

**Prepared Statement of
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House Armed Services Committee
Commission on Security and Cooperation in Europe
“Implementation of DOD Policy with Regard to Trafficking in Humans”
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Mr. Chairman and Members of the Committees:

It is an honor to testify before you today on the issue of Department of Defense policy on trafficking in persons. My name is Martina Vandenberg, and I am an attorney in private practice with the firm of Jenner & Block and the author of the Human Rights Watch report, *Hopes Betrayed: Trafficking in Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution*. I would like to thank Congressman Hunter, Congressman Smith, and all the members for providing a rare opportunity to address an issue too often ignored and neglected: impunity for traffickers and links to peacekeeping operations.

I will focus today on three key areas. First, I will provide a brief synopsis of the findings of the Human Rights Watch report and examine the history of impunity for U.S. contractors in Bosnia-Herzegovina. Second, I will examine the Military Extraterritorial Jurisdiction Act and its usefulness as a tool to combat trafficking. And third, I will provide an evaluation of the Department of Defense’s implementation efforts, including the requirements set forth in National Security Presidential Directive-22 (NSPD-22).

I. Impunity for Contractors and Trafficking in Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution.

By 1998, brothels and nightclubs littered the countryside in Bosnia and Herzegovina, many of them filled with women and girls trafficked from the former Soviet Union. Stripped of their passports, physically and sexually abused, sold from “owner” to “owner,” and trapped in debt bondage, these women and girls found themselves forced to provide sexual services to paying clients, both local and foreign. Traffickers’ promises of lucrative opportunities in Western Europe as waitresses, dancers, housekeepers and in the sex industry evaporated upon arrival in Bosnia and Herzegovina, where the women quickly learned that they would earn no money.

Human Rights Watch uncovered at least eight cases of U.S. personnel who allegedly purchased trafficked women and girls. Let me give you just one example. On June 26, 2000, a young woman appeared at a United Nations International Police Task Force (IPTF) office in Bosnia and Herzegovina. According to the official incident report, an American contractor serving with the Stabilization Force (SFOR) had purchased her from a brothel owner for 3,000 Deutsch Marks (approximately U.S. \$1,388).¹ After the purchase, she lived with the American contractor in his private house in Dubrave, near a U.S. military base. According to the International Police Task Force officer who interviewed the woman, “[The] girl was sold, and her last owner was [a U.S.

¹ IPTF Incident Report, Tuzla, June 26, 2000.

contractor]. He bought her for himself. . . She lived with him like a prostitute.”² Moreover, the purchase by the U.S. contractor marked the third time she had been sold. Traffickers had promised her a job in Italy as a waitress, but instead sold her first in Hungary and then in Yugoslavia. From there she was trafficked to Bosnia and Herzegovina and forced to provide sexual services in a nightclub near a U.S. military base.

The United Nations Mission in Bosnia and Herzegovina uncovered this case but did nothing. The official IPTF incident report states, “No further meetings with her planned. We do not expect any development of the case.”³ In fact, the case might never have come to light but for a whistleblower, Ben Johnston, who reported the purchase of women from brothels to the U.S. Army Criminal Investigation Division at Eagle Base in Tuzla. Just a few weeks before the trafficking victim turned up at the IPTF station, U.S. Army CID investigators, acting on Johnston’s tip, confronted a U.S. contractor. According to the CID report, the contractor, who I will call “K,” told the investigators that he had purchased the young woman and an Uzi 9mm automatic submachine gun in a package deal from a local brothel owner. In a sworn statement, “K”, a DynCorp employee, claimed that he had bought the young woman to free her and that she lived with him “as a housemate.”⁴ CID referred the case to the local police for prosecution for illegal possession of a weapon and procuring and pandering. “K” immediately left the country.

In all, Johnston identified eight DynCorp employees who allegedly admitted to him that they had purchased women and girls from brothels in 1999 and 2000. Some had used the women for sexual services and as domestic servants. After Johnston leveled these charges against his fellow workers, the U.S. Army placed him in protective custody. DynCorp fired him. His official letter of discharge from DynCorp stated that he had committed “misconduct, violations of standards and conditions of employment” by bringing “discredit to the company and the U.S. Army while working in Tuzla, Bosnia and Herzegovina.” Johnston sued, and in August 2002, DynCorp settled with him for an undisclosed sum.

The DynCorp employees who returned home in 1999 and 2000 after allegations of involvement in trafficking surfaced enjoyed impunity. Not one faced criminal prosecution.⁵

Local police officials in Bosnia and Herzegovina certainly knew about U.S. contractor involvement in trafficking-related activities. Local police had even videotaped the nightclub parking lots, filled with U.S. vehicles bearing contractor plates. The chief of police in Zivinice, a village near the U.S. SFOR Eagle Base, told me in an interview:

² Author’s interview with IPTF human rights officer [name withheld], Tuzla, March 24, 2001. See Human Rights Watch, *Hopes Betrayed: Trafficking in Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution*, Vol. 14, No. 9(D), p. 66 (November 2002) (available at <http://www.hrw.org/reports/2002/bosnia/>).

³ IPTF Incident Report, Tuzla, June 26, 2000.

⁴ United States Criminal Investigation Command, “Sworn Statement,” File number 0065-00CID597, Tuzla, Bosnia and Herzegovina, June 2, 2000.

⁵ *Hopes Betrayed*, p. 68, fn. 378.

Two times DynCorp employees were sent home [to the United States]. Maybe four or six were sent home. The girls talked about ["K"], and they have ["K"] on video. One of the guys made porno movies with two of the women. It is a crime in Bosnia. We couldn't bring charges against him under Annex IA of [the Dayton Agreement]. That annex states that people who are in the IC [international community] mission are not under our jurisdiction. They will be prosecuted in their own countries. When we find a foreigner is involved, this is the biggest problem for us. We can't do anything against them - they are above the law.⁶

The involvement of U.S. contractors in trafficking in Bosnia and Herzegovina not only undermined efforts to establish rule of law, it also exacerbated the already rampant corruption among local law enforcement authorities. The United Nations Mission in Bosnia and Herzegovina documented another case in which a U.S. contractor allegedly paid two local police officers 300 Deutsch Marks (\$138) to obtain a fraudulent visa to regularize the status of a Moldovan woman purchased from a brothel owner. Neither the contractor, nor the police officers who allegedly accepted the bribe, faced criminal penalties.

As the examples above illustrate, at the time of the Human Rights Watch investigation (1999-2002), impunity for trafficking was the rule, not the exception. This held true for DoD contractors as well as contractors working for other federal agencies, such as the Department of State. In testimony before Congress in 2002, Robert Gifford of the State Department Bureau for International Narcotics and Law Enforcement Affairs testified that six U.S. police officers had been sent home from Bosnia and Herzegovina for "sexual misconduct."⁷ A December 2001 internal State Department memorandum, obtained by Human Rights Watch through a FOIA request, documented one particularly egregious case:

In a fairly clear-cut case, an American officer was fired after he admitted that he "bought out the contract" of a 19-year-old woman trafficked from Russia with whom he co-habitated for six months.⁸

Again, the U.S. contractor was fired, but faced no criminal charges. At the time, zero tolerance - of a kind - pervaded the contractor community: not the "zero tolerance" touted in NSPD-22, but zero tolerance for whistleblowers. In addition to Ben Johnston, Kathryn Bolkovac, an International Police Task Force officer through a Department of State contract, made allegations that fellow IPTF officers had purchased trafficking victims and engaged in trafficking-related offenses. She was also fired.

⁶ Author's interview, March 27, 2001.

⁷ "The U.N. and the Sex Slave Trade in Bosnia; Isolated Case or Larger Problem in the U.N. System?", Hearing before the Subcommittee on International Operations and Human Rights of the Committee on International Relations of the House of Representatives, 107th Congress, April 24, 2002, Serial no. 107-85 (available at http://commdocs.house.gov/committees/intlrel/hfa78948.000/hfa78948_of.htm).

⁸ Information Memorandum, "Trafficking in Women in Bosnia - Recent Events," 10 December 2001, S/S No. 200020567.

II. The Military Extraterritorial Jurisdiction Act of 2000

At the time these allegations emerged, the Military Extraterritorial Jurisdiction Act of 2000 (MEJA) was in place and available for prosecutions of DoD contractors. It was not used. To the best of my knowledge, there has not been a single prosecution of a Department of Defense contractor using MEJA. Make no mistake: that stunning statistic does not reflect an absence of allegations of U.S. contractor involvement in trafficking-related offenses. It reflects a failure of political will to enforce the law.

Four years after passage of MEJA, the U.S. government still has no regulations in place to implement the law fully, and it has rarely been brought to bear in prosecutions. The Department of Defense says that in the past four years, it has used MEJA twice. A search of legal databases turned up only one case, the prosecution of a young civilian woman for killing her husband, an Air Force staff sergeant, in Turkey.⁹

After years of foot-dragging, the Deputy Secretary of Defense forwarded draft regulations for MEJA to the Chairmen and Ranking Members of the Senate and House Judiciary Committees in June of this year. They should take effect later this month. The Department of Defense, while failing to promulgate the regulations required by the statute, always noted that MEJA federal jurisdiction exists even without the implementing regulations. So why no prosecutions? I would point to two factors: the first I have already mentioned - a failure of political will. The second factor - intimately related to the first - is a lack of understanding of the seriousness of trafficking among those charged with investigating these crimes. This ignorance or incompetence has doomed investigations, scuttling potential prosecutions.

The U.S. Army CID investigation in Bosnia provides an egregious example. There, the investigators treated the purchase of an Uzi as more serious than the purchase of a human being, which they classified as "procuring and pandering."¹⁰ The untrained investigators also apparently accepted at face value the DoD contractor's claim that he had "rescued" the Moldovan trafficking victim by purchasing her. Indeed, the final CID report characterized the contractor's purchase of the woman from a nightclub owner as the purchase of her "freedom."¹¹ There is no evidence in the report that the investigators ever interviewed the trafficking victim. Yet it is obviously the victim, not the perpetrator, who can say whether she was "rescued" or simply purchased as chattel to be held in sexual servitude by yet another "owner." Without effective training for military investigators, U.S. contractors committing trafficking offenses may continue to enjoy impunity and even to portray themselves as heroes freeing "sex slaves" from bondage.

⁹ The case ended in a mistrial.

¹⁰ Although these crimes occurred before the passage of the Trafficking Victims Protection Act of 2000 (Public Law 106-386), prosecutors could have potentially lodged charges under several other federal criminal statutes.

¹¹ Department of the Army, U.S. Army Criminal Investigations Command, 48th MP Detachment (CID), Eagle Base, Bosnia and Herzegovina, "CID Report of Investigation," p. 1.

The absence of trafficking prosecutions among U.S. Department of Defense contractors, who clearly fall within MEJA's ambit, has sent a strong message that "zero tolerance" is nothing more than rhetoric. This is particularly true in light of the widely publicized allegations made by Johnston, the whistleblower, who accused fellow DynCorp employees of trafficking in women and girls in Congressional testimony on April 24, 2002.¹²

While the regulations that take effect this month may aid in the belated implementation of MEJA, they cannot plug the jurisdictional gaps left by the Act itself. MEJA covers only Department of Defense contractors, excluding individuals employed under contracts with any other agency - including the Department of State, the Central Intelligence Agency, and the Department of the Interior. While the torture scandals in Iraq and Afghanistan catapulted MEJA into the public eye, experts investigating the involvement of U.S. citizens in human trafficking in the Balkans had already concluded that MEJA was deeply flawed. Just as MEJA's extremely limited coverage and scope prevented it from being used to prosecute CIA and Department of Interior contractors accused of torture in Afghanistan and Iraq, so too MEJA failed to provide jurisdiction to prosecute U.S. police officers accused of trafficking-related offenses in Bosnia and Herzegovina while on contract to the Department of State.

Two and a half years ago, trafficking experts began advocating for the passage of an amendment to MEJA that would close this jurisdictional gap. Bush Administration officials have repeatedly said that they were drafting such an amendment. On April 24, 2002, Ambassador Nancy Ely-Raphel, then-Director of the State Department's Office to Monitor and Combat Trafficking in Persons, testified that "the Criminal Division [of the Justice Department] is currently drafting a proposed amendment to MEJA of 2000 that would extend federal jurisdiction to include all U.S. government employees and contractors who work in a law enforcement capacity abroad."¹³ Four years later, we still do not have such an amendment in place.

Since the allegations of torture by U.S. contractors in Afghanistan and Iraq, there has been a flurry of amendments. On May 19, 2004, Congressmen Shays and Price introduced a bill on contractor accountability. The Price-Shays bill, HR 4390 (the "MEJA Clarification Act"), would extend application of MEJA to "any civilian employee, contractor, or subcontractor of DoD or any other federal agency that is supporting the mission of DoD or working in an occupied territory."¹⁴ On May 18, 2004, Congressman Meehan introduced a similar bill, the "Contractor Accountability Act," HR 4387, designed to extend jurisdiction to any contractor of "any other Federal agency...to the extent that such employment relates to supporting the mission of the Department of Defense overseas." In June 2004, the Senate approved the Sessions and Schumer Amendment to the Fiscal Year 2005 defense authorization bill. The amendment extended jurisdiction to persons working for any federal agency "in support of a Defense Department mission abroad."

¹² Testimony of Ben Johnston, "The U.N. and the Sex Slave Trade in Bosnia; Isolated Case or Larger Problem in the U.N. System?", April 24, 2002.

¹³ Testimony of Nancy Ely-Raphel, "The U.N. and the Sex Slave Trade in Bosnia: Isolated Case or Larger Problem in the U.N. System," April 24, 2002.

¹⁴ U.S. Representative David Price Press Release, May 20, 2004 (available at http://www.house.gov/apps/list/press/nc04_price/price_shays.html)

But these amendments, responding to public outrage over the Abu Ghraib scandal, would do little to remedy the jurisdictional gap identified by trafficking experts.¹⁵ The language of these all three amendments still requires a nexus to the Department of Defense. While the amendments would certainly help clarify the application of MEJA to DoD contractors, the trafficking offenses allegedly committed by U.S. police officers serving with United Nations missions in Kosovo and Bosnia and Herzegovina as Department of State contractors would not fall under the extended jurisdiction, allowing these perpetrators to continue to enjoy impunity.

The current jurisdictional picture appears fairly bleak. Department of Defense contractors legally can be prosecuted, but are not. And even if one of the House amendments should pass, State Department contractors serving with international organizations abroad still could not be prosecuted. With status of forces agreements (SOFAs) guaranteeing immunity from domestic prosecution in Bosnia and Herzegovina and around the world, the lack of prosecution in the United States means that impunity remains the rule.

III. NSPD-22 and Department of Defense Implementation Efforts

I will close with an assessment of the Department of Defense's implementation of NSPD-22, released on December 16, 2002. The Directive states, "Department and agency heads shall, within 90 days of the effective date of this Directive, promulgate plans to implement this Directive."¹⁶ Based on that deadline, a plan should have been in place within the Department of Defense in March 2003. It is now September 2004, eighteen months later, and time for an evaluation:¹⁷

- **Training:** The Department of Defense does not yet have a training module in place. The proposed module, which I and several colleagues had an opportunity to review briefly in a meeting with DoD, was drafted by a DoD subcontractor with absolutely no prior expertise on trafficking. Although a more recent, revised version of the module is much improved, incorporating some of the recommendations made by non-governmental organization experts, in my opinion it does not go far enough to challenge the deep-seated passivity or ignorance about trafficking offenses that we have seen in Bosnia and Herzegovina. The module relies on a lecture format with PowerPoint slides, failing to engage the audience with the kind of personal case studies or discussions that can shake callous attitudes toward prostitutes and inspire investigators to treat trafficking as the outrageous human rights violation that it is.

¹⁵ The Department of Justice brought the indictment of David Passaro, the CIA contractor accused of torture in Afghanistan, under Title 18, Section 7(9), which extends U.S. jurisdiction to cover U.S. bases, buildings, and residential units abroad. It is unlikely, but possible, that this jurisdictional provision could be used to prosecute non-DOD contractors accused of trafficking.

¹⁶ NSPD-22, p. 8.

¹⁷ This assessment reflects only the situation in the Balkans, and does not include South Korea. I have not conducted trafficking research in South Korea.

- **Contractor accountability:** Although required by NSPD-22 and the Trafficking Victims Protection Reauthorization Act of 2003, 22 U.S.C. 7101 (PL 108-193), the Department of Defense has apparently not yet incorporated a condition into existing contracts permitting termination of grants, contracts, or cooperative agreements if the contractor engages in trafficking or uses forced labor in the performance of the grant, contract, or cooperative agreement. Nor has DoD yet promulgated a new clause for the Defense Federal Acquisition Regulations Supplement (DFARS) for inclusion in all future contracts. And although the Inspector General’s Phase II Report on Bosnia and Herzegovina and Kosovo envisions imposition of administrative penalties on contractors, it does not appear that any such sanctions have ever been imposed.
- **Evaluation programs and the need for benchmarks:** The Inspector General’s reports on South Korea and Bosnia and Herzegovina indicate that there is a need for enhanced training on investigative techniques relating to trafficking. One fundamental gap pervades trafficking investigations by the U.S. government: the lack of trafficking victims’ testimonies. The women’s voices -- and their side of the story -- are often missing. As noted above, without direct testimony from trafficking victims, a U.S. contractor purchasing trafficking victims can claim that he has committed a “rescue” and not a crime. While this would certainly run afoul of the zero tolerance policy, it is unclear whether it would trigger a criminal prosecution. As the DoD develops benchmarks to measure adherence to the zero tolerance policy, it must develop mechanisms for incorporating the experiences of trafficking victims into the evaluation. Finally, DoD must provide immediate and specialized training for agents tasked with investigating trafficking allegations.
- **Victim assistance:** NSPD-22 states, “The policy of the United States is to treat trafficked people as victims.” So far, the DoD has treated trafficking victims as largely invisible, or as willing participants complicit in the crime. The MEJA regulations make no mention of victims whatsoever, leaving open the question of how testimony against U.S. contractors will be gathered and presented. The reality is, victims cannot agree to testify against traffickers without some form of witness protection. It does not appear that DoD has considered the need to protect or assist victims, or to coordinate with non-governmental organizations in the field that provide assistance to victims.
- **MEJA implementation:** Although we are now mere days away from the regulations’ entry into force, political will and sophisticated criminal investigations will be necessary to bring effective prosecutions. Political will must come from the top down, beginning with the Office of the Secretary of Defense. Sophisticated investigations, on the other hand, require a bottom-up approach, which is why vigorous training, financial support, statutory tools, and careful supervision are necessary.
- **MEJA amendment:** The Department of Defense has contracted with some civilian agencies through the Department of Interior and other agencies. DoD should immediately and wholeheartedly support efforts to amend MEJA to cover contractors that are outside the narrow scope of MEJA’s jurisdiction.

- **Intelligence and information gathering:** the DoD Inspector General's report on Bosnia and Kosovo, published in December 2003, concluded that the information the inspectors were able to collect in the field "suggests that DoD contractor employees may have more than a limited role in human trafficking. We were unable to gather more evidence of it precisely because there are no requirements and no procedures in place compelling contractors to gather such information regarding their employees or to report it to U.S. military authorities."¹⁸ It does not appear that DoD has subsequently put any of these reporting requirements or procedures in place.
- **Cooperation with local law enforcement:** NSPD-22 calls for "cooperation on investigations and prosecutions...as appropriate" with local law enforcement agencies. As noted above, law enforcement officials in Bosnia and Herzegovina viewed the United States as more of a hindrance than a help to anti-trafficking investigations. In some cases, U.S. contractors who could have served as witnesses in criminal cases against local traffickers boarded the next plane home after being caught in brothel raids by local police and International Police Task Force officers. As the Bosnian police chief aptly stated, U.S. contractors remain "above the law." DoD needs to take steps to ensure that those individuals who can give relevant testimony remain to do so.
- **Ending impunity:** U.S. DoD contractors in Bosnia and Herzegovina, who are in theory subject to local prosecution for crimes outside the scope of their functional immunity, could have been prosecuted for trafficking-related offenses by local authorities under the Dayton Agreement. However, local authorities feared bringing such prosecutions. One local NGO activist from Bosnia and Herzegovina told participants at a NATO side meeting that victims who wish to bring charges against their traffickers are advised to remain silent about any involvement of U.S. personnel. Allegations of U.S. involvement are the fastest way to scuttle a prosecution, even of a local trafficker, the activist said. DoD should foster, rather than hamper, cooperation with local prosecutors, even if it opts to invoke U.S. jurisdiction over U.S. citizens. At present, DoD is neither effectively facilitating the prosecution of trafficking offenders in the United States nor is it helping local prosecutors to hold traffickers accountable.

V. CONCLUSIONS

The recent anti-trafficking policy memoranda released by Deputy Secretary of Defense Paul Wolfowitz (January 30, 2004) and Secretary Donald Rumsfeld (September 16, 2004) are commendable for their strongly worded condemnations of all forms of trafficking - including involuntary servitude and debt bondage - and their frank recognition of the role that DoD contractors can play in trafficking in peacekeeping operations. But, DoD's actions do not match this ambitious rhetoric. Secretary Rumsfeld's stated commitment to take "every step possible to combat Trafficking in Persons" has not translated into results in the field. Without implementation, the stated policy of "zero tolerance" will make zero difference in the lives of trafficking victims. Zero prosecutions speaks for itself.

¹⁸ Office of the Inspector General, "Assessment of DoD Efforts to Combat Trafficking in Persons: Phase II Bosnia-Herzegovina and Kosovo," December 8, 2003, p. 25.