks. In 2003 with our first reauthorization of the Trafficking Victims Protection Act, we put in provisions that would hold to account those companies that get U.S. contracts, whether it be a DOD, State Department or any other, that they have to certify that they are not enabling or complicit with trafficking.

And nothing sharpens the mind of a CEO or a CFO knowing that they could lose, not only will their employees be held to account, but they could lose the money itself, the contract. That has worked to some extent.

And Mark Lagon, Ambassador Luis CdeBaca's predecessor in his job as ambassador, is working with LexisNexis and some other corporate entities to try to put together an effort on human trafficking to get the corporate world fully engaged in combating this modern-day scourge. And I'm wondering if you have seen any like-minded effort in Europe.

Dr. GIAMMARINARO. Actually, what we are trying to do is to bring together employers' organizations, trade unions, migrant workers' organizations and enlarge the partnership. As special representative, I chair the Alliance Against Trafficking in Persons, which includes international organizations and the most active NGOs.

And now we are trying to enlarge this partnership and include trade unions, employers' organizations and migrant workers' organizations because the idea is that the labor dimension of trafficking should be addressed also involving the private sector and the organizations that are active in the field of protection of workers' rights.

In addition, we have commissioned a study to build a sort of code of conduct for employers because the idea is that in terms of prevention, we should have as main actors the employers in the sense that they should put in place good practice and that preventing all the situation in which trafficking flourishes. So this is something which is on our agenda.

Mr. SMITH. I appreciate that. And one final question with regards to involuntary domestic servitude. If you might elaborate on the tenth Alliance Against Trafficking conference, some of the findings especially as it relates to that.

And to Ambassador CdeBaca, one of the more obscure parts of our original Trafficking Victims Protection Act, title V was called, "The Battered Immigrant Women Act" and that legislation, which doesn't get, I don't think, the kind of enforcement that it deserves,

is designed to help battered women, many of whom would be undocumented or illegal aliens, who are fearful to come forward out of the thought of being deported. And that's held over their heads, so they endure the battering and the exploitation so they won't be deported.

And this legislation—and I did it—was designed to provide the Violence Against Women Act protections over them as well, in addition to staying any kind of deportation proceeding. And I'm wondering how that's being enforced.

Dr. GIAMMARINARO. Concerning the outcome of the conference, I could say that one first outcome is the general concept that trafficking for domestic servitude flourishes in a situation in which a domestic worker is not protected enough in terms of regulation or labor law, et cetera. And so we welcome the initiative of the ILO for this convention to better protect domestic worker in general. And this in terms of prevention.

Another issue addressed by the conference is intersection between trafficking for domestic servitude and migration policies in particular concerning the possibility for the workers to change their employer because if the worker is linked and his visa or her visa is linked to a particular employer, this means that this person becomes immediately vulnerable to the worst forms of exploitation because she or he has no alternative, has to stay with the same player. So this is something to be looked better in terms of the regulation of migration policy.

Another challenge is identification. Of course, these victims of trafficking are completely isolated. So we have to think about regulation that enables these people to have direct contact with the authorities which are in charge, for example, of the renewal of their visa. The situation now is that all the relationship with the authorities are normally mediated by the employers themselves that take care of the renewal of the documentation, keep the passports, et cetera. So we should try to find the way to reduce as much as possible the social isolation of these people.

Finally, the conference addressed the very difficult problem of the domestic servitude taking place in diplomats' households. And this is, of course, as you know very well, a big problem. And in these cases, it is difficult to—it is impossible, of course, to prosecute at people that have diplomatic immunity unless there is an initiative of the state of the nationality of the diplomat.

In general terms, I think that the most important thing is that every government take responsibility for their own diplomats but also for what happens in their territory because this is a focus, a sort of attention that itself is a form of prevention. In addition, we have good practices in some—in a few, actually—a few European countries, including Austria and Belgium. And these practices consist of specific procedures that enable domestic workers to be more autonomous, more independent, to have a direct relationship with the authority, the immigration authority.

Of course, it is also to be explored the possibility of declaring a *persona non grata* people that are suspected of carrying out domestic servitude in their households. But the most important is that governments take responsibility for this phenomenon that so far has been completely forgotten.

Mr. CDEBACA. Before I address your question about the battered immigrant women, I would like to slipstream for a moment on the references that the special representative has put together on the diplomats because one of the things that we've done just in the last few months is we have issued formal guidelines for the United States diplomats and employees working overseas and their chief of mission authority as to how they can treat any domestic workers that they have, including the fact that they can face removal from employment and federal prosecution were they to abuse workers overseas.

So again, that's one of the places where we're making sure that our jurisdiction to prosecute here in the United States something that one of our diplomats does in another country is clear to everyone. And there was a case several years ago that had been done with a returned diplomat in the Northern Virginia, in the eastern district of Virginia as well. So it's something that we take very seriously not just through our diplomacy but in the secretary's role as the head of this particular organization.

As far as the Battered Immigrant Women Act, portions of the TBPA, as you mentioned, Mr. Smith, the U visa is a very important part of the TBPA. It's not limited to trafficking, although there is—the word “trafficking” was included in there, kind of belts and suspenders. Unfortunately, there is much more domestic abuse and other generalized crime against women than just trafficking, human trafficking, kind of the equivalent, as I think Congress declared in the '96 immigration act, human trafficking being the equivalent of kidnapping and extortion. So luckily there is not as much of it as there is of some of these other crimes.

The battered immigrant women, much larger numbers and many more visas have been issued—over 10,000 in the last 10 years. Unfortunately the DHS doesn't disaggregate the U visa as to what crime it was issued for and so I can't tell you how many of those was domestic violence versus a different type of crime that the victim may have suffered.

One of the things that I think is exciting about this year is that the Department of Labor has now issue guidelines to their wage and hour investigators as coming into line with the EEOC. Our civil partners, those who are not the FBI or INS or ICE—our civil partners actually looking to see whether or not they should be getting those letters out saying you're entitled to a U visa, et cetera. So we think that having DOL at EEOC brought online is going to be a very positive step.

But the other trend is something that is pointed out in this year's report and I think that it needs, frankly, needs some work. And that is, as more and more state and local law enforcement are participating in the 287(g) enforcements under the immigration act that allows them to do local enforcement of immigration laws, they have very limited training on T and U visas.

The training that they get, it's unclear as to whether there has been an impact as far as the state and local cops bringing women forward in order to get the U visas. So that's something that, again, it's in our recommendations this year. DHS was very forthright when we went to them and said, we think that we need to

put this in the report. And I think that that puts us in good stead; we may be coming to talk to you about it. Thank you.

Mr. CARDIN. Well, let me thank both of you for your testimony. I do have just one question for the special representative. And that is, you have indicated in your testimony the importance of having the position at a high level within the OSCE as the special representative.

My question is, basically, do you have the adequate resources and access within the OSCE to accomplish your mission as effectively as you would like to? Are there concerns that we should be aware of in the U.S. Helsinki Commission to assist you within the OSCE network so that you do get the type of access and the type of resources necessary to carry out your mission?

Dr. GIAMMARINARO. Of course, we have an office. We have 10 people, very committed and skilled people. So we have a good basis to work. And we have a budget which allows us to carry out a number of good initiatives. But we are now thinking about the fact that we should raise fund to be more active in terms of projects because it is true that so far projects have been carried out by ODIHR and by the field operations.

But in order to make the action of the special representative office more effective, we need more funds. So of course, we have the possibility to ask for extra budgetary funds, but this procedure is particularly difficult because for every project, we have to call for donors, we have to try to interest a number of donors, et cetera.

We are now thinking about the fact that probably it would be much easier and better for us to have a sort of program, a sort of fund financing a program, for example, for prevention. And according to this mandate concerning the program, we could carry out projects without every time raising fund for this particular project. A system not different from the ODIHR, ODIHR financing of projects concerning trafficking.

Of course, we don't want to promote any competition with ODIHR. Of course, we have different features and these resources should be additional resources. But I suggest the same structure, the same functioning of this program funding because it has proven particularly effective in the case of ODIHR. So this is something I would like to advocate with participating states to make our action easier and more effective.

Mr. CARDIN. The reason I raise the question is that a special representative is the special representative of the chair, which under the OSCE structure, of course, the chair changes every year, which is a healthy thing for OSCE. However, the predictability and permanency of our commitment in this area goes beyond any one chairmanship or the interest of any one chair. And that's why there is the office of ODIHR to make it clear that the human rights commitment of OSCE is one that has a permanent presence.

And I think we need to take a look within the structure as to whether moving forward there is a need for a more permanent type of operation dealing with trafficking. And the budgeting, of course, is the key factor. So we will solicit your input as we take a look at ways in which we can make it clear that our interest here is not just with one chairmanship but is one that's institutionalized within the OSCE.

Dr. GIAMMARINARO. Yeah, this could be an interesting development, especially because the special representative is a sui generis structure because it is true that I belong both to the secretariat and to the chairmanship. So as coordinator, I belong to the secretariat because, of course, I'm the head of the office. As a representative, I belong to the chairmanship. But in fact, this is not a bad situation because this ensures continuity and ensures also a direct contact with delegations, which is the added value of being a representative of the chairmanship.

Of course, there is also this bad side, which is linked to the fact the chairmanship in office changes every year. But the good side is that the special representative work together with the governments and I have direct access not only to the chairmanship but to all the delegations. And so this makes this mandate particularly effective, especially concerning advocacy and technical assistance because this implies a close relationship.

Of course, another scenario could be that the special representative becomes an institution. But of course, this is a different perspective, and I wonder whether it is a good idea to have, you know, all the tasks concerning trafficking in one single—under one single umbrella.

Because, after all, the idea that an institution—ODIHR—with autonomy dealing with human rights can take action maybe more freely in the field of human rights is, you know, a good way of complementing different angles of the anti-trafficking struggle, because we need to work with governments and because ultimately, the real results and improvements in anti-trafficking policy depends on the political will of governments. So we need to work with them.

But we need, also, to speak openly about a certain number of issues. This is something to be discussed, to be thought about. But for the moment, I think that the feature of the special representative is effective. And if we have more resources and the possibility to act more, you know, in an easier way on our daily basis, I think that our action can be effective. At least, we hope so.

Mr. CARDIN. Our commission has had the opportunity to meet with the chairs in office, and the subject of trafficking is always on the agenda. And quite frankly, as almost always brought up by the chair in office, so I think that it has had the attention of the chair of office, which is important.

So I didn't meant to imply, by the question, that there's a concern of the current effectiveness of the structure, but as you raised budgetary issues, this is something that we want to take a look at to make sure that it does continue to have a high priority in the OSCE, particularly during tough budget years. These are not easy years.

I know in the parliamentary assembly, we just froze our budget, which is going to cause some very difficult judgments to be made. Let me, again, thank our two witnesses and appreciate the work that you're doing and invite you to work very closely with our commission. If there are ways that we can help either your efforts, Mr. Ambassador, or your efforts, Madame Special Representative, please let us know.

Dr. GIAMMARINARO. Thank you.

Mr. CARDIN. We'll move on to the second panel, and I know we do have a time restraint in that, I believe, this facility is only available to a certain hour. So we will try to move as efficiently as we can, understanding the time commitments.

Jolene Smith is the cofounder and CEO of Free the Slaves, a Washington, D.C.-based, nonprofit, nonpartisan organization dedicated to eradicating modern slavery around the world. And Holly Burkhalter is the vice president for government relations of the International Justice Mission, a U.S.-based human rights organization that provides legal services in 14 overseas offices to victims of human rights violations and works to make public justice systems accessible to the poor.

It's a pleasure to have both of you here. Thank you for your patience with the first panel. And we welcome your testimony. Your entire statements will be made part of our record. And you may proceed as you wish. Ms. Smith?

**JOLENE SMITH, CEO & CO-FOUNDER, FREE THE SLAVES**

Ms. SMITH. Thank you, Chairman. Thank you, Congressman Smith. It's an honor to be here today in the presence of so many who made this report and the reporting process possible for the last decade. In our experience as a non-governmental organization, we have found that it has truly helped strengthen and shape efforts of antislavery work around the world, including the efforts of the United States.

Free the Slaves, as you may know, is a nonprofit, nonpartisan organization dedicated to ending slavery worldwide. We are engaged in constant, on-the-ground liberation and rehabilitation/reintegration of people through partnerships that we have with grassroots organizations in seven countries. And this is in addition to our efforts in the United States.

Informed by these local partners and by our overseas staff, I would like to highlight one of the major benefits that this report, and the reporting process, has brought about, and also one example of how we think there might be an enhancement to this process. So first, what is working? And that is law enforcement emphasis with civil society collaboration and partnership.

For Free the Slaves, we knew things were changing when the death threats started. And I know that, that's a common occurrence among many people in this room. Fortunately, it doesn't happen all that regularly for Free the Slaves—we're fortunate in that manner—but with the mission of ending slavery, we all, together, need to accept that, that's going to happen, not least of which because any time any of us succeeds in our work, criminals lose power and money. It's going to keep happening.

This particular threat was an indication that Ghana's trafficking law, and actually, the threat of using that law, was having an impact. So while it was a horrible occurrence and we raced to make sure that everyone was going to be safe while they continued their work, we also knew that this was a success factor. And this is the case in every case where the rule of law is used to benefit antislavery work. It is felt as much by the slaveholder as it is felt by the two boys, in this case, who became free.

So in, roughly, 2007, two brothers—ages 6 and 8—were trafficked by a woman named Comfort Sam in Ghana. They were brought to the Lake Volta region. And as you've probably guessed, they were forced into the fishing industry. These boys were forced to spend more than 12 hours a day out in the boats, usually with no food during that time. When the nets got tangled, the slaveholder threw them overboard so that they could go down and untangle the nets. The boys lived in fear, as one might imagine, of getting tangled in the nets themselves and not being able to come up for air and drowning.

Our local partner, Challenging Heights, uncovered the situation and went immediately to the slaveholder, Comfort Sam, actually, and her husband, Sammy and demanded that the boys be released. But they would not budge. Actually, moral suasion, in many cases around Lake Volta works when community organizations will put enough pressure on the slaveholders and their neighbors to make them relent. But in this case, they would not. The field workers then did what they always do in these situations: go to the local police. Now, this didn't always work, but in recent years, it has been working better. And in this case, it did.

The local police said to Comfort Sam and Sammy, you must bring these boys to the police station tomorrow. And this is when Comfort Sam started taking even more missteps. That night, she had her husband bring the boys to a faraway village and just dump them alone. The next morning, because of the community outreach that this group had been doing, a community worker—good Samaritan—noticed the boys, figured out what was going on and called our partner, who got the medical car and brought them to police so that they could give their statement, and then brought them to a child slave rehabilitation center. So after three years of this, the boys were free.

It was really a turning point when there was the real threat of law enforcement. And that is the big lesson here, for us. This is really where the value of the United States State Department emphasis on national anti-trafficking laws and on prosecution is really visible, and especially where there's a successful partnership between civil society and law enforcement. Because this trafficker would not be behind bars today, for nine years—the first trafficking conviction in Ghana under this 2005 law for the fishing industry—if it hadn't been for the civil society. And likewise, the boys wouldn't be free if there wasn't that real threat of use of police.

So in looking to the future, understanding that we have this solid base to build upon, what is next? There are two common criticisms of the TIP reporting process and the related diplomacy that perhaps point to how to help maximize the use of the process itself. The critical truth is that there's not enough funding and there's not enough influence for our common fight against slavery. There's just not.

There's a reasonable argument that's made sometimes that the countries that need the most drastic improvements are also the countries that need the most technical assistance and funding in order to get there. Without this assistance will there really be significant improvements? Even if the funding was not an obstacle,

there remains the serious challenge of not enough influence in some areas of the world with the highest incidences of trafficking.

How can the United States government and other governments have an impact in these countries where diplomacy is simply not effective, or is not working quickly enough? For example, what about the countries that remain on tier three and consistently do not improve? Are we simply damning those people inside that country to slavery for those who are enslaved? Also, what about the countries that simply are not responsive to U.S. pressure?

We know that there are no easy answers, but the U.S. government has already pointed the way and taken the lead in a possible way forward that actually addresses both challenges, to a certain extent. The 2008 TVPRA includes a mandate to incorporate what is called a slavery lens throughout U.S. international assistance. And this is to ensure that assistance programs in the United States do not run counter to U.S. anti-trafficking policy.

If you're unfamiliar with the slavery lens, recall the profound and positive impact that the gender lens had, implemented with international development in the 1980s. It's simply adding the perspective of human trafficking and modern-day slavery into the common work of human rights, democracy-building, education, et cetera. And these are all inextricably linked, and of course, we have to deal with them all together, and really harnessing the power of international aid organizations is one way to do that.

At best, incorporating the slavery lens within international development assistance can have that same money do double duty. We have antislavery outcomes at the same time as those funds are achieving their other aims. At the very least, the development dollars with the slavery lens incorporated can prevent funds from inadvertently being used in ways that cause people to fall into slavery. And sadly, tragically, this is happening today.

For example, last week alone, I received a communication from our Nepal director who reported this tragic situation. There's a lovely, well-meaning lone community program in a village in Nepal. And this was designed so that villagers could take out a low-interest loan and then use it for income-generating activities. However, a couple of the members of this group used that money to follow specious job opportunities overseas, which were actually trafficking ruses.

So this donor, unfortunately, had to learn that their hard-earned dollars actually had not gone into community incomes, but had gone into the pockets of traffickers. And it had an insidious twist, of course, in that human beings were enslaved. And this situation takes additional law enforcement, takes additional social services, economic empowerment to make right.

In contrast, Free the Slaves tested the implementation of the slavery lens in Nepal—actually, in other communities. And this is through working with the World Bank in their Nepal program and the U.K.'s forestry program there. And these are large anti-poverty and environmental programs that were already existing. What we've done is simply make sure that all the workers are trained in antislavery and trafficking and they conduct anti-trafficking, antislavery training along with whatever else they're doing. They

also keep an eye out to be able to detect trafficking and slavery cases.

These efforts alone, even though this is just a pilot for us, are reaching 600,000 households in Nepal over the next year. And these are already the families that are most vulnerable to slavery and trafficking, because they had already been detected as being the poorest of the poor in these communities. And this is all with minimal additional cost to the core programs.

Free the slaves is beginning to work with USAID in a similar way to implement this slavery lens mandate. Other donor governments, many of the OSCE states, could join the United States and the U.K. in implementing the slavery lens. And this really does help harness additional aid. If only the world's top four donor countries, all of them OSCE states, were to implement the slavery lens throughout all of their programs, it would affect more than \$50 billion in aid each year.

Some of these benefits are directly quantifiable. For example, when a family is detected to be in slavery and they are enslaved, they become something that is quite different in their community. They become a consumer. That sounds odd to us. Many of us are fighting against consumerism. However, when a person comes out of slavery, what they mean by being a consumer is suddenly being able to buy two meals a day, instead of eating the one that the slaveholder gives them, or three meals a day; buying schoolbooks for their children. And where are they buying these things? From the local shops. They don't have transportation to go out to the larger communities. They're buying them right there in those communities that are the poorest of the poor.

Ironically, some of those shops are owned, of course, by the wealthiest people in the community: the slaveholder. So we've actually found cases where slaveholders are making more money after their slaves are freed. In addition, there are other sought-after development outcomes—decreased domestic violence when people are freed sustainably, because it also involves training about gender equality and such; anticorruption measures because people are no longer willing to see their police be corrupt.

We call these added benefits the freedom dividend. And in some, we're really finding that doing antislavery work can actually bring about some mainstream development aims that we all want anyway. However, what may be even more critical than the funding is access and influence. And this is precisely in the regions with very high incidences of slavery. Often, slavery is taking place in locations at great distance from power, from government, even from multinational corporations. It thrives in places where law enforcement and basic government services are almost insignificant and where they are desperately corrupted.

In such places, countries' tier ratings make very little difference. They may make a difference in the capital city, and that is a very good step that we fully support. Are they making a difference in the communities where most slavery is happening? And I think we all have to answer that, that is no. So in the farm field, the mine, the brothel, the home where slavery is occurring, we need to find a different way, an additional way.

Often, the only outside presence with the resources and the potential to bring about positive change in these communities are small organizations that are funded by international development agencies. For all of these agencies' limitations, their reach is virtually unparalleled. No other institutions are reaching them. The mandate of the State Department is to rank countries based on the extent of government action to combat trafficking according to minimum standards defined by Congress.

In future years, Free the Slaves urges Congress to consider whether a minimum standard for donor governments should include incorporating the slavery lens throughout their assistance programs so as to prevent unintended consequences, as well as to leverage additional resources for antislavery aims without adverse effects to development programs. And what we found is actually to the contrary; it's to the benefit of development programs.

The U.S. government has taken that step. Free the Slaves believes that other donor governments should be similarly responsible. To this end, Free the Slaves encourages the State Department and its continued forward progress in the TIP reporting process in the countries where it wields action-inducing influence. Where it does not, Free the Slaves urges Congress to enact additional minimum standards or other incentives that help achieve more influence, resources and impact for the most needy. Thank you.

Mr. CARDIN. Well, thank you for your testimony. We've been joined by Congresswoman Richardson. It's nice to have you with us today. Ms. Burkhalter?

**HOLLY J. BURKHALTER, VICE PRESIDENT FOR GOVERNMENT RELATIONS, INTERNATIONAL JUSTICE MISSION**

Ms. BURKHALTER. Thank you for inviting International Justice Mission to join you, Chairman Cardin. It's a pleasure to see my old friend, Chris Smith. I'm delighted to be here on behalf of our organization. I had hoped to bring you as a witness the head of our investigations department, who is responsible for all of our undercover work abroad in our 14 overseas offices, investigating not just the crime of trafficking and slavery, but also, we work on sexual violence and property-grabbing—property expropriation from widows and orphans.

But he's just back from about a month in the field working on police training programs with some of our partners and I could not drag him up here, as jetlagged as he was. So now you have to put up with me. But it gives me a chance to thank you, all three of you, for your interest and your leadership on this important issue.

And just waxing slightly nostalgic, it being the 10th anniversary of the Trafficking Victims Protection Act, it allows me to say that after 30 plus years in the human rights field, there is something unique about this human right violation. And I want to dwell on it just for a moment. I've worked, in my many, many, many years with NGOs, including Human Rights Watch, Physicians for Human Rights, and my current work with International Justice Mission, as well as my seven years on Capitol Hill.

I've worked on many, many, many different kinds of terrible, terrible crimes—genocide and war crimes, some torture and rape and

blood diamonds, and we've done a lot of that work together, Chris. But there's something interesting about the crime of trafficking and slavery, whether it is labor trafficking or sex trafficking—and my organization does casework on both kinds.

What's interesting to me about this crime, and gives me a sense of particular urgency, is that it is truly and, sort of, uniquely stoppable by law enforcement. And the reason why is because it's an economic crime, fundamentally. Certainly, for the victims, it's a crime of gross violence and degradation. And I was very touched by the previous witness describing the sequela of trafficking and slavery to be very much akin to that experienced by torture victims. I think that is correct. That is what we see among our thousands of clients of both kinds of slavery—sexual exploitation, as well as labor slavery.

But in terms of the perpetrators, it's an economic crime. And it is thus uniquely, I think, stoppable by effective law enforcement in ways that, say, child rape or other crimes that are very common, but how do you create a deterrent against that? Of course, you need law enforcement, but what will deter sick individuals from certain kinds of crimes, or how do you deter a genocide when a whole government is involved are baffling. This is not baffling. We actually know what stops economic crimes. What stops them and what deters criminals is when they see a very real possibility that they're going to go to jail for what they're doing.

And then that makes the profits to be had from selling human flesh to be just slightly less impressive. And the higher the likelihood that, that supposed customer is actually an undercover agent from a government or from an NGO working with a government, the less likely or the less secure they're going to be offering that victim out to the public, if she or he is a victim of commercial sexual exploitation, for example. If the customers can find them, the police can find them.

So really, the Rosetta Stone, amongst all the things that need to be done, first and foremost, countries' laws against both labor slavery and commercial sexual exploitation of minors and those forced have to be enforced. And what IJM does in our 14 overseas offices is literally try to make countries' laws work for the poorest. And we work with governments, not against them. We collaborate—we have to collaborate. You cannot create a deterrence against the crime of trafficking by going in and buying slaves out of a brothel, as tempting or as much as you might want to do that.

That does not create deterrence. The trafficker simply goes out and gets another one. But if you work with local police, you help them with undercover work, you bring these cases to their attention and then train them and work with them and identify the good actors—and there always are some, no matter how corrupt a police force is. There's always people you can work with. And then you go out and the police do their job with your assistance to rescue that victim and, simultaneously, arrest the perpetrators. Victim relief without perpetrator arrest and accountability is important—you get the victims—but another victim will take her place.

So we strongly feel that programs that provide police assistance that's not just a one-off training at a nice hotel somewhere, but that engages with police so that you know who the good guys are

and who the bad guys are and you work with a specially trained anti-trafficking unit, which has been very helpful to us, so that you just literally do an end run around police that have been accommodating the trade for all these years. So we've learned a lot in the field. And if I had about, you know, six days—or 20 hours—I'd tell you all about it.

But what I'm going to do, right now, instead, is turn from IJM's work and talk a little bit about this interesting creation of Congress, and that is the trafficking in persons office at the State Department. Because I think this unique crime that is so vast, but that is also uniquely vulnerable to pressure from effective law enforcement and from public justice systems that work, and from local NGOs like those that Free the Slaves work with, this effort has been aided immensely by this extraordinary creation of Congress.

I have worked on lots of human rights law. I've written a lot of it. But there's never been anything like the TVPA of 2000 and its improvements over the years, because you created unique capacities within the government that we don't have for other kinds of human rights violations. We don't have this for genocide. We don't have this for rape—and I wish we did. But what we have here in one agency, staffed by a very small number of people, I might add: diplomatic expertise and monitoring expertise. Look what they did. Look at that. That's about six peoples' work.

And they work around the clock, and they are the unsung—Mark Taylor and his team are the unsung abolitionist heroes of our day. And they use that to make it a living document. It saves lives because they are in dialogue with counterparts abroad about the individual victims, about the perpetrators, about the gaps and infirmities in local justice systems. And they know it cold because they're providing this kind of ever-more-excellent reporting and monitoring so that we have this diplomatic and monitoring function that you created in the 2000 act.

We also have a grant-making function, which I think is very, very important. It's often overlooked because it's very small. The TIP office has about \$22 million to spend this year, and Congress always boosts up the numbers. The executive branch—Republican and Democrat alike—lowball it and Congress, which likes the TIP office—and for good reason—brings those numbers up. But we really—\$22 million in the world we live in over the dozens and dozens of countries where they're making grants to NGOs, including IJM, is not a realistic way to face the coming decade.

They have proven to be good stewards of their grant money, and they need more of it. And it's for two reasons. One, I think even though the United States provides other anti-trafficking systems through USAID and other spigots, I have to say that the trafficking in persons office gets the resources closest to the victims and the perpetrators. And they know it best, because they link it with our diplomacy that you see reflected in that report. And to have a grant program that will help governments deal with the very problems the TIP diplomats are identifying is just strategic, and it's smart.

And I think it's important that we have more carrots for them to use. A, the developing country governments need it. But B, I

think TIP is seen as the kind of in-house nag at the State Department. And with resources to help fix the problems they identify, I think we'll get more buy-in from our regional representatives and the powerhouses at the State Department, which, all too often, I'm afraid, are on the opposite side of a disagreement and are more likely to defend the record of a country with whom we have an important relation than join our friends at TIP.

We can have TIP doing the diplomacy alone. They need to have the fulsome support of the rest of the State Department bureaucracy. We have a secretary of state who is deeply committed to these issues. But the TIP issues need to be shared. The trafficking office is on point, but we need to have resources so that they aren't seeing—the TIP diplomats—aren't seen as some kind of a skunk at the garden party when we deal with our overall relationships, particularly with important countries.

As we look towards equipping the TIP office for the next decade and reflect on the excellent job that they have done, it's worthy of note that, unlike any other human rights issue I've worked on, there has never been congressional oversight of the work of any administration. It's a bipartisan and nonpartisan issue—as there has been on slavery and trafficking. And that's a credit to Mr. Smith and to many others in Congress. But the more interest you have, the more interest that the executive branch has. And I think one of the reasons that the TVPRA implementation has been so successful is because of these oversight hearings. And there hasn't been one for a couple of years and I'm very happy that there's one today. And I thank you for it.

You'll get a chance to look deeply into these issues because the TVPRA will again have to be reauthorized in 2011. And I think it would be great if we could really look to the future and be more visionary about abolishing slavery and trafficking and equipping this office to do it well. That means giving them more money and more staff. That goes without saying. I'd like to ask you to keep an eagle eye on the foreign aid reform process.

Foreign aid reform needs to happen. There's good work being done. But I've been hearing some rumblings about consolidating TIP's function at USAID, consolidating the Trafficking in Persons Report with the regular human rights report. There's a—that's a reasonable and rational recommendation, but please don't do it. Do not do it. It is precisely the standalone and expert nature of both the reporting and the grant-making that has made this office such a success.

And it has been such a success that women working on violence against women want to have one just like it. You know, they want to pull the issue out—and with good reason—pull that issue out of USAID and get that focused grant-making in the area of gender violence. It is something that people want to emulate. Please don't change one of the things that has been such a success.

So watch that space, both of you, in your respective perches at Senate Foreign Relations Committee and House Foreign Affairs Committee. And in closing—and forgive me for going over time on a busy day—I want to just direct your attention to these countries that are on, for the second year, on the tier two watch list. As you know, that watch list area was created by Congress to bring special

scrutiny to countries, including some very good friends of the United States, that aren't quite bad enough to be beyond the pale on tier three, or we don't feel, diplomatically, like we're ready to put them there.

But they are supposed to get special attention, and it has kind of turned into a parking lot for certain countries that have been on there six, seven years. And Congress put an end to that in the last reauthorization of the TVPA in December, 2008, and said, okay, two years and then it's up or down or out. And there are some important countries on that tier two list for the second year. And that means this year is a banner year for effective diplomacy. Because those countries don't know whether they're going to tier three or they're going up to tier two.

And this will be the time to lay very important issues before them. Let's take the case of the Philippines, where IJM has two offices. It's a government that has a terrible trafficking problem, have terrible sexual exploitation of children. We have good working relationship with the government, but they have a terrible problem in their courts. It takes, on average, five years to get a conviction for a trafficking case. That is not a deterrent. They had exactly eight convictions on sex trafficking last year in a country where there are thousands and thousands of victims.

This is the year for the Philippines, with the new Aquino government, which has expressed an interest in really getting on top of this problem—this is the year for lots of diplomacy, lots of help, but also, lots of seriousness. Because there's many things that need to be done, and the Filipinos know what they are. They need to eliminate corruption throughout the court process, within the police, get specialized police units up and working well, and start arresting perpetrators on a regular basis and closing down establishments permanently that offer children. That problem's not even going to begin to go away.

And I'm only using the Philippines as an example because I know it well, but it is the second year on tier two watch, so I know it well, and we know that something needs to happen. So I really would urge you to urge your colleagues to keep an eye on India, the Philippines, Russia—other countries with problems that are friends of the United States, but that need a boost and maybe also need a nudge in this area. Well, I've got lots more to say, but I welcome the chance to be here with you.

Mr. CARDIN. Well, let me tell you, both of your testimonies were extremely important. And I did not want to interrupt your presentations because I think they were extremely valuable to our oversight function. I'm going to ask our colleagues to try to limit this round to five minutes so that we can be out at the planned time for the use of the room. And let me make one observation first, and that is, it's important to put a face on this issue, so I really appreciate, Ms. Smith, your testimony about the two boys.

We hear numbers, but unless you see the people—I've been to victim centers and we had a chance to talk to the people who've been victimized—and understand how this is affecting families and people—you've got to personalize it a little bit more. And as important as the TIP report is, you've got to personalize this. So I encourage you to continue to do that.

Both of you raised the issue of the importance of foreign assistance in the soft power and the reauthorization of our foreign assistance programs. Clearly, the United States is putting a higher priority on foreign aid today, as a major tool for diplomacy. The lens that you talk about—the slavery lens—of looking at foreign assistance is an interesting barometer. It would be interesting to see how that could be incorporated into the TIP report for the donor countries.

My guess is, we'll get some resistance on that. And I say that in conjunction with the fact that there are a lot of requirements on government agencies for reporting. None are as visible or as well-documented as trafficking or the human rights reports, generally. And I agree, Ms. Burkhalter, with your point about preserving what is right, and that is the TIP report. We will be under challenge, though, as other well-intended groups want to get this type of visibility by government efficiency experts saying let's combine everything into one. So I think it's something we really do need to be very careful about.

So I guess my question or comment to you is that I think you really need to concentrate on the current efforts on soft power and foreign assistance, as it will give new opportunities for us to enforce antislavery efforts through our aid programs. We certainly don't want to see our economic assistance to help small businesses being used to promote slavery operations. And that's something that we have to demand accountability.

So I welcome your suggestions as to how this can be done effectively, working with the human rights advocates, but not allowing us to diminish the importance of the separate report on TIP. So that's an open-ended invitation, not necessarily to respond to a question, but an open-ended invitation to work with us as we move forward. Congressman Smith?

Mr. SMITH. Thank you very much, Mr. Chairman. I want to thank our two very distinguished witnesses for their passionate commitment to ending modern-day slavery. You really are an example, and I know Holly has helped, as she put it, write some of our laws and has provided totally timely and very valuable guidance, not just on this, but also on torture victims relief and other issues from the past—14 years with Human Rights Watch, nine years with Physicians for Human Rights and all of the advocacy with IJM now is been tremendous what you've done, so I do want to thank you.

Ms. BURKHALTER. Just getting old, Chris, the long and the short of it.

Mr. SMITH. You did bring up the in-house powerhouses within the State Department. I'm glad you so lifted up the TIP office and its employees, beginning with its ambassador, Luis CdeBaca, for the valiant effort they wage against very powerful in-house interests, who do not want their diplomacy in any way complicated with this issue of human trafficking.

And I find it—I know Chairman Cardin finds it as he travels, I'm sure we all do. You know, human rights is an irritant to many. They like to have the low-level foreign service officer who handles the portfolio of human rights—he can handle it, or she. Now that has changed with some of our ambassadors who have done extraor-

dinary work, so you can't broad-brush it. But in the beginning, you could. There was such pushback on the TIP effort. It was very slow, even after the law was enacted, in getting put into place.

I actually chaired a hearing—an oversight hearing—and the Bush administration was—it said “shall”—you shall do this, you shall do that. And they didn't want to do it, or whatever the reason was. So we had an oversight hearing and said, you will do it. But they were very upset because, we were getting in their face. That has to be done. It's benign in your face. And you do it so extraordinarily well.

You know, you try to work with the offending governments, find the good police, as you said. There are good apples in every police force. There's also a whole lot of bad ones. But you know, nine countries—eight countries were sanctioned, nine were waived. There are six in the OSCE region—Azerbaijan, Moldova, Russia, Turkmenistan, Tajikistan and Uzbekistan—who are in that parking lot—or used to be parking lot. They're watch list countries that will move up or down.

And I think your point is very well taken that, that's where we provide maximum pressure right now to say there are sanctions—sword of Damocles—hanging over your head and we will look to impose it. So more just a comment, and then a question. But do you find—and you might want to answer this—pushback? I know Luis CdeBaca wages a tough fight, as did all of his predecessors, against DCMs, ambassadors, people in the hierarchy of the State Department, who say, don't put that country on the list. Leave China off. Leave Vietnam off. Leave country X, Y or Z off. Put them on the watch list. Is that your sense, too, that they're getting better, or is it as bad as it has been in the past?

Ms. BURKHALTER. I'd have to let him answer that one because we are in-country and a service organization and we are not a public critic or—of the countries where we work. Yeah, I'll let Lou answer that one. Excuse me, Chris.

Mr. SMITH. Okay. Again, I just want to thank you so much for your work. Ms. Smith, did you want to answer, or no?

Ms. SMITH. We certainly have been in conversations with diplomatic officials who are really struggling with these questions and about their own recommendations over this, especially with trading partners. And that's one of the reasons why we feel that collaboration among trading partners is going to be more and more important, and especially ensuring that trade agreements are actually antislavery instruments, as well.

I think we've all got a lot more work to do on ensuring that, but especially where there is a trading relationship, we all know, of course, that there are going to be extra sensitivities. We need to turn those sensitivities in the favor of people in antislavery work and of people in slavery today.

Mr. SMITH. Thank you.

Mr. CARDIN. Congresswoman Richardson.

**HON. LAURA RICHARDSON, A MEMBER OF CONGRESS FROM  
THE STATE OF CALIFORNIA**

Ms. RICHARDSON. Thank you, Chairman and Senator. Let me, first of all, say that I want to thank you for allowing me to partici-

pate in today's hearing, and also to allow me to go to the OSCE parliamentary meeting that we had back in February. And unfortunately, I was not able to participate with you this last week.

I also wanted to acknowledge—and I know she just stepped out, but I do want to note her for the record—Dr. Jama Rinaharal. And I'm sorry if I butchered her name there, but I first met her when I attended the OSCE meeting, and I think her work in this issue and her passion to work with us in a collaborative way, speaking about partnerships and what we can do for diplomacy—I think she's leading in that effort. And so I was inspired by meeting her and look forward to working with her.

A couple things regarding the TIP program, which you mentioned in your testimony. When we had appropriations, I did, in fact, support increasing it by three times, and unfortunately, the administration did not have the level that many of us would like to have seen. But I think various of us have weighed in on that issue and hope to see the improvement, and appreciate your comments, in terms of recommendations of what to do, of consolidating.

To Congressman Smith, of course many of us have watched your very heroic efforts that you had just in this last year, and it has been commendable and I think brought to the point that we've heard much about the sexual trafficking and the slavery that's being done, but the custodial battles are equally offensive and have not had the legal push that's needed to change that. And so I commend your efforts and look forward to working with you.

Finally, what I want to say: I think much focus—television, you know, articles, movies and so on have talked a lot about the sexual exploitation that we see of women and children. For me, I represent an area in Long Beach where we have the largest ports in the United States, and the third largest in the world. And not to minimize those issues, but what I hope to spend my time in the partnership with Sen. Cardin, and also, Congressman Smith, is really looking at some of the labor-trafficking issues.

And it is encompassed in the report, but I think we're going to have to get at more of it. Because when money is behind it, it allows the others to fall in the shadows. And so we have to go beyond the agriculture, which we've spent some time on. We're doing some of the manufacturing, in terms of textiles.

But really, when you look at building of the televisions, assembling video games, you know, making tennis shoes and so on, that is really the money, I believe, that drives some of the other issues that we're seeing. So I'm kind of the new kid on the block, but I look forward to joining this team and helping in any way that I can. Thank you very much.

Mr. CARDIN. Well, we welcome you to the team. We need all the help we can get, so it's nice to see your interest in this area. Let me again thank our two witnesses. I'm encouraged by your testimonies, particularly the cooperation you're receiving in countries. I must tell you, I've traveled to a lot of countries where we've had serious issues with law enforcement even to acknowledge that trafficking exists.

And as Congressman Smith points out, frequently, in many countries, we have a hard time with the local police authorities to recognize those who have been trafficked are victims, rather than crimi-

nals. So that's been a continuous problem, so I'm very encouraged by your testimony about their being receptive in countries to work with you—maybe not collectively, but you can find, at least, elements to work with you to help rescue those who have been victimized.

And we certainly want to promote those best practices, so I encourage you to give us the information so we can showcase those countries or those communities where they have taken this issue with the type of attitude that it requires to identify those who have been victimized. This will continue to be a major issue of interest to the Helsinki Commission and, as you have acknowledged, this is an oversight hearing that was long overdue, and we're glad that we could have the quality of the witnesses here today to help us in our responsibility on this very important subject. And with that, the Helsinki Commission will stand adjourned.





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