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Shaky Ground: How Wavering Approaches to Prostitution Law Have Undermined International Efforts to End It

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Tamarah Prevost

I. Introduction

The central question for prostitution reform was identified by human rights activist Shelagh Day as, “what will help women, particularly poor, racialized women, escape the violence of prostitution?”¹ Starting with this population seems logical within a goal of protecting human rights of all women, which is prioritized under various international covenants. If one starts with protecting the women that are at the highest risk of violence, presumably all women will benefit from this increased safety.

Since the adoption of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (CSTPEPO) in 1949, international law has approached prostitution inconsistently. The earliest treaties to address prostitution generally identify it as a form of violence against women per se and direct countries to abolish it. However, beginning in the late 1970’s various international instruments have vacillated between an abolitionist model and a more permissive, mixed model. Ultimately, the United Nations has not presented a uniform view of how to categorize prostitution², and some have even characterized international efforts to curb it as having “failed miserably”³.

The failure to choose a consistent model of law has undermined the international efforts to eradicate the harms associated with prostitution. Those efforts would be more effective if international bodies adopted an unambiguous and uniform stance in favor of the abolitionist approach.

This paper has two main goals. The first is to outline the gradual shift within international law between different models and to identify potential reasons for this shift. A few key instruments inform an analysis of the international law addressing this issue, for example, the Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of the Prostitution of Others (CSTPEPO), the Convention for the Elimination of Discrimination Against Women (CEDAW); and the Beijing Platform for Action, arising out of the Fourth World Conference for Women emerge as authoritative. These sources demonstrate the influential shift from a goal of eradicating all prostitution as violence against women per se, to a focus on simply ending forced prostitution. While child prostitution is a distinct form of prostitution that has generally been accepted as worthy of abolishing, this paper solely addresses the historical treatment of adult prostitution.

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1. Shelagh Day, *Prostitution: Violating the Rights of Poor Women*, ACTION ONTARIENNE CONTRE LA VIOLENCE FAITE AUX FEMMES, 1 (June 2008), available at <http://casac.ca/sites/default/files/Shelagh%20Day%202008%20Prostitution.pdf>.
 2. Nora V. Demleitner, *Forced Prostitution: Naming an International Offense*, 18 FORDHAM INTL L.J. 163, 193 (1994-95).
 3. *Id.* at 164.

The second goal of this paper is to advocate that a normative shift back to an abolitionist approach is necessary, given the consistent international objectives of ending the exploitation of prostituted women, and the CEDAW Committee's specific concern for protecting the world's most vulnerable women. This paper starts from the premise that poor and marginalized women stand to suffer the most from laws that fail to protect them. To that end, the abolitionist approach is promoted as a method that would most effectively protect society's most vulnerable women.

II. Framing the Debate

There are two main, conflicting positions with respect to prostitution law. The abolitionist standpoint views any form of prostitution as a human rights violation which, similar to slavery, should be abolished at once.⁴ Under this perspective, prostitution should never be associated with legitimate labor concepts such as consent.⁵ In contrast, the decriminalization perspective -also referred to as the permissive, tolerant or libertarian standpoint- sees prostitution as a valid form of work, and an occupation that is liberatory for women's rights.

Abolitionists view "consent" as illusory, as it is found within the context of male domination and patriarchy. They argue that no genuinely empowered woman would freely subject herself to the violence and degradation involved with selling her body unless she had no alternative. According to abolitionists, coercive factors such as poverty, lack of employment opportunities, or past sexual abuse subtract the possibility of meaningful choice given to prostitutes. For poor or marginalized females, prostitution is a means to survive⁶ based on necessity, not a freely chosen career path. Legally and politically, abolitionists refuse to distinguish between voluntary and forced prostitution, or between immigration for sex work and human trafficking, where an unequal power dynamic persists.⁷ Contemporary abolitionists rely upon international conventions against trafficking and slavery, conventions for the protection of women and children, evolving standards concerning violence against women, and basic human rights instruments to advance their arguments.⁸

The decriminalization position is based upon two principle tenets: first, that prostitution is an inevitable and legitimate form of work, and second, that regulations are therefore required to reduce the harms associated with sex work. This more permissive position was historically premised on the intrinsic male right

4. Jane E. Larson, *Prostitution, Labor, and Human Rights*, 37 U.C. DAVIS L. REV. 673, 680 (2004).

5. *Id.*

6. Day, *supra* note 1.

7. Larson, *supra* note 4.

8. Larson, *supra* note 4, at 680.

and need to be sexually gratified.⁹ The modern rationale for decriminalization is rooted in economic labor analysis¹⁰, and perceives women as autonomous beings who freely choose to pursue sex work as an exercise of their right to choose their livelihood.¹¹ Historical antecedents have informed this modern evolution, particularly in the rationale of prostitution as “the oldest profession”, one which is pervasive and impossible to eradicate. Thus, a harm reduction position is advanced under this approach: the inevitability of prostitution means that the policy goal should be centered upon the State making prostitution as safe as possible.

Arguing for the legalization of prostitution as a legitimate profession, decriminalists argue that it is no better and no worse than other means of livelihood, paralleling prostitution to wage labor.¹² Decriminalization under the autonomy perspective is a gender-neutral approach that treats the (mainly) women who sell sexual services and the men buying them as though they were the same.¹³ The women, pimps and brothel owners are all treated the same because all of these activities are legal. Conversely, proponents of the autonomy perspective invoke the human right to work and the right to self-determination within general human rights instruments like the Universal Declaration.¹⁴

Not surprisingly, this position rejects government sanctions against prostitution, which is considered a government infringement on women’s rights. Accordingly, women are discriminated against when their ability to prostitute and market their resources is limited. They argue that when women have minimal opportunities to work, the right for them to sell their bodies should warrant greater protection.¹⁵ Many proponents have analogized the decriminalization movement to the advances made by women’s liberation, and categorized it as pro-sex and pro-women.¹⁶ Some advocacy groups argue for “completely unrestricted commercial sex as an expression of freedom from governmental intrusion into the free choices of individuals.”¹⁷ Decriminalization supporters argue that unrestricted commercial sex will reduce harms to prostituted women because they will be able to run their own brothels legally and be safer indoors.¹⁸ The supporters further argue that any role the State has should be to support women in their chosen profession. The harm reduction approach is deeply connected to the idea that prostitution will always exist, and can

9. Larson, *supra* note 4, at 674.

10. Larson, *supra* note 4, at 681.

11. Larson, *supra* note 4, at 674.

12. Larson, *supra* note 4, at 674-75.

13. Day, *supra* note 1, at 2.

14. Larson, *supra* note 4, at 681.

15. *Id.*

16. Day, *supra* note 1.

17. Larson, *supra* note 4, at 682.

18. Day, *supra* note 1, at 2.

be considered more reactive than pro-active.

Making prostitution legal under the motif of increasing the safety of prostitutes has been seen by many as being fundamentally misguided. According to leading human rights lawyer Shelagh Day,

“Harm reduction, at bottom, is a position of capitulation. Decriminalization advocates have given up on the fundamental struggle to achieve equality and autonomy for the most vulnerable, racialized, poor women. They have turned instead to a defensive attempt to protect women from the worst harms that prostitution can bring, not by changing the conditions that catapult women into prostitution or by helping them out of prostitution, but rather by, ostensibly, giving them better market conditions in which to be self-employed prostitution entrepreneurs.”¹⁹

Moreover, suggesting prostitution as a legitimate occupation ignores the inherently unequal economic power dynamic between prostitutes and johns, resulting in two troublesome outcomes. First, it allows a blind eye to be turned to the danger that the vast majority of prostitutes consistently experience. According to a nine country study conducted by Melissa Farley, in which 854 people currently or recently in prostitution were interviewed, 71% were physically assaulted in prostitution; 63% were raped; 89% of respondents wanted to escape prostitution, but did not have other options for survival and a total of 75% had been homeless at one point in their lives. Ms. Farley’s findings, which she admits are likely “conservative” in comparison to reality²⁰, led her and her team to dispel a few common myths about prostitution. Among them, that most of those in prostitution freely consent to it, that street prostitution is the worst kind of prostitution, and that legalizing or decriminalizing prostitution would decrease its harm.²¹

Second, it suggests that prostitution can fit within internationally and domestically accepted labor practices, which has similarly been considered deeply problematic. According to Shelagh Day, prostitution cannot fit within the nearly globally accepted right to non-discrimination. Employing women for sex services is discriminatory because it “perpetuates their sexual subordination to men and exploits their economic vulnerability”.²² Also, the essence of prostitution as an

19. Day, *supra* note 1, at 4.

20. Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Trauma and Posttraumatic Stress Disorder*, 2 J. OF TRAUMA PRAC. 33, 56 n. 3-4 (2003) available at <http://www.prostitutionresearch.com/pdf/Prostitutionin9Countries.pdf>. (“Women who experienced the most extreme violence in prostitution were not represented in our research” and “traumatized individuals tend to minimize or deny their experiences”).

21. *Id.* at 34.

22. Day, *supra* note 1, at 6.

economic transaction involves men (the customer) choosing which women will provide sexual services to them on the basis of race, age and gender-related characteristics such as breast size, which has also been found inapposite to non-discriminatory principles.²³

Ultimately, Ms. Day notes that trying to fit prostitution into the labor framework poses a “conundrum” to legislators: to “amend human rights law so that prostitution could fit into an anti-discrimination framework, to the detriment of all women; or set prostitution outside the parameters of human rights law, contrary to the goals of decriminalization advocates.”²⁴

While these two perspectives represent the poles of the prostitution law spectrum, there is a sizable middle ground within which many States position themselves. Different versions of partial decriminalization exist, generally dependent on the cultural mores of the State in question. Generally, partial decriminalization removes the criminal sanction directed at prostitutes, instead criminalizing the patron or pimp.²⁵ Perhaps surprisingly, most modern abolitionists support a partial criminalization approach because of how damaging a “pure criminalization” model can be to prostitutes working on the ground²⁶, and due to abolitionists’ prioritization of protecting the poorest, most vulnerable prostituted women. In places where prostitution is illegal, it is very often the poor, racialized and marginalized women that are sanctioned more frequently.²⁷ Instead of viewing partial decriminalization as an “accommodation or legitimization” of prostitution, they consider it to be the model that most effectively protects and empowers women, particularly those most in need of protection.²⁸

While the debate as to the “correct” prostitution law for women rages on, it is apparently at least reasonably conceded on either side of the debate, that little social good is served by using the criminal law against women that commit acts of prostitution. As Shelagh Day notes, “criminalizing poor women for the impact of poverty, racism, early sexual abuse, and the lingering effects of colonialism just doesn’t seem just.”²⁹

Applying the prostitution debate to the international law setting produces predictably complicated problems. Given increasing globalization and ease of travel (among many other factors), and considering that prostitution has been deemed a

23. *Id.*

24. *Id.*

25. Larson, *supra* note 4, at 681.

26. Larson, *supra* note 4, at 680-81.

27. Day, *supra* note 1, at 1.

28. Larson, *supra* note 4, at 681.

29. Day, *supra* note 1, at 1.

“growth industry”³⁰, it has never been more urgent for the international community (specifically the UN and its agencies) to clarify and streamline their expectations of States under existing women’s treaties. Tracking the historical shift from an abolitionist approach to an approach more permissive of State’s domestic autonomy demonstrates the complexity of this task, and suggests strongly that the abolitionist approach should inform the international community’s next moves.

III. Evolution of Treaty Regimes

Certain key instruments are of “persuasive value in influencing international norms with regard to the elimination of violence against women and in providing normative standards for States to follow at the national level.”³¹ Reflective of the normative attitudes within the period in which they were written, instruments aimed at trafficking and prostitution from the past century reveal a shift from an abolitionist approach to one far more permissive of States domestic choices. In particular, while international law was largely abolitionist before 1949, more modern developments like the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (CSTPEPO) and the Convention for the Elimination of Discrimination Against Women (CEDAW) among other instruments fail to present a unified directive to State parties.

A. Developments Before 1949

In the mid nineteenth century, the moral debate over prostitution shifted to the legal arena and moved from predominantly domestically focused to the emerging area of international law.³² International agreements rested upon at least a symbolic global consensus that prostitution and human trafficking are human rights violations to be abolished. Official actions pursued both the protection of the female victim and punishment of the procurer.³³ During this period, prostitution was regarded as akin to slavery³⁴ and the abolition perspective reigned supreme, but this would not always hold true.

The first international treaty on trafficking in women, the International Agreement for the Suppression of White Slave Traffic entered into force in 1905

30. Demleitner, *supra* note 2, at 190.

31. UN Special Rapporteur on Violence Against Women, Report of the Special Rapporteur on violence against women, including its causes and consequences, Rashida Manjoo, 28 May 2014, A/HRC/26/38, 11).

32. Larson, *supra* note 4, at 676.

33. Demleitner, *supra* note 2, at 165

34. Larson, *supra* note 4, at 670.

(“White Slave Agreement”) and was enacted as the result of globally organized feminism, reflecting the normative landscape of abolition at this time.³⁵ The goal of this agreement was to halt the sale of prostituted women in Europe at a time when the economy was in dire conditions.³⁶ State parties are identified as “being desirous of securing to women of full age ... effective protection against the criminal traffic known as the “White Slave Traffic”.”³⁷ Acknowledging that prostituted women were in need of protecting, the original White Slave Agreement protected victims, but did not punish procurers, an approach which proved ineffective.³⁸ Thus, five years later, the 1910 International Convention for the Suppression of White Traffic criminalized the procurement of women.³⁹ The 1910 Convention bound its thirteen signatories to severely punish the purchasers of sexual services, but, it is worth noting, did not cover those who held women in brothels, as this was considered to fall under each State’s domestic jurisdiction.⁴⁰

Post-World War I, trafficking in women and children was considered of such concern that the Covenant of the League of Nations entrusted the League with “general supervision” over it.⁴¹ Notably, the League was entrusted with supervising agreements respecting both trafficking in women and narcotics trafficking. In this way, trafficked women were considered akin to property, a categorization that can be deemed emblematic of the paternalist international reaction to prostitution at the time.⁴²

From this authority, the League created two treaties, both aimed at prosecuting traffickers and declaring that victim’s consent was not a defense to the crime of trafficking: the Convention for the Suppression of Traffic in Women and Children⁴³,

35. *Id.*

36. Stephanie Fariior, *The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to its Potential*, 10 HARV. HUM. RTS. J. 213, 216 (1997).

37. International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83, available at <http://www1.umn.edu/humanrts/instree/whiteslavetraffic1904.html>.

38. Fariior, *supra* note 36, at 216.

39. Demleitner, *supra* note 2, at 168. See also the International Agreement for the Suppression of the White Slave Traffic, April 5, 1910, available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-10&chapter=7&lang=en.

40. *Id.* at 169.

41. *Id.* See also LEAGUE OF NATIONS COVENANT art. 23, ¶ 1(c).

42. Fariior notes the problems involved with placing women in the same category as property; particularly with enforcement. *supra* note 36, at 169; n. 28. In fact, current decriminalization advocates often point to success behind various harm reduction movements in drug policy to support why a harm reduction approach should be embraced by governments dealing with prostitution. Abolitionists consider a harm reduction approach to be giving up on a societal standard that prioritizes ending female victimization, rather than “dealing with” its existence as though it were a physical addiction resulting from narcotics use. Many argue that a harm reduction approach is fundamentally at odds with ending prostitution, as Fariior notes, “women are human, drugs are not.” *Id.*

43. Convention for the Suppression of Traffic in Women and Children, opened for signature Sept. 30, 1921, 9 L.N.T.S. 415.

and the International Convention for the Suppression of the Traffic in Women of Full Age⁴⁴. The first of these Conventions was ratified by a significantly larger number of States than earlier conventions.⁴⁵The choice on behalf of the League to exclude consent as a defense is categorically abolitionist because under this approach, selling another individual's body should be eradicated- any consent that may or may not have been given by a victim is a separate and largely irrelevant issue.

In the mid-1920's the League commissioned a group of experts to assess the state of trafficking in the Middle East, Europe and North and South America.⁴⁶ This study determined that licensed brothels were "undoubtedly an incentive to traffic[king of women], both national and international"⁴⁷ as well as establishing that "profit is at the root of ...forced prostitution" and specifically condemning the "business" of prostitution as being inherently exploitative to women.⁴⁸

In 1937, the League drafted a convention designed to secure international cooperation in the abolition of brothels and the punishment of brothel owners and managers.⁴⁹ The League was able to justify this based on the findings of the expert study, and by arguing that brothels were no longer purely a domestic question, since they incentivize global trafficking.⁵⁰It would have been the first international treaty to address prostitution, which underlies trafficking, and had as its goal "abolishing any regulation of prostitution"⁵¹. Backed by evidence and fueled with a desire to end prostitution once and for all, this groundbreaking convention would have sewn an abolitionist approach into the international treatment of prostitution. But due to the outbreak of World War II, this draft was never opened for signature⁵² and international attention was directed away from a uniform visionary approach to this issue.

Upon the close of WWII, the Commission on the Status of Women (CSW) was established in 1946 and has been instrumental in initiating normative frameworks on women's rights such as the Convention on the Elimination of All Forms of

44. International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431.

45. *Id.*

46. Demleitner, *supra* note 2, at 170 (*citing* U.N. DEPT OF INT'L ECONOMIC AND SOCIAL AFFAIRS, Study on Traffic in Persons and Prostitution, 1-2, U.N. Doc. ST/SOA/SD/8, U.N. Sales No. 59.IV.5 (1959), hereinafter "Study on Traffic in Persons").

47. *Id.*

48. *Id.*

49. Demleitner, *supra* note 2, at 171.

50. *Id.* (*citing* Study on Traffic in Persons, *supra* note 47, at 2-3).

51. Demleitner, *supra* note 2, at 171.

52. *Id.* (*citing* Study on Traffic in Persons, *supra* note 47, at 2-3).

Discrimination Against Women and the Declaration on the Elimination of Violence Against Women.⁵³ Among other work, currently the Special Rapporteur's mandate involves country visits and producing written reports to the General Assembly on specific forms of violence against women in certain countries.⁵⁴

B. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (CSTPEPO)

In 1949, the United Nations consolidated the four prior treaties with the 1937 League of Nations draft, to produce the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (CSTPEPO).⁵⁵ CSTPEPO's Article 28 explicitly states that it supersedes prior treaties when ratified. While at the time of signing, only just over half of U.N. member states adopted CSTPEPO, it has been described more recently as "reflecting the philosophy of the overwhelming majority of members of the international community."⁵⁶

CSTPEPO represents both early abolitionism and the first treaty in which prostitution as a specific issue was put on the international mainstage. First, the very fact that prostitution is in CSTPEPO's title has been described as "indicating its focus on [prostitution which was a] previously domestic aspect of trafficking"⁵⁷, moving this issue into the international realm.

Second, several aspects of CSTPEPO reveal its abolitionist ideology. Article 1 entreats States to criminalize anyone who "procures, entices or leads away, for purposes of prostitution, another person, or exploits the prostitution of another person even with the consent of that person."⁵⁸ Framing prostituted women's consent as irrelevant to this inquiry places this treaty as closer to an abolitionist ideology,⁵⁹ however CSTPEPO remains cautious of protecting the sovereignty of domestic State law.⁶⁰ Moreover, CSTPEPO "rejected the regulatory approach to prostitution, which it considered as an incentive to forced prostitution."⁶¹ CSTPEPO

53. Manjoo, *supra* note 31, at 4.

54. *Id.*

55. Farrior, *supra* note 36, at 217. See UN Documents: Gathering a body of global agreements, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, available at <http://www.un-documents.net/cstpepo.htm> (hereinafter CSTPEPO).

56. U.N. Dep't of Int'l Economic & Social Affairs, Activities for the Advancement of Women: Equality, Development and Peace at 17, U.N. Doc. ST/ESA/174 (1985).

57. Demleitner, *supra* note 2, at 172.

58. CSTPEPO, *supra* note 56.

59. CSTPEPO, *supra* note 66.

60. See CSTPEPO, *supra* note 56, at art. 12. ("The present Convention does not affect the principle that the offences to which it refers shall in each State be defined, prosecuted and punished in conformity with its domestic law.")

61. Farrior, *supra* note 36, at 174.

entreats states to repeal any laws requiring registration of prostitutes⁶² and does not condone brothels.⁶³ Taking a stance against state regulated prostitution positions CSTPEPO's approach as more abolitionist than permissive.

However, other provisions indicate that CSTPEPO in fact adopts a nuanced version of abolitionism. While CSTPEPO considers it "incompatible with the dignity of the human person"⁶⁴, it also considers prostitution as a "personal choice and hence a private matter". This informs the policy decision not to abolish prostitution entirely, but instead to aim for the eradication of the exploitation of prostitution exclusively.⁶⁵ While its text obligates States to end prostitution in a number of ways, CSTPEPO has been criticized for having weak enforcement mechanisms and being ideologically unclear⁶⁶ as to whether all kinds of prostitution or just forced prostitution were at issue.⁶⁷ Besides CSTPEPO's ambiguity⁶⁸, addressing manifestations of prostitution, such as brothels, rather than confronting its socio-economic causes has also been disapproved of as constituting a limited approach.⁶⁹ Those who believe that abolition is the superior method similarly condemn CSTPEPO for advancing a weak effort to enforce abolition among States.⁷⁰

Furthermore, critics identify CSTPEPO as overly deferent to the sovereignty of its signatories' which they claim has undermined efforts in human rights law around prostitution.⁷¹ Perhaps due to the notion of "international human rights" as still relatively new in 1949, nervousness about the perception of interference in State domestic affairs by intergovernmental organizations prevented CSTPEPO from effective enforcement. It seems that CSTPEPO reflected abolitionist sentiment, but lacked a unifying directive to States which ultimately undermined its efforts.

Criticisms aside, in 1959 the UN commissioned a study to evaluate the effects of CSTPEPO on international trafficking (the 1959 Study).⁷² The study found a low percentage of foreign prostitutes in most countries, particularly in states who incorporated CSTPEPO's mandates into their domestic policies⁷³ and those who closed brothels as a main incentive for trafficking. Acknowledging that work still

62. CSTPEPO, *supra* note 56, at art. 6.

63. Farrior, *supra* note 36, at 218. (*Citing* CSTPEPO, *supra* note 56, at art. 6.)

64. Demleitner, *supra* note 2, at 174.

65. *Id.*

66. Farrior, *supra* note 36, at 217.

67. *Id.*

68. *Id.*

69. Farrior, *supra* note 36, at 218.

70. *Id.*

71. *Id.* at 219-20.

72. Study on the Traffic in Persons, *supra* note 47; *see also* Demleitner, *supra* note 2, at 175.

73. *Id.*

needed to be done, the study named “the abolition of the regulation of prostitution [as] a necessary prerequisite to any [such] programme [to end prostitution].”⁷⁴ While perhaps not as effective as it could have been, to the extent that CSTPEPO attempted to embody an abolitionist approach, it appeared to have succeeded in its aims, but lacked the enforcement capabilities for widespread change.

C. Convention for the Elimination of Discrimination Against Women (CEDAW)

The 1979 Convention for the Elimination of Discrimination Against Women (CEDAW) is among the seminal documents with respect to women’s rights globally. Evidencing the importance of States to act domestically on prostitution and trafficking, Article 6 demands that “State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”⁷⁵ Significantly, this document distinguishes “exploitation of prostitution” as worthy of suppressing, but does not take the position that prostitution per se should be abolished, opening up possibilities for States to adopt either abolitionist or decriminalization laws.

CEDAW’s adoption contributed to a climate shift with regards to women’s rights and prostitution. In the years that followed, a model increasingly more permissive of States decisions to legalize prostitution began to emerge. UN Special Rapporteur on violence against women, Rashida Manjoo, presents written reports on the causes and consequences of violence against women to the Human Rights Council and the UN General Assembly.⁷⁶ Ms. Manjoo noted in her 2014 report, the “conceptualization of violence against women” over the past 20 years at the UN has been “expanding”.⁷⁷ This expansion parallels the shift away from abolitionism, as assumptions that women are in need of protecting were being questioned more frequently. Unfortunately, this shift only exacerbated the hesitancy that the UN had (and still has) around directing States on how to deal with prostitution domestically.

IV. UN Resolutions and Soft Law Instruments, 1959-2013

UN Resolutions and soft law instruments developed through conferences from 1959 onward have been unable to decide between abolitionist and decriminalization

74. Study on the Traffic in Persons, *supra* note 47; *see also* Demleitner, *supra* note 2, at 175.

75. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Jun. 30-Jul. 25, 2003), 29th Session, *available at* <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article6>.

76. Manjoo, *supra* note 31, at 3.

77. Manjoo, *supra* note 31, at 1.

approaches, often wavering between perspectives. This lack of unification is a disservice to prostituted women globally, because it demonstrates that they are not worthy of gathering the political will to adopt a stance on this issue.

In response to the aforementioned 1959 Study, the U.N. Economic and Social Council (ECOSOC) adopted a resolution requesting governments “to take all appropriate measures for the elimination of the causes leading to the traffic in persons and of the exploitation of the prostitution of others through constant improvement of social and economic living conditions of their peoples.”⁷⁸ Such generalized statements evidence that branches such as ECOSOC care about this issue, but not to the extent of recommending domestic policy to States.

In what might appear to be a historical throwback, in 1974 the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights formed a Working Group and classified trafficking in women as slavery.⁷⁹ For abolitionists, this classification might be considered an advancement because it encapsulates prostitution under a practice which has achieved consensus as unacceptable.⁸⁰ Decriminalization proponents assess this categorization as inhibiting women’s empowerment by relegating all women to a “victim” role, which they consider to be a broad overgeneralization in the context of prostitution.

Instruments arising from the Women’s Conferences in Mexico City (1975), Copenhagen (1980), Nairobi (1985) and Beijing (1995) serve as international soft-law and while not necessarily as authoritative as ratified treaties, have served as advocacy platforms for domestic activist efforts.⁸¹

The 1985 Nairobi women’s conference carefully condemned only forced prostitution, specifically.⁸² This document saw forced prostitution as a form of slavery imposed on women by procurers; the result of economic degradation and stemming from women’s dependence on men.⁸³ Its recommendation section includes implementing CSTPEPO domestically, framing it squarely amidst the abolitionist framework, but only prostitution that was “forced”.⁸⁴

The Declaration on the Elimination of Violence against Women (DEVAW) was

78. Study on the Traffic in Persons, *supra* note 47; Demleitner, *supra* note 2, at 175-76.

79. Demleitner, *supra* note 2 at 176.

80. *Id.*

81. Farrior, *supra* note 36, at 250.

82. *Id.* at 220-21.

83. Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality Development and Peace at 70, ¶ 290, U.N. Doc. A/CONF.116/28/Rev.1 (1986).

84. *Id.* Abolitionism at its core considers all prostitution forced, as a byproduct of patriarchy, capitalism and other social factors.

adopted by the General Assembly in December 1993⁸⁵ and is the primary normative framework for the work of the Special Rapporteur on violence against women.⁸⁶ DEVAW is considered to compliment and strengthen the Convention on the Elimination of Discrimination Against Women (CEDAW).⁸⁷

DEVAW is most significant because of its expansion of state responsibility.⁸⁸ Representing a global consensus that violence against women by private actors constitutes a human rights abuse if a State “systematically fails to act with due diligence to prevent, investigate, or punish such acts”,⁸⁹ DEVAW has been described as a “critical development in the evolution of women’s human rights.”⁹⁰

Further, DEVAW has been interpreted within its preamble as identifying patriarchy and the subordination as the root causes of violence against women⁹¹ which would seem to suggest that prostitution in any form, constitutes violence against women, and therefore is deserving of an abolitionist approach. Once again however, Article 2 categorizes only forced prostitution as violence against women⁹² and Article 4 (c) entreats States to condemn violence against women, but only “in accordance with [their] domestic legislation”⁹³. Similar to past treaties, this inherent lack of uniform directives to States is still present, but has just evolved further away from explicit abolitionism, towards one very deferential to domestic State sovereignty. While the UN and international community were continuing to mobilize for women generally, the lack of explicit clarity meant that prostituted, victimized women were yet to enjoy the fruits of this labor.

The 1995 Beijing Platform for Action (BPA) arose out of the Fourth World Conference on Women⁹⁴ and upholds CEDAW, the Nairobi Conference, and relevant resolutions adopted by ECOSOC and the General Assembly. The Platform for Action is aimed at establishing a basic group of priority actions to be carried out in the five

85. G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993), *available at* <http://www.un.org/documents/ga/res/48/a48r104.htm>. (hereinafter DEVAW; not to be confused with the Declaration on the Elimination of Violence Against Women, adopted in 1967).

86. Manjoo, *supra* note 31, at 5.

87. DEVAW, *supra* note 95, at pmbl. (“Recognizing that effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women, set forth in the present resolution, will strengthen and complement that process...”).

88. Johanna E. Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women’s International Human Rights Violations*, 52 EMORY L.J. 71, 90 (2003).

89. Bond, *supra* note 98, at 90.

90. *Id.*

91. Manjoo, *supra* note 31, at 9 (citing DEVAW, *supra* note 95, at pmbl.).

92. DEVAW, *supra* note 95, at art 2.

93. *Id.* at art 4(c).

94. The United Nations Fourth World Conference on Women, Sept. 1995, *Beijing Platform for Action*, Mission Statement, U.N. Doc., *available at* <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm#statement>. [Hereinafter Beijing Platform].

years following its formulation.⁹⁵

The BPA's implementation measures appear to be stronger than the instruments that preceded it, even though it is still considered international "soft law". According to the Platform for Action's mission statement, its success "will require a strong commitment on the part of Governments, international organizations and institutions at all levels" and will "require adequate mobilization of resources at the national and international levels as well as new and additional resources to the developing countries from all available funding mechanisms, including multilateral, bilateral and private sources for the advancement of women".⁹⁶ One of the main action items arising from the Conference were its strategic objectives meant to inform State and UN action regarding violence against women, moving forward. The BPA has been touted as having overall greater effectiveness at instigating progressive domestic policies within UN member states, than the CEDAW.⁹⁷ Without denying this potential strength, the BPA gives little specific direction to States about how prostitution should be dealt with domestically.

Once again, the BPA communicates a consistent message of eradicating "forced prostitution", specifically. As noted, at the time the BPA issued its recommendations, the general international and UN stance was to condemn only forced prostitution, as opposed to all prostitution in general. While this might indicate a preference towards a decriminalized model, the analysis leading to this conclusion, somewhat unsurprisingly, could cut either way.

Within the BPA's definition of violence against women, "violence related to exploitation"⁹⁸ and forced prostitution are specifically mentioned.⁹⁹ Problematic, however, is that both sides of prostitution law interpret the presence and role of violence in prostitution differently. For abolitionists, prostitution is violence against women full stop, and clearly within the scope of activities in need of ending under the Platform. For decriminalization proponents, not all forms of prostitution are forced, so women choosing it as legitimate work fall outside of the activities to be eliminated under the Platform. By maintaining an ambiguous stance around the relationship between violence against women and prostitution, room is created for domestic legislation on both sides of the debate.

Prostitution in the BPA is noted as a "matter of pressing international

95. *Id.*

96. *Id.*

97. Jessica Neuwirth, *Inequality Before the Law: Holding States Accountable for Sex Discriminatory Laws Under the Convention on the Elimination of All Forms of Discrimination Against Women and Through the Beijing Platform for Action*, 18 HARV. HUM. RTS. J. 19, 40 (2005).

98. Beijing Platform, *supra* note 104 at ¶ 113(a).

99. *Id.* at ¶ 113 (b).

concern”¹⁰⁰, rather than domestic sense. Strategic Objective D.3. of the Platform paints with broad strokes, aiming to “[e]liminate trafficking in women and assist victims of violence due to prostitution and trafficking.”¹⁰¹ Recommending that States aid victims of prostitution, rather than proactively legislating to prevent entry into the trade. This stance suggests that not all prostitutes are victims of violence, and that only ones actively reporting it are in need of assistance. This harm reduction approach is more commonly associated with decriminalization, while allowing State parties broad deference to enact their own domestic laws.

The BPA’s Strategic Objectives on Women and the Economy are centered upon women’s employment, and nowhere in this section is prostitution mentioned. The presence of prostitution in the Violence Against Women section, and its absence in the Women and the Economy category by omission, communicates an abolitionist perspective on the one hand. Instead of legitimate work, subject to the labor forces and worthy of allowing women to market their resources, prostitution is definitively categorized as violence against women.

On the other hand, the presence of language describing women’s economic empowerment for their livelihood suggests a right to work under a decriminalization approach, which purports to advance women’s right to work as a prostitute. While specifically advocating for the abolitionist CSTPEPO Convention to be reviewed and strengthened,¹⁰² ultimately the BPA is a far cry from a clear directive.

As part of this work, the BPA invited the Special Rapporteur of the Commission on Human Rights to address forced prostitution.¹⁰³ Consequently, agreed conclusions in 1998, 2007 and 2013 CSW Reports reveal a few notable trends. First, the 1998 conclusions are more specific with regard to the steps that governments should take to address violence against women, whereas the 2007 and 2013 agreed conclusions are far more general.¹⁰⁴

In 2013, new themes emerged in the conclusions including “the need for governments to promote and protect the human rights of all women, including their right to have control over, and decide freely and responsibly, on matters relating to their sexuality”.¹⁰⁵ This evolution is aligned with the historical shift away from abolitionism and towards a permissive stance both for States, to determine their own domestic policy; but also with respect to the individual women’s “choice” to “work” within the prostitution trade in general.

100. *Id.* at ¶ 122.

101. *Id.* at ¶ 130.

102. *Id.* at ¶ 122.

103. *Id.*

104. Manjoo, *supra* note 31, at 6.

105. Manjoo, *supra* note 31, at 7.

Between 2007 and 2013, the Human Rights Council adopted twenty-eight resolutions directly relating to the mandate of the Special Rapporteur on violence against women.¹⁰⁶ Trafficking in persons, especially women, and most recently, the role of freedom of opinion and expression in women's empowerment also made its way into these resolutions.¹⁰⁷ These findings are significant because the decriminalization approach sees prostitution as a viable work option, that empowered women have the right to choose. This shift, within the women's liberation movement, empowers and favors the individual instead of the paternalist state and favors a society in which women are self-determined, and in charge of their own careers. In other words, resolutions focused on women's empowerment are ideologically consistent with a decriminalization stance with respect to prostitution.

V. The CEDAW Committee

The CEDAW Committee has not issued a formal declaration explicitly outlining a preferred method of prostitution law. However, since States are obligated to report to the CEDAW Committee, published reports and communications with State parties can identify the gaps and priorities that must be addressed to work towards a uniform, focused future approach to prostitution. Perhaps most useful to be gleaned from these interactions, is the priority that CEDAW places on protecting the world's poorest women.

To assess the CEDAW Committee's response to prostitution, fourteen geographically diverse State parties were selected, from varied points along the prostitution law continuum. Uganda, Sri Lanka, Russia and Cambodia were used as examples of countries in which prostitution is predominantly illegal.¹⁰⁸ On the other side of the spectrum, Senegal, Venezuela and Nepal are examples of State parties to CEDAW which have chosen to make prostitution legal and regulated.¹⁰⁹ In these countries, licensed brothels and bawdy houses are common.¹¹⁰

Occupying the spaces between these two poles are the States in which

106. Manjoo, *supra* note 31, at 9.

107. Manjoo, *supra* note 31, at 9.

108. Each of these countries' laws vary in what they consider illegal, often due to a lack of enforcement on the ground, creating differences between de jure and defacto illegality. Prostitution, brothel ownership and pimping are illegal in all three countries. ProCon.Org, *Legal Prostitution: Pros and Cons, 100 Countries and Their Prostitution Policies*, available at <http://prostitution.procon.org/view.resource.php?resourceID=000772>. In Russia however, prostitution is not a serious crime, and a wealth of reports indicate that in Uganda and Cambodia, prostitution is still very prevalent despite its sanctioned status. *Id.* See also *Uganda Prostitution Workshop Banned*, BBC NEWS: One Minute News, Mar. 25, 2008, available at <http://news.bbc.co.uk/2/hi/africa/7313310.stm>.

109. ProCon.Org, *supra* note 108. (In Senegal, prostitution is legal but brothels and pimping are not.)

110. *Id.*

prostitution in certain forms is illegal, or prostitutes themselves are not criminalized. Norway, for example, has made it illegal to purchase sex but legal to sell it. Criminalizing the demand for paid sex is considered to fit within Norway's gender equality mandate, which supports john shaming and focuses on exit strategies for current or former prostitutes. Japan¹¹¹, Guatemala, Ethiopia, India¹¹² and Argentina criminalize certain portions of prostitution activity. In India, prostitution per se is not a crime but prostitution in public places and soliciting is a crime. The law penalizes both prostitutes and clients, but in practice prostitutes have many more cases booked against them.¹¹³

Many most recent Summary Records from CEDAW session meetings do not mention prostitution at all,¹¹⁴ which itself is indicative of the prioritization of this issue relative to others within the CEDAW Committee's mandate. Those that do mention prostitution highlight concerns with the poorest prostituted women, lack of effective domestic judicial systems, the necessity of data collection, and a refusal to allow culture to excuse domestic inaction.¹¹⁵

The Committee's focused concern about poverty within the poorest countries suggests a starting point for analysis, but is not necessarily indicative of any particular stance. Poverty as a cause of prostitution can be used to justify both abolition and decriminalization approaches and the Committee members themselves have been identified as divergent in terms of prostitution reform.¹¹⁶ While the Committee's concern for the safety of poor women does not reflect an abolitionist approach to prostitution, the Committee is particularly uneasy about the lack of available options for women who may have entered the prostitution trade.

In its most recent summary record, the Committee commented that the Uganda report "conveyed a sense of hopelessness concerning the relationship between

111. ProCon.Org, *supra* note 108. In Japan, for example, anything non-coital is legal, but coital prostitution is sanctioned. *Id.* This is presumably to support the popular massage parlor and bathhouse culture, and is connected to the history of "comfort women" in Japan.

112. In India, prostitution per se is not a crime but prostitution in public places and soliciting is a crime. The law provides for punishment for both the woman and client, but in practice the number of cases booked on a client are far and few compared to that of the cases booked against the woman. CEDAW/C/IND/2-3, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women*, Combined third and fourth periodic reports of States parties, India, ¶ 137, (Oct. 19, 2005), available at <http://www.un.org/womenwatch/daw/cedaw/cedaw36/India2-3E.pdf>.

113. *Id.*

114. See CEDAW/C/SR.545, *Consideration of reports submitted by States parties under article 18 of the convention, Third and Fourth periodic reports of Sri Lanka*, (Feb 2, 2002), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/232/62/PDF/N0223262.pdf?OpenElement>.

115. *Id.*

116. Julia L. Ernst, Review Essay, *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*, in 13 MELBOURNE J. OF INT'L LAW 890, 900-01 and n. 37 (Marsha Freeman & Christine Chinkin eds., 2012).

widespread poverty, trafficking and prostitution.”¹¹⁷ In Senegal correspondingly, of note was the fact that women were frequently brought into prostitution by unemployment¹¹⁸ and in Nepal, the Committee acknowledged poverty as the primary cause of trafficking which would not exist without prostitution. By pointing specific concerns at the relationship between poverty and prostitution and requesting a response from States on how this relationship is being managed, the Committee implicitly acknowledges that the concept of choice is simply not the same when the choosing occurs within a context of poverty. This appears to be aligned with abolitionist Shelagh Day’s analysis of starting the conversation of prostitution reform from the perspective of the poorest, most vulnerable women. No matter where one finds themselves on the prostitution debate spectrum, at the very least this confirms the logic behind putting the poorest women at the heart of the analysis.

Regardless of the domestic treatment of prostitution, the Committee has regularly criticized any inability to prosecute prostitution activities as in need of domestic legislative remedies. In this way, the importance of effective judicial systems to prevent impunity are underlined. When questioning Uganda, one Committee member noted that “there were virtually no prosecutions or convictions of offenders and ...she asked how the Government planned to address that gross violation of women’s human rights.”¹¹⁹ A Committee member noted that in Russia, even though illegal, “prostitution continued to be regarded as an administrative offence ... and women engaging in prostitution might only incur a small fine.”¹²⁰ In India, the Committee noted that “though the law proposes to penalize the institution, i.e., the traffickers, brothel keepers, pimp and touts, in practice, the women are penalized and victimized more often than the traffickers.” Notably, the Indian delegate explained that amendments to the current laws are being considered, to “decriminalize prostitutes and [make] the law more stringent against the traffickers.”¹²¹ It appears through this dialogue, that the Committee adopts an approach to prostitution that is far from pro-decriminalization.

While conducting an assessment of the Committee’s approach, it is important to

117. CEDAW/C/SR.575, Consideration of reports submitted by state parties under article 18 of the Convention, *Third periodic report of Uganda*, ¶ 23, (Jan. 15, 2003), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/516/46/PDF/N0251646.pdf?OpenElement>.

118. CEDAW/C/SR.247, Committee on the Elimination of Discrimination Against Women, Thirteenth session, Summary record of 247th meeting, ¶ 30, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/801/98/PDF/N9480198.pdf?OpenElement>.

119. *Id.* at ¶ 23.

120. CEDAW/C/GUA/6, Consideration of reports submitted by States parties under article 18 of CEDAW, *Fifth periodic report of the Russian Federation*, ¶ 10, (Feb. 1, 2004), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/231/14/PDF/N0223114.pdf?OpenElement>.

121. CEDAW/C/IND/2-3, *supra* note 134, at ¶ 142.

note the scarcity of data that was used to assess prostitution in each country. Overwhelmingly across almost all of the countries surveyed, the lack of accurate data or statistics on the numbers of prostitutes is a constant barrier to the Committee's full understanding of this issue.¹²²

While it may be practically difficult to institute an empirical study on numbers of prostitutes given that they may be transient or difficult to track, the fact that in many countries prostitutes are not statistically accounted for is difficult to rationalize. Some feminists have argued that the invisibility of prostitutes is the strongest evidence of their "second-class citizen" status in the minds of society's leaders. If governments truly cared about this class of people, they would make counting them a greater priority. The extension of this argument of course, is that if the international community truly cared about prostitutes, there would be a mandated system of accounting for prostituted populations, to track their development. The General Assembly has in the past requested that the Statistical Commission and the Secretary-General to develop a possible set of indicators on violence against women, "to assist States in assessing its scope, prevalence and incidence."¹²³ At the time of this article, this initiative has not moved forward, nor has it been directed specifically at prostitutes. Any uniform international approach moving forward must include domestic efforts to collect data on prostituted women within their borders.

The cultural aspects that contextualize prostitution in each country are spoken of with some frequency, both by the Committee and member States. For example, a Committee member has explained prostitution in Guatemala as a "socio-cultural phenomenon [which is] entrenched in society as a result of patriarchal patterns that [have] a major impact on children and adolescents"¹²⁴ Other times, it is simply addressed as being deeply rooted in patriarchy and gender inequality, even in countries in which prostitution is illegal. In Guatemala, the Committee noted "the prevalence of prostitution, [which] was not classified as a criminal offence but had become a cultural phenomenon encouraging the enslavement and exploitation of

122. CEDAW/C/SR.544, *supra* note 130 at ¶ 17. (Russian delegate regretting that statistics on prostitution numbers not being broken down by sex). CEDAW/C/KHM/1-3, Consideration of reports submitted by States parties under article 18 of CEDAW, *Combined initial, second and third periodic reports of State parties*, Cambodia ¶ 157, (Feb. 11, 2004), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/241/21/PDF/N0424121.pdf?OpenElement>. ("There is no accurate data available on trafficking and prostitution."). CEDAW/C/SR.646, *supra* note 134 at ¶ 21. ("Committee member asking for facts and figures on prostitution in Ethiopia."). CEDAW/C/IND/2-3 *supra* note 134, at ¶ 138. ("No systematic study done nor is there any database on women in prostitution.").

123. Manjoo, *supra* note 31, at 10. This initiative was meant to be in consultation with the Commission on the Status of Women, and building on the work undertaken by the Special Rapporteur on violence against women.

124. CEDAW/C/GUA/6, *supra* note 136, at ¶ 16.

women. The reporting State should indicate whether progress had been made in promoting the concept of women as social equals.”¹²⁵ Prostitution is further described by States themselves as considered “socially unacceptable”¹²⁶ prostitutes as “deviants” and “morally judged as characterless women.”¹²⁷

While culture has been used to justify the need for State sovereignty in dealing with prostitution, it should not be used as an excuse for inaction and the Special Rapporteur on violence against women has explicitly renounced cultural relativism as a justification for violence against women.¹²⁸ This renunciation and other UN efforts made towards changing the attitude and environment of countries as a way to achieve gender equity, suggests that the idea that “prostitution is the oldest profession and will always be around” simply will not stand. As most know, history is largely socially constructed and has at least the potential to evolve with our growing understanding and empathy. As abolitionists suggest, simply because a harmful practice may have existed for centuries should not inhibit efforts to end it today.

VI. Conclusions and Recommendations

The UN and the international community have made various attempts over the past century to eradicate forced prostitution. These efforts have been criticized as being ineffective, largely due to lack of a “universal rallying point.”¹²⁹ While the global debate concerning prostitution policy rages on, proponents on all sides can agree that there is no benefit to the inconsistent state of affairs currently embodied by the UN and other international instruments.

Considering the obligation of the UN and its member States to protect the fundamental rights of women, a concerted effort towards eradicating prostitution is far overdue. Efforts to curb prostitution by the international community over the past century have not offered clear directives to States about how to deal with this issue. The time has come to gather the political will necessary to mobilize a uniform approach to prostitution reform.

While there is no one-size fits all method, particularly concerning such a

125. CEDAW/C/SR.577 Consideration of reports submitted by States parties under article 18 of CEDAW, *Combined third and fourth periodic report and fifth periodic report of Guatemala*, ¶ 47, (Jan. 23, 2003), available at http://www.bayefsky.com/summary/guatemala_cedaw_c_sr_577_2002.pdf.

126. CEDAW/C/ETH/1-3, Consideration of reports submitted by States parties under article 18 of the Convention, Initial, second and third periodic reports of states parties, Ethiopia, ¶ 35, (May 21, 1993), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N95/344/45/IMG/N9534445.pdf?OpenElement>.

127. CEDAW/C/IND/2-3, *supra* note 134, at ¶ 138.

128. Manjoo, *supra* note 31, at 14.

129. Demleitner, *supra* note 2, at 164.

controversial issue, certain pillars of the abolitionist approach are worthy of adopting in the international policy sphere. First, poverty and other items contributing to women's vulnerability must be made central to this analysis, because a world safest for these specific women will benefit all women. Prostitution should not be permitted by governments as a method of work when poverty is exercising such a potent coercive force in these women's lives. With a level of coercion often constituting life or death, the notion of "choice" is not reasonably made, as decriminalization proponents suggest.

Second, the female/male power dynamic must not be ignored in a discussion of the model of prostitution law that is the safest for the most vulnerable women. This involves understanding that prostitution, especially in the poorest countries, is inherently contradictory to modern international norms of equal work. If men and women enjoyed substantive equality, there would be no need for Covenants such as CEDAW and CSTPEPO, among others, and women could more reasonably fairly choose prostitution as a profession. Ignoring the gendered aspect of prostitution, and instead suggesting that it could be subjected to labor laws like any other job, seems to contradict essential CEDAW and UN policies of integrating gender analysis throughout its work.¹³⁰

Third, State sovereignty must still be protected, however, this must be balanced with the urgent necessity to end prostitution, and States must take certain steps within their borders to that end. If the universal, inalienable right of women to be free from violence is to be protected, no longer can prostitution be considered a purely domestic issue. It is high time for the UN to formally adopt an abolitionist approach to prostitution and use everything within their power to direct State parties to do the same.

130. See UN Women: United Nations Entity for Gender Equality and the Empowerment of Women, *Gender Mainstreaming*, available at <http://www.un.org/womenwatch/osagi/gendermainstreaming.htm>.