International Stability Operations Association – White Paper

Combatting Trafficking in Persons (CTIP): A Conundrum for Contractors

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Trafficking in persons refers to the subjection of men, women[1] or children, to exploitative conditions for financial gain.[2] The immoral and illegal exploitation of human beings has persisted throughout history across the globe, and even the United States is not immune to this scourge. Unfortunately, some employees who support U.S. overseas contingency operations (OCOs) are victims of human trafficking and contractors are in the unenviable position of being viewed as part of the problem. Presently several large government contracting companies, primary contractors (primes), find themselves in a Catch-22 situation. One the one hand, they are deeply committed to combatting human trafficking. On the other, they may find themselves not able to compete for overseas contracts unless they sub-contract much of the work out to non-U.S. smaller sub-prime contractors (subs), some of which work within legal systems weak on human rights and with little transparency or oversight. As such, contractors supporting OCOs may find themselves in this CTIP conundrum. This paper argues that the current CTIP regulations may be putting ethical contractors at a disadvantage and therefore undermining the essence of the United States CTIP policy. It is recommended that the Federal Acquisition Regulation (FAR) be amended to contain language whereby the United States government supports contractors with robust CTIP compliance plans to include giving priority to contractors with a documented record of CTIP compliance.

TRAFFICKING: Trafficking[3], is any form of forced labor—to include debt bondage,[4] domestic servitude,[5] and sex trafficking.[6] Human trafficking does not require the movement of persons

[1] According to the *United Nations Global Report on Trafficking* (2009) women make up the largest proportion of traffickers of other women. http://www.unodc.org/documents/data-andnalysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf

[2] Although children may legally engage in certain forms of work, children can also be found in slavery or slavery-like situations. Child soldiering is a manifestation of human trafficking when it involves the unlawful recruitment or use of children—through force, fraud, or coercion—by armed forces as combatants or other forms of labor.

[3] 18 US Code Chapter 77. See key statutes – 1581 – debt bondage; 1583 and 1584 – enticement into slavery and sale into involuntary servitude, as well as 1589 – forced labor and 1590, 1591, and 1592 (trafficking with respect to peonage, slavery, involuntary servitude and forced labor; sex trafficking of children or by force, fraud, or coercion; and unlawful conduct with respect to documents (document tampering, visa fraud, etc.).

[4] One form of coercion used by traffickers in both sex trafficking and forced labor is the imposition of a bond or debt, where the salary amount makes it nearly impossible to get out of the labor contract.

[5] Involuntary domestic servitude is a form of human trafficking where a domestic worker is not free to leave his or her employment and is abused and underpaid, if paid at all.

[6] When an adult engages in a commercial sex act, such as prostitution, as the result of force, threats of force, fraud, coercion or any combination of such means, that person is a victim of trafficking even that person initially consented.

from one country to another. Human trafficking is differentiated from human smuggling as the latter is usually done with the person's full knowledge and consent of the person(s) being smuggled. Trafficking is not consensual.

An estimated 40 to 45 million people worldwide are trapped in modern-day slavery.[7] Underlying all of this is money. The International Labor Organization estimates that forced labor is a $150 billion-dollar global industry.[8] Some scholars even claim that in the present market, where keeping slaves is relatively cheap, trafficking human beings is more profitable than drugs, weapons, or any other kind of contraband.[9]

Of these millions, approximately 64% are exploited for labor, 19% are sexually exploited, and 17% are exploited through state-imposed forced labor.[10] While 19% of victims are trafficked for sex, sexual exploitation earns 66% of the global profits of human trafficking and can yield a return on investment ranging from 100% to 1,000%. Other forms of non-sexual enslaved labor show less profit, approximately 50 percent.[11]

According to the United Nations trafficking protocol, trafficking in person has three elements: (1) an action, consisting of "recruitment, transportation, transfer, harboring, or receipt of persons;" (2) by means of "the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, or the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve consent of a person having control over another person;" (3) "for the purpose of exploitation."[12] The relevant aspect of trafficking, then, is the traffickers' aim or intent to exploit and enslave their victims through coercive and deceptive practices and intent is often difficult to see and therefore prevent.

LAW and POLICY: The Department of Defense (DoD), the United States' largest contracting agency, has taken numerous actions to combat the trafficking in persons (CTIP).[13] The cornerstone CTIP law is the October 2000 legislation known as the *Trafficking Victims*

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[7] Numbers vary. See for example: Global Slavery Index at https://www.globalslaveryindex.org/ and the Alliance 8.7 Global Estimates of Modern Slavery at http://www.alliance87.org/2017ge/modernslavery#!section=0

[8] Polaris Project, https://polarisproject.org/human-trafficking/facts

[9] Elsie Gonzalez, "The Nexus between Human Trafficking and Terrorism/Organized Crime: Combatting Human Trafficking by Creating a Cooperative Law Enforcement System," *Seton Hall University*, May 1, 201, p.18.

[10] Human Rights First, https://www.humanrightsfirst.org/resource/human-trafficking-numbers For example, in Qatar NGOs are gathering data of the severity of exploitation of workers for forthcoming Olympics.

[11] Organization for Security and Co-operation in Europe, www.osce.org

[12] "Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime," *The United Nations*, November 15, 200.

[13] Some relevant links include: DoD CTIP Information Paper; Strategic Plan for CTIP 2014 - 2018; DoD CTIP Task Force Charter; Federal Strategic Action Plan on Services for Victims of Human Trafficking; Federal Strategic Action Plan on Services for Victims of Trafficking Status Report FY 2016; GAO Report on Human Trafficking: Agencies Have Taken Steps to Assess Prevalence, Address Victims Issues, and Avoid Grant Duplications; GAO Report on Human Trafficking: Actions Taken to Implement Related Statutory Provisions; Testimony Before the Committee on the Judiciary, U.S. Senate: Human Trafficking Implementation of Related Statutory Provisions, Law Enforcement Efforts, and Grant Funding; President's Interagency Task Force to Monitor and Combat Trafficking in Persons Report on Child Trafficking Primary Prevention.

Protection Act of 2000 (TVPA).[14] The three federal departments tasked with carrying out the law's objectives are the Department of State, the Department of Homeland Security and the Department of Justice, specifically regarding prosecutions. The law's focus, however, is primarily administering and resourcing protection mechanisms for victims of trafficking in the United States, not preventing trafficking globally.

Since then there have been additional policy documents attempting to strengthen CTIP accountability including Executive Order (EO) 13627, "Strengthening Protections Against Trafficking in Persons in Federal Contracts," published in 2012. This EO specifically targets supply chain[15] challenges, such as counterfeit parts, black market goods, and illicit services attract those who exploit workers. It said to have given teeth to the USG's zero tolerance policy on human trafficking in government contracting.[16] However, many in the community argue that more regulation is needed.

In February 2017 the Trump administration released "Presidential Executive Order on Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking,"[17] and confirmed the commitment to fight human trafficking and reaffirming the 2013 Federal Acquisition Regulation (FAR) 52.222-50's requirements.[18]

- **FAR Subpart 22.17:** Prescribes overall federal regulation implementing 22 U.S.C. 7104 which applies to all acquisitions. Requires government contracts to (a) Prohibit contractors, contractor employees, subcontractors, and subcontractor employees from engaging in trafficking in persons during the period of performance of the contract. (See FAR Provision 52.222-56 and FAR Clause 52.222-50.)[19]

TRAFFICKING and U.S. CONTRACTING: Despite the collection of laws and regulations CTIP compliance, especially for subs, remains a challenge. Although the U.S. Government has adopted a "zero-tolerance" policy against trafficking, such policies hold little weight as most offenses go unpunished. Though primes are the responsible parties, much of their OCO labor is

[14] Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat.1464 (codified as amended U.S.C. § 7010-12), 2006.
[15] Long and complex supply chains that cross multiple borders and rely on an array of subcontractors impede traceability and make it challenging to verify that the goods and services bought and sold every day are untouched by modern-day slaves. This means consumers of goods and services may be connected to human trafficking. Department of State, "Preventing Human Trafficking in Global Supply Chains," Office To Monitor and Combat Trafficking in Persons Report 2015.
[16] Sharron Welch, "Human Trafficking and Terrorism: Utilizing National Security Resources to Present Human trafficking in the Islamic State," *Duke Journal of Gender Law and Policy*, Vol.24, 2017, pp.165-188, p.175.
[17] Executive Order, "Presidential Executive Order on Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking," February 9, 2017.
[18] Jennifer Plitsch and Alexander Hastings, Trump's Commitment Against Human Trafficking Brings Greater Uncertainty for Contractors," *Inside Government Contracts*, February 27, 2017. https://www.insidegovernmentcontracts.com/2017/02/trumps-commitment-human-trafficking-brings-greater-uncertainty-contractors/
[19] In addition, there exists the Defense Federal Acquisition Regulations (DFARS) Subpart 222.17 which prescribes unique Defense regulation implementing policy and guidance for Defense contracts. Provides useful information regarding Quality Assurance Surveillance Plans (QASP), the role of the COR in monitoring the contractor's CTIP compliance, and requirements if there is CTIP violation. (See DFARS Provision 252.222-7007.)

subcontracted and the subs, mostly non-U.S. owned and run, face little opposition from their home governments. As such non-U.S. subs regularly participate in deceptive hiring practices and other forms of abuse.

According to U.S. Central Command (CENTCOM), "thousands" of "other country nationals" (OCNs) are hired under government contracts to work in U.S. military missions in Iraq and Afghanistan. These workers perform low-wage essential services, which may include construction, security, and food services. [20] Across all overseas contingency operations, the numbers reach well into the hundreds of thousands. During the 2008 timeframe, there were an estimated 190,000 contractors in Iraq.[21] And in 2013, Kandahar Air Base, Afghanistan, alone had an estimated 25,000 people stationed there in support of Operation Enduring Freedom, more than 900 of them were OCNs.[22]

Where the United States government has ongoing OCOs the need for the quick deployment of a large labor force, combined with a promise of U.S. dollars, creates an environment ripe for exploitation. OCNs from economically depressed regions of the world seeking a way to send money home to feed their families are especially vulnerable. Since 2002 cases abound involving laborers being tricked with false promises of lucrative jobs in rich Gulf states, who are then coerced into accepting work in Afghanistan or Iraq, where they then have their passports confiscated, their pay minimized or withheld, and find themselves with no way to leave the situation and return home. A 2014 Government Accountability Office (GAO) report found that foreign workers employed on large U.S. contracts in Afghanistan and Iraq often paid recruitment fees in the thousands of dollars to subs and recruitment agencies, a strong indicator of trafficking.[23]

Stories abound of workers having their passports confiscated, being told they owe most of their pay to their employer or were simply left on base to fend for themselves once their contract ended, with no way to get home and no authorization for housing or food. Anecdotes depicting beatings, false imprisonment, and persons being forced off base into Iraq or Afghanistan without security or funds, though not as frequent, are not unheard of. Such incidents, however, often remained unreported through official channels and therefore impossible to corroborate. Nonetheless, they cannot be dismissed out of hand.[24]

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[20] http://ctip.defense.gov/Portals/12/Documents/Leadership%20Toolkit%20Fact%20Sheet%20v11%20CENTCOM.pdf?ver=2017-01-11-134022-370

[21] Congressional Budget Office, "Contractors in Support to U.S. Operations in Iraq," CBO 3053, 2007-2008. http://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/08-12-iraqcontractors.pdf

[22] Sharonda Pearson, "401st AFSB Boasts Dedicated, Diverse Workforce," *Public Affairs Army.mil*, December 13, 2013.

[23] A number of workers reported paying an average of approximately $3,000 to secure employment and the payment of such fees. Government Accountability Office Report, GAO-15-102, "Human Trafficking: Oversight of Contractor's Use of Foreign Workers in High-Risk Environments Needs to Be Strengthened," 11/2014.

[24] In June 2011, a story came to light about trafficking victims, women from Fiji, who thought they were going to lucrative salon jobs in Dubai but ended up "unwitting recruits" to Iraq and Afghanistan, to include U.S. bases. Though many of these women made it into "salon" jobs, rumors of these women being forced into prostitution on U.S. and NATO bases were ubiquitous. And in 2015 a contract employee asked to perform duties at Kandahar Airfield, Afghanistan alleged that the contractor improperly directed him and other employees to relinquish their U.S. military-issued common access cards to preclude them from leaving the country or seeking other employment.

CTIP and TERRORISM

CTIP law and policy is, of course, an essentially humanitarian issue, but this emphasis toward essential change has not been effective. CTIP though can be looked at anew through the broader and more robust national security lens. The 2017 National Security Strategy emphasizes the need to reduce drug and human trafficking for national security reasons[25] and seeing the countering of trafficking as one part of the United States' counterterrorism activities may have pay-offs for both endeavors.

The wars in Iraq and Afghanistan have highlighted the symbiosis between terrorism and trafficking. First, trafficking in persons can be viewed as itself a form of terror. It is a common weapon in the arsenal of Muslim terrorists such as the Islamic State, the Taliban, Boko Haram, and others. Girls as young as 9 are abducted, made into sex slaves, and given to the jihadi fighters as "brides" in a practice called "sexual jihad." Male children are also sexually abused, though many are also trained as fighters or forced into being servants to fighters. Trafficking not only results in new recruits, it serves to demoralize those being victimized often further weakening unstable states, outcomes of which affect our national security.

Then there is the bottom line. It is well accepted that the trafficking of drugs and weapons funds Islamic terrorists and their global violence.[26] Unlike drugs or guns, however, persons can be lucratively sold, used, reused and resold.[27] One U.K. study[28] estimated that human trafficking brought in around £7.6 million (approx. $10 million) to £22.8 million (approx. $31 million) for the Islamic State last year, monies that can be used to purchase weapons, train fighters, and of course plan and executed attacks on U.S. interests at home and abroad. Trafficking pays.

In Afghanistan, for example, al-Qaeda (and associated groups) searching for alternative funding streams often abducted and sold Afghan women and girls to wealthy Arabs to remain solvent.[29] Though al-Qaeda's strength may have waned, funding from these ancient arrangements has not. In Iraq, Hezbollah, the Lebanon based puppet militia for Iran, is among the Islamic groups believed to have made massive sums selling slaves.[30] In response, U.S. lawmakers recently crafted legislation designed to inhibit Hezbollah (and therefor Iran) from accessing the funds

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(Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons, FY 2015.)

[25] The President of the United States, *National Security Strategy*, December 2017, p.7 and p.53.

[26] http://ctip.defense.gov/Portals/12/Documents/Leadership%20Toolkit%20Fact%20Sheet%20v11%20CENTCOM.pdf?ver=2017-01-11-134022-370

[27] Elsie Gonzalez, "The Nexus between Human Trafficking and Terrorism/Organized Crime: Combatting Human Trafficking by Creating a Cooperative Law Enforcement System, *Seton Hall University*, May 1, 2013, p.4.

[28] Henry Jackson Society, "Trafficking Terror: How Modern Slavery and Sexual Violence Fund Terrorism," October 8, 2017.

[29] Elsie Gonzalez, "The Nexus between Human Trafficking and Terrorism/Organized Crime: Combatting Human Trafficking by Creating a Cooperative Law Enforcement System," *Seton Hall University*, May 1, 2013, p.4.

[30] Josh Meyer, "Obama Protected Hezbollah Drug and Human Trafficking Rings To Appease Iran," Politico, December 17, 2017.

acquired from trafficking in humans.[31] Human trafficking, if not the favorite commodity in the terrorist portfolio, is no doubt one of the most profitable.[32]

One approach to solving the conundrum of the ethical contractor, then, is to refocus the need to prevent human trafficking as one part of the broader national security mission of ending terrorist financing. Under this rubric, the power to take on trafficking would come not only from countering trafficking legislation, but from countering terrorism legislation, specifically18 U.S.C. Code § 2339B, "Providing Material Support or Resources to Designated Foreign Terrorist Organizations."[33] Prosecutions for the material support of terrorism have become "the centerpiece of counterterrorism efforts by the U.S. government."[34] Therefore, if a nexus can be shown between the money gained from human trafficking of any company or person working under a U.S. government contracts, then needed funding for tracking, capturing, and prosecuting traffickers among nefarious contractors would most likely increase.[35]

A drawback to this approach, however, is that it would be too difficult to prove the nexus between human trafficking and terrorism in all but the most egregious cases. For instance, it is doubtful that every case of a contract employee having his passport confiscated by a sub would warrant the same time and resources required to produce a prosecutable case when resources are dedicated to following the large banking transactions between Hezbollah and the Islamic Republic of Iran.

In active OCOs one may be able to justify employing military resources, but sadly, the bang still may not be worth the buck. Enabling contractor companies with the necessary intelligence resourced for vetting and tracking perpetrators would also be difficult if not unreasonable. And as with many non-combat activities it is tracking traffickers would not be viewed as an appropriate focus for our military in war zones. This does not mean that following the trail of terrorist financing and its reliance on human trafficking should be neglected, nor that appealing to the connection to terrorism should be used to bolster CTIP activities, however using counterterrorism legislation to curtail human trafficking may be a bridge too far.

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[31] The new "Hezbollah Sanctions Bill," amends the 2015 "Hezbollah International Financing Prevention Act." If passed, it would bar both individuals and corporations found to be supporting Hezbollah from entering the United States; target the finances—freeze funds and block assets—of anyone working with Hezbollah; and increase sanctions on government funded business for facilitating transactions for Hezbollah, such as many of the banks in Iran and Lebanon.

[32] Susan W. Tiefenbrun, "The Saga of Susannah: A U.S. Remedy for Sex Trafficking in Women," *Utah Law Review*, 107, 2002.

[33] 18 U.S.C. Code § 2339B, "Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989)."

[34] Sharron Welch, "Human Trafficking and Terrorism: Utilizing National Security Resources to Present Human trafficking in the Islamic State," *Duke Journal of Gender Law and Policy*, Vol.24, 2017, pp.179-183.

[35] *Id*.

A BRIDGE TO THE FAR

In a Lowest Price Technically Acceptable (LPTA) environment, some primes have claimed they are in a no-win situation. In the words of one prime contractor "honest ethical individuals are at a disadvantage because there is no enforcement. Good actors are losing to bad actors in an LPTA environment." It seems that despite a zero-tolerance policy, the reality is that neither contractors, even the largest and most powerful, nor the relevant government agencies, are capable of detecting, let alone preventing, human trafficking in OCO environments.

In addition, present laws seem to be relatively toothless. At the 2017 International Stability Operations Association (ISOA) conference, it was reported by officials that large DoD contractors have been fined and subjected to certain administrative actions, but to date there had been no criminal prosecutions. Nor was the U.S. government even ready to "name and shame" companies regarding a lack of CTIP compliance.[36]

The contractor community has discussed solutions to this Catch-22. Executive Order, "Strengthening Protections Against Trafficking in Persons in Federal Contracts," (EO 13627) [37] requires contractors and subcontractors to "certify" that, "to the best of [their] knowledge and belief," they do not engage in human trafficking. There is no guidance, however, as to the diligence this standard requires. Without guidelines, and mechanisms for incorporating this labor-intensive expense, companies committed to CTIP will be unable to conduct relevant vetting of their supply chains. Companies will more likely employ only ephemeral, much less effective, measures to cut costs, putting ethical contractors at a disadvantage in the bidding process, and creating additional risk to the mission.

EO 13627 also states that the contractor or subcontractor is responsible for taking "appropriate remedial and referral actions," if abuses have been found, yet, as stated above, the government has done little to assist the contractor community through the use of punishment. The norm is that adverse actions may result in fines, but little else. In addition, it is difficult to track contractors that are punished for violating CTIP policy. There may be security reasons for such secrecy, however the U.S. government has not articulated why CTIP violators are not subject to at public scrutiny. This lack of transparency contributes to the perception by ethical contractors that their less scrupulous competitors operate with near impunity.[38]

Compliance plans are also a sticking point. EO 13627 directs "each contractor and subcontractor maintain a compliance plan during the performance of the contract or subcontract that is appropriate."[39] Although the Defense Federal Acquisition Regulations (DFARS) provides information regarding quality assurance surveillance plans (QASP), there are no established standards nor even a requirement that the "plan" itself be included in the contract bid. Such

[36] 2017 ISOA conference on CTIP.
[37] The White House, "Executive Order-Strengthening Protections Against Trafficking in Persons In Federal Contracts," September 25, 2012.
[38] These issues were brought up in discussions between members of the contract community and DoD officials as the 2017 ISOA Conference.
[39] The White House, "Executive Order-Strengthening Protections Against Trafficking in Persons In Federal Contracts," September 25, 2012.

documents remain outside the purview of government consideration and therefore at risk of being widely inconsistent, if not simply inadequate. Primes and subs can, in principle, get away with a plan that is more form than content, simply checking the box.

U.S. Contractors have been raising these concerns to legislators and policy makers since 2007. At this point CTIP regulations seem to be putting ethical contractors at a disadvantage and therefore undermining the essence of the United States CTIP policy. It is recommended that the Federal Acquisition Regulation (FAR) be amended to contain language whereby the United States government supports contractors with robust CTIP compliance plans, and maybe even giving priority to contractors with a documented record of CTIP compliance.

Amending the FAR itself is of course the first logical course of action, but it is not the only course of action. While working toward such changes contractors can enact small but relevant changes to their own protocols in preparation of greater accountability. Recommendations from within the contractor community have included internal spot-checking by the primes on the subs in theater, exit interviews with random contractor employees, and incentivizing subs toward more ethical behavior. Exactly what is needed will require immediate and continued discussion between the relevant contractor community, the Department of Defense and State contracting officials, and Congress. That conversation needs to be started now.