



Organization for Security and Co-operation in Europe

**TAKING A STAND:  
EFFECTIVE ASSISTANCE AND PROTECTION  
TO VICTIMS OF TRAFFICKING**

**28 February 2005, Vienna, Austria**

**Conference sponsored by the OSCE Special Representative  
on Combating Trafficking in Human Beings  
and the Anti-Trafficking Assistance Unit  
Under the Aegis of the Alliance Against Trafficking in Persons**

## **TAKING A STAND: EFFECTIVE ASSISTANCE AND PROTECTION TO VICTIMS OF TRAFFICKING**

On 28 February 2005, some 170 participants from 45 participating States took part in a one-day conference on effective victim assistance and protection.

The Alliance Against Trafficking in Persons, an initiative launched by the OSCE Special Representative on Combating Trafficking in Human Beings in July 2004 is a partnership of relevant international actors united in the joint effort to combat human trafficking.

An important aim of this conference was to discuss the legal status of victims of trafficking, before, during and after criminal proceedings. Special attention was given to assistance and protection measures that will have to be provided to child victims of trafficking. The practical measures of victim assistance and protection are all too rarely tailored to the practical needs of children.

The results of the conference are reflected in the presentations and papers that follow here.

We hope they provide practice oriented background information to governments and all those responsible on the spot for the fight against trafficking in human beings as decision-making aids in the formulation and implementation of anti-trafficking strategies.

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# AGENDA

Alliance Against Trafficking in Persons  
National Experts Meeting  
Vienna, Hofburg, Neuer Saal  
28 February 2005

## Taking a Stand: Effective Assistance and Protection to Victims of Trafficking

- 09.00 – 10.00     **Registration**
- 10.00 – 10.30     **Welcome Addresses**
- Ambassador Janez Lenarčič, Chairman of the OSCE Permanent Council
  - Ambassador Brendan Moran, Chair of the OSCE Informal Working Group on Gender Equality and Anti-Trafficking
- Introductory Remarks**
- Helga Konrad, OSCE Special Representative on Combating Trafficking in Human Beings
- 10.30 – 12.00     **Making Victim Assistance and Protection more Effective**  
Chair: Ambassador Mette Kongsheem, Permanent Delegation of Norway to the OSCE
- Presentation of Expert Position Paper:**
- Liliana Sorrentino (ATAU)
  - Maria Grazia Giammarinaro (Consultant/Judge)
- Open floor discussion; comments, good practices, lessons learnt
- 12.00 – 14.00     **Lunch Break**
- 14.00 – 15.00     **Residence Regimes for Victims of Trafficking**  
Chair: Ambassador Brendan Moran, Chair of OSCE Informal Working Group on Gender Equality and Anti-Trafficking
- Presentation of Expert Position Paper:**
- Anelise Gomes de Araujo (ATAU)
  - Grainne O'Hara (UNHCR)
- Open floor discussion; comments, good practices, lessons learnt
- 15.00 – 15.30     Coffee Break
- 15.30 – 16.30     **Acting in the Best Interest of Child Victims of Trafficking**  
Chair: Michele Clark, Head, OSCE Anti-Trafficking Assistance Unit
- Presentation of Expert Position Paper:**
- Vera Gracheva (ATAU)
  - Tine Staermose (ILO)
- Open floor discussion; comments, good practices, lessons learnt
- 16.30 – 17.00     **Wrap-up & outlook:**  
OSCE Special Representative  
on Combating Trafficking in Human Beings

## **H.E. Ambassador Janez Lenarčič, Chairman of the OSCE Permanent Council Welcome Address**

Ladies and gentlemen,

On behalf of the Slovenian Chairmanship I would like to welcome you here in Vienna at the seat of the Organization for Security and Co-operation in Europe. As you know, the fight against trafficking has become one of the priorities of this organization. Protection of victims is an essential aspect of any effort to fight trafficking. This meeting is therefore a very important event which can provide an additional insight on how to ensure effective assistance and protection to the victims of trafficking.

Trafficking in human beings affects all OSCE participating States, east and west of Vienna, either as countries of origin, countries of transit and/or countries of destination. It is a horrendous crime and a grave violation of human rights. It is a complex human rights issue and it also represents a threat to security and stability in the OSCE area. It is not a new phenomenon; although it is important to stress that it has grown to an alarming extent. Therefore it is understandable that in the last few years, the fight against trafficking in persons has become a clear priority for the OSCE. And it is truly an example of a cross-dimensional problem, for which a comprehensive, integral and co-ordinated approach is needed. Of course, combating trafficking is the primary responsibility of participating States, and the comprehensive approach should include the prevention of trafficking, protection of victims and the prosecution of traffickers and their accomplices.

Since 1999 the OSCE has developed strong commitments to fight against trafficking. These were summarized in the OSCE Action Plan on Trafficking in Human Beings that was endorsed in December 2003 at the Maastricht Ministerial Council. Last spring the OSCE Special Representative on Combating Trafficking in Human Beings Dr. Helga Konrad was appointed, and in autumn an Anti-Trafficking Assistance Unit in the Secretariat became operational. In addition, the Office for Democratic Institutions and Human Rights (ODIHR), the Strategic Police Matters Unit (SPMU), the Office of the Economic and Environmental Co-ordinator (OCEEA) and the Senior Gender Adviser continue to play an important role in this field.

Let me recall two recent important events on trafficking: the 2001 Berlin Conference entitled «Europe against Trafficking in Persons» and 2004 Helsinki Conference on «Ensuring Human Rights Protection in Countries of Destination: Breaking the Cycle of Trafficking». These two conferences provided ample input for the efforts of the OSCE states to take the necessary measures for effective assistance and protection to victims of trafficking.

There is still a lot to be done in this area. Persons who are victims of trafficking are often not even identified as such. The law enforcement agencies often treat them in the same way as illegal immigrants, with all the negative consequences that this treatment involves. For this reason, education and training of law enforcement officials about the specifics of trafficking and its victims is essential.

One of the most pressing challenges is the need to define the scope of rights, and protection, that the victims of trafficking should enjoy. Undoubtedly, these should include adequate medical and psychological care and at least a temporary permit to stay on the territory of the country of destination. In general, states should ensure the protection of

the trafficked persons at every stage of the trafficking cycle. In particular, we should address the root causes of trafficking and, in this regard, the programs to address the needs of potential victims of trafficking should be developed.

Ladies and gentlemen, combating trafficking requires a co-ordinated action by all relevant players. Additional steps should be taken to strengthen the co-operation of international bodies such as the OSCE, Council of Europe, United Nations, IOM, European Union and others. One should also take into account the crucial role that the non-governmental organizations can play, especially in the field of victim recognition and protection.

Trafficking is more than merely combating organized crime, although the criminal law aspect is also of great importance. Trafficking occurs, in part, due to social and economic disparities that create a supply of victims seeking to migrate and a demand for sexual and other services that provide the economic impetus for trafficking. Deterrence and criminal punishment are important elements, but addressing the underlying circumstances which drive both supply and demand is also necessary. In this context, an important prevention measure is public information and awareness-raising. In doing so, the protection of human rights of trafficked persons should be at the centre of our efforts.

Ladies and Gentlemen, unfortunately, few countries can claim they are effectively dealing with the trafficking in children. There is a general problem of the lack of infrastructure designed to provide appropriate assistance and protection to victims, such as shelters, hotlines, provisions of legal, medical and psychological support. The OSCE has recently acknowledged this problem. At its Sofia meeting last December, the Ministerial Council tasked the OSCE to elaborate an addendum to the Action Plan to Combat Trafficking in Human Beings, addressing the special needs of children victims of trafficking. This addendum should be prepared by the end of July, by the working group chaired by Ireland.

In conclusion, I should like to stress that the trafficking in human beings has acquired such dimensions that it can truly be called a new form of slavery. Urgent action is desperately needed. I hope today's discussions will help us develop practical tools for international and national action which will be geared towards more effective protection of and assistance to the victims of this scourge.

I wish you a fruitful day.

Thank you.

## **H.E. Ambassador Brendan Moran, Permanent Representative of Ireland and Chair of the OSCE Informal Working Group on Gender Equality and Anti-Trafficking**

### **Welcome Address**

Dr. Konrad, distinguished participants, ladies and gentlemen, I am very pleased to have been invited to participate in the opening of this expert meeting on «Effective Assistance and Protection to Victims of Trafficking.» Today's meeting is an important initiative in the continuing struggle against all forms of human trafficking, which is simply the slave trade in its contemporary guise.

The OSCE is ideally equipped to tackle such a vast and pervasive issue as human trafficking. Its mandate, inclusive of the security, economic, and human dimensions, as well as its geographical scope, bringing together countries of origin, transit and destination, make this organization a natural catalyst for complex problems with far reaching social and political consequences.

Within the organisation we have substantial reserves of experience and expertise to draw on. Apart from the Special Representative, the Support Unit and other experts in the Secretariat here in Vienna, we have the expertise of ODIHR and substantial experience of the issue in many of our Field Missions. I know that the representatives from all institutions and outposts of the OSCE will agree with me that it is of the utmost importance that their efforts and work should be closely co-ordinated for maximum efficiency and the thorough implementation of OSCE undertakings and commitments.

The OSCE Action Plan to Combat Trafficking in Human Beings is a bold mandate which allowed for proactive measures in prevention, law enforcement and prosecution, and victim protection and assistance.

Additionally, the OSCE – within the context of the Action Plan – is aggressively addressing the scourge of child trafficking. At the meeting of the Ministerial Council in Sofia in December 2004, Ministers decided to supplement their earlier Decision on Combating Trafficking in Human Beings with a Decision on the Special Needs for Child Victims of Trafficking for Protection and Assistance.

In addition to the work to be undertaken by participating States, Ministers have tasked the Permanent Council to elaborate an addendum to the existing Action Plan on Trafficking addressing the special needs of child victims. The decision also calls for a summary of best practices to be part of this addendum.

The practical work of giving effect to this element of the Ministerial Decision will fall to the Informal Working Group on Gender Equality and anti-Trafficking, which I have the honour to chair in 2005. It is my expectation, and that of the other participants in the Informal Working Group, that today's meeting will provide us with a clear focus for our work in the months ahead. We shall be particularly interested to hear any contributions relevant to the emergence of best practices in the field of assistance and protection as this is central to the task entrusted to us.

We look forward to coming away from this conference with several concrete and relevant steps in order to move forward our common agenda in each of the areas where we have convened experts.

Finally, I should like to thank the anti-Trafficking Assistance Unit for the useful background material they prepared in advance of this meeting, which was particularly valuable for the non-experts among us. I look forward to an interesting and productive day.



**Introductory remarks**

Let me warmly welcome you all to this meeting of national and international experts under the aegis of the «Alliance against Trafficking in Persons». I commend all of you for sharing your unique experience and expertise in victim assistance and protection. We have gathered here in order to discuss, to further develop and find effective ways to enhance implementation of victim assistance and protection measures.

Considering the cardinal importance of co-operation and co-ordination, we shall continue and intensify the work launched in July last year within the «Alliance against Trafficking in Persons» regarding concerted and streamlined approaches to all the dimensions of human trafficking, especially trafficking in children, but also trafficking into domestic servitude and for other forms of forced and bonded labour, trafficking for forced marriages and trafficking in organs.

Our goal is to provide high-quality practice oriented background information to governments and all those responsible on the spot for the fight against trafficking in human beings as decision-making aids in the formulation and implementation of anti-trafficking strategies.

In response to the decision taken by the Ministerial Council in Sofia last December, the OSCE High-level Conference in Vienna on 18 March will be devoted to the fight against trafficking in children.

Our meeting of national and international experts here today will also generate back-up for this conference and for the addendum the OSCE has been tasked to develop on the special assistance and protection needs for child victims of trafficking to the OSCE action plan.

Distinguished Participants, we probably all agree that today it is universally recognized and has been forcefully and repeatedly proclaimed by government officials in countries around the world that human trafficking is a serious crime and horrendous human rights violation. There is also broad agreement that this is a multi-disciplinary issue, requiring counter-action by a range of governmental, intergovernmental and nongovernmental actors to be effective.

Yet, most countries organize their response to trafficking in persons in a rather narrow way, based almost exclusively upon prevailing notions of national security and border control. When we look into the practice of many European and other destination countries it becomes quite obvious that the protection of the fundamental rights of victims of trafficking takes second place to the promotion of state interests. Governments very often see the battle against illegal immigration as their first priority.

Therefore victims of trafficking run the risk of being treated as illegal immigrants and immediately deported to their countries of origin. And even when victims are allowed to stay temporarily, support for them depends on whether they are useful to the prosecution of the traffickers and willing to co-operate with law enforcement authorities. As a result, victims

are often instrumentalised in the interests of the State – or in other words: State interests take precedence over the right of victims to protection of their physical and mental integrity.

Despite increased attention at the political level only few states have taken adequate measures to protect individuals from trafficking and its related human rights abuses, or to provide effective assistance or remedies to victims. What is offered, is very often human rights insensitive; it is «fast food» – and authorities very often prioritise the system over assistance. We do not provide victims of trafficking with what they need.

Although in recent years things have changed slightly, victims of trafficking are still frequently seen as perpetrators and criminalized. Very often state authorities prosecute the victims instead of protecting their rights or going after the true perpetrators – the traffickers and their middlemen. Instead of being taken to shelters, victims are still frequently taken to jail and/or detention centres in receiving countries and stigmatised in their home countries – while authorities turn a blind eye to the abuses they have suffered at the hands of their traffickers.

Considering that human trafficking is not a new phenomenon and has been constantly spreading, we must admit that the traditional methods of control, deterrence and immediate repatriation of victims of trafficking have not been very effective.

If we want to be effective in diminishing human trafficking, it must not be seen primarily or exclusively from the perspective of national security; fighting human trafficking must not be seen as a fight against illegal migration. It is first and foremost a violation of human rights.

So, what is needed is a shift in perspective.

We must switch from an exclusive law-enforcement approach to a victim-centred one, not merely because it would in any case be the task of states and governments under human rights norms to protect the fundamental rights of individuals, but also in the interest of curbing this crime.

A central issue in this context is refraining from immediate deportation of victims of trafficking and instead granting the right of an extended stay in the country. The granting of a residence permit would signal to victims that the state on whose territory they find themselves sides with them without reservations.

This is one important part we would like to discuss with you here today. I am of course well aware that this is a sensitive issue in many countries and that many countries are reluctant to grant residence status to victims of trafficking for fear that the offer of an extended stay would attract more migrants and be abused. Let me point out that such an attitude implies at least indirectly that migrants would voluntarily try to become victims of trafficking in order to benefit from protection granted to victims of trafficking. Let me quote the Parliamentary Assembly of the Council of Europe on the status of the negotiations of the European Convention: «The current draft Convention rather gives the impression of reflecting the member states' desire to protect themselves from illegal migration instead of accepting that trafficking in human beings is a crime and its victims must be protected.» Illegal migration, smuggling and human trafficking are different issues and need to be addressed separately.

Another important issue we would like to discuss with you here today and which deserves particular attention, is the status of victims of trafficking in criminal proceedings. Frequently victims suffer from severe trauma. To expose them or force them too early to confront the traumatising experience may cause additional traumatising. The victims must, therefore, not be instrumentalised in the interests of state criminal prosecution. They must have the right to refuse to testify, and if they agree to testify, they should be able to do so in a non-confrontational environment. In any case, the process of testifying against the trafficker must not re-victimise a victim, but should be an empowering, positive experience.

In practice, however, many states do not even provide the most basic protection for victims who participate in proceedings. Many countries do not allow witnesses to remain in the country during the proceedings, but summon them back without giving a thought to the financial burdens involved or to the safety of the witnesses and those close to them.

Effective victim-witness protection does not end at the conclusion of a trial, of course. Research has indicated that in countries of origin, victims and their families are more or less totally unprotected against threats or violence.

Therefore, another right should be the right of family reunification. Family reunification is frequently the only way to ensure the security of the closest relatives of trafficking victims.

Another problem we would like to discuss with you during this meeting is reintegration of victims of trafficking. Very often, there is no systematic method of following up on the fates of repatriated victims of trafficking. There is no evidence that governments in the source countries take clear responsibility for the protection of their nationals upon their return home. On the contrary: In many countries, women are arrested upon repatriation or branded as deviants or criminals. Such actions prevent the successful reintegration of these «survivors» of trafficking – as they are called by many NGOs – into their communities. They have little chance of re-establishing a normal life in their home countries. Often they face distressing stigmatisation both from their families and from society. Once a trafficked person is repatriated, there is no communication between the governments to ensure that those responsible for the trafficking in the country of origin are brought to justice or to ensure the protection of the victims.

And last, but not least, we would like to discuss with you here today which specific assistance and protection measures will have to be provided to child victims of trafficking and why. So far, only a few countries are able to appropriately address trafficking in children. The practical measures of victim assistance and protection are all too rarely tailored to the practical needs of children.

## Liliana Sorrentino

### Making Victim Assistance and Protection more Effective

Thank you Madam Ambassador,  
Ladies and gentlemen,  
Dear colleagues,

My task this morning is not easy for I will attempt to answer the question, «How we can be more effective in providing assistance and protection to victims of trafficking?»

The question that we try to answer today comes at a crucial time. Just last week, 45 States in the Council of Europe (CoE) tried to set very minimum standards for protection and assistance to trafficked persons in the framework of the Draft Convention on Action against Trafficking in Human Beings.

But before we go into the various aspects of effective protection, perhaps it is good to remind ourselves: «Why do we do this?»

First, because States have a legal obligation to act with due diligence to prevent trafficking in human beings, prosecute traffickers and assist and protect trafficked persons, as elaborated in the UN Convention against Transnational Organized Crime and in its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

Secondly, research and practice show that countries with more comprehensive victim protection measures fare better in prosecution of traffickers.<sup>1</sup> In Italy, for example, after the introduction of the Article 18 there has been a significant increase in the number of victims of trafficking identified and assisted and in the prosecution of the perpetrators. This will be further illustrated in the presentation of my colleague Judge Maria Grazia Giammarinaro.

We have to be honest in admitting that we understand little about the extent to which successful prosecutions are closely tied to victim protection. In other words, the response to trafficking needs to be built on the respect of the rights of its victims. This is the only way to ensure prosecution of the perpetrators.

How do we translate this policy goal into practice?

Of course there is no simple answer. One single approach cannot solve the problem.

**We need a variety of complementary and integrated responses** in order to work towards more effective solutions.

1. See Anti-Slavery International, Human traffic, human rights: redefining victim protection, 2002. This point is well illustrated in the finding and recommendations of this research study, which Anti Slavery conducted in co-operation with various NGOs in ten countries (Belgium, Colombia, Italy, Netherlands, Nigeria, Poland, Thailand, Ukraine, United Kingdom and United States.). The study investigated measures to protect trafficked persons, especially those acting as witnesses in the prosecutions of traffickers. «[...] countries which fared better in prosecuting traffickers for various crimes (Belgium, Italy, Netherlands and United States) were the four countries which also had the most comprehensive measures for assisting victims, including temporary residency permits for those prepared to testify against their traffickers.» p.2 .

Additionally, see also a number of publications analysing the impact of the Italian legislation on protection of victims of trafficking, e.g.. On the Road, Article 18: Protection of Victims of Trafficking and Fight against Crime (Italy and the European Scenarios). Research Report (Martinsicuro, 2002); Transcrime, Trafficking in Persons and Smuggling of Migrants into Italy, Transcrime Reports n. 8, 2004 Ministry of Justice and of the Italian Ministry for Equal Opportunities

We suggest starting with some basic steps which include **a package of support services** which are based on a set of basic principles. For the purposes of this presentation, I will not make reference to child rights because this will be done later on by my colleagues Vera Gracheva and Tine Staermose.

Additionally, these remarks are relevant to all the various forms of exploitation of trafficked men, women and children.

You will not find these principles new or revolutionary. Instead, they are simple and clear standards which need to be implemented within the particular context of your own countries.

Let's start with the basic steps.

**We should be proactive about identifying trafficking cases.** This means that we will develop mechanisms and conditions, which allow identification, starting with defining the different forms of exploitation, identifying places where trafficking occurs, identifying actors that can get in contact with trafficked persons. Despite the fact that law enforcement may be the main body identifying trafficked persons, many other actors – such as NGOs through outreach work and help-lines, local authorities, labour inspectors, and clients – may also encounter trafficked persons. This process should be accompanied by an effective system of co-operation and referral to specialised victim protection services and by procedures and mechanisms harmonizing the interests of prosecution with protection of the victim's rights (e.g. an agreement between police, NGOs and other relevant actors defining the sequence of events from the initial identification and referral to legal, medical and psychological counseling, and accommodation services to specific victim protection and victim-witness protection schemes in criminal proceeding).

**Trafficked persons must be identified as such,** clearly differentiated from illegal migrants, and treated consistently as victims of a serious crime. They are **victims and not criminals.**

**What happens if we fail to identify victims?** The immediate deportation of any person when there are reasonable grounds to believe she/he is a victim of trafficking, and the lack of any identification procedure, result in:

- Criminalization of a victim of crime
- Re-victimization
- Re-trafficking
- Lack of information or co-operation to initiate investigation
- Impunity of traffickers

Thus failing to identify trafficked persons makes this modern slavery continue and deprives thousands of persons of their fundamental rights and freedoms. Moreover, the financial profitability of human trafficking, which the UN Centre for International Crime Prevention estimate up to 7-8 billion USD, easily connects with other forms of crime and corruption, which destabilize society and economy.

This is why we need better and more effective victim protection. This should be built around the idea of providing the person with a legal status and an opportunity for a positive future. We cannot deny that most trafficked persons are migrants in search of

viable means of existence. Trafficked persons should be provided in national legislation with a clear legal status, **a reflection delay and a permit to stay**, during which they can start recovering from trauma, may decide about eventual participation in criminal proceedings and start planning how to make a living and earn for themselves and their family.

This helps the victim to begin to **regain control of life** and encourages the person to participate and contribute to successful prosecution. In other words, the granting of a legal status is the tool to enable the person to get out of the illegal situation; this is a condition to allow fighting the criminals.

Now when we look at the package for victims' support services, we need to consider two main components: emergency assistance and long term support workings towards social inclusion/reintegration.

There are **minimum standards** which aim at assisting the person after having escaped from traffickers' control and being in a position of great insecurity and vulnerability. Thus in the reflection period States are responsible to ensure that trafficked persons are provided with assistance. The **assistance package** should be delivered in co-operation with NGOs and include at minimum:

- safe accommodation
- legal information and legal assistance
- medical and psycho-social care
- material assistance for subsistence

This emergency package of support services applies to all victims, national and foreigners, regardless of residency status. This is meant to allow a very minimum physical recovery and psychological stability to start overcoming trauma, feeling safe and start evaluating the situation and option and so regaining control.

The long term support workings towards social inclusion/reintegration should be tailored to the individual needs of the trafficked person and encompass:

- accommodation
- specialized services (psycho-social and medical care, legal assistance, material assistance for subsistence)
- access to education, vocational training, and the labour

Let me elaborate on one particular issue: **What do we mean by safe accommodation?**

This can include a variety of housing solutions depending on the individual circumstances. The place should not be like a detention centre although there will be rules for access to ensure the security of the trafficked persons as well as of the various service providers and workers. We know that in some cases trafficked persons are kept in shelters for long periods for the interests of investigation and prosecution. Moving from a situation of exploitation and lack of freedom to a closed shelter is not an attractive perspective. Such a situation merely recreates a new controlling environment. There is yet no freedom and no self determination.. By shelter, we mean a place where the person can feel in a safe and comfortable environment, face the reality of what happened and start to regain control over her/his life.

The second component – **long term solutions** - relates to the phase after emergency assistance. Ideally the person is given the option to make an informed choice to either stay and work or to return home after a risk assessment has been conducted with NGOs and local authorities. So the person is aware of circumstances and possibilities for further assistance.

Co-operation among service providers in countries of destination and origin should help in developing a plan to offer the person further support services aiming at social inclusion in the community and at the workplace.

In my personal experience after the trafficking event a person needs long term support and assistance to regain control over life. Most trafficked persons had two-three children prior to the trafficking experience, came from vulnerable families with a very low income, almost nil, and many had been abused during their childhood. They were already very vulnerable before being trafficked and it took years for them to be able to overcome the trauma, restore relationships with children and find viable means of existence. When trafficked persons return home, they face the sad reality of extreme poverty, of serious family problems, of children who were living with other relatives or in institutions, of abuse from which they escaped, of social stigmatization, of unemployment, and often no housing, plus risk of reprisal from traffickers. And it is in the context of collapse of social welfare that NGOs in co-operation with local authorities struggle to establish a referral system to support the trafficked person in regaining control over life options and getting them socially included in the community and at work place.

**How to deliver this package? Here is a set of basic principles of work:**

- Do no harm
- Respect confidentiality
- No discrimination
- No punishment
- No link to co-operation in prosecution
- Cultural sensitivity
- Assistance tailored to the individual needs
- Aim at self-determination and empowerment
- Quality standards of care

On some of them which are especially relevant also in the protection during investigation and prosecution you will hear from my colleague in a few minutes.

**Let me just elaborate on a couple of concepts. What do we mean by self-determination and empowerment?**

There is a widespread tendency to believe that trafficked persons must accept anything which is offered to them that would allow them to escape from violence and humiliation. One has to consider that these are persons with dreams, expectations and aspirations and that they are the ones to make the best informed decisions about their futures. The idea of self determination is that the person is the actor of the process and must regain control over life. The person must be put in the position to reflect on the experience in a safe environment, to weigh up the options of assistance and make an informed decision.

**We need quality standards of care.** We should ask why do victims in some countries refuse any assistance? Why are some shelters empty? Why in most places do victims not seek

assistance from authorities? Is it because of the quality of the assistance which is offered? Is it because of the conditions upon which services are provided? Because of the intrinsic limitations of the offer, either assisted return or deportation?

Is the answer merely the standards, or has care not adequately been defined or not appropriately delivered? At a minimum we have to apply the standards already existing for other vulnerable groups. The challenge for service providers is ensuring a variety of flexible options, which can be tailored to the individual needs of the trafficked person.

Again this is a synthesis, which shows that the aim of the work is social inclusion.

**So what do we mean with social inclusion?** The reality is that in most cases trafficked persons are not given this opportunity. Depending on national laws related to foreigners and on whether they are in the country of destination or origin, the access to services and especially to the labour market may be more or less limited.

We have to be aware of these differences and we cannot deny that they contribute to re-trafficking. What are the implications for law enforcement if the person is immediately returned? No prosecution. What is the option for a person who returns back with none or very little support? In many cases either the person gets re-trafficked in search for a better life or becomes a trafficker!

All of you working on these issues have experienced that when we fail to protect victims of trafficking, all our anti-trafficking work is affected.

If this sounds all too familiar that is because most of you acknowledged, promoted, or even already established these standards. **We understand that protection services cannot be left exclusively to the good will of civil society** of developing projects of assistance for victims of trafficking. **It is up to the State to regularly fund the establishment of appropriate structures and services to respond to trafficking in persons.**

What we need now is for you to consolidate all your expertise and find ways of convincing your respective authorities to allocate resources and offer this package to all victims of trafficking.



## **Maria Grazia Giammarinaro**

### **Making Victim Assistance and Protection more Effective**

As far as assistance and protection of victims of trafficking are concerned, there is still a great gulf between declared intentions and concrete results. I am going to stress some elements that should be considered essential to a successful policy to assist and protect victims, with a special emphasis on the legal side of the problem.

In order to make assistance and protection more effective, the victims of trafficking must be identified as such. Very often they are treated as illegal migrants and immediately deported without any procedure aimed at finding out what is hidden below the surface. This means that a good identification process is necessary as the first step.

The effective identification of victims of trafficking depends on some preconditions. The first relates to political will. An identification process can only be effectively established if governments make combating trafficking a priority in their policies against illegal immigration. Policies aimed at protecting borders should take second place to policies devised to protect victims of serious crime. This prioritization requires some changes in illegal migration policies. When an illegal migrant is found, the competent authorities should immediately assess whether there are any indications of trafficking (e.g. the person is terrorized; she/he shows injuries or other signs of violence; their documents are in the possession of another person etc.). If these indicators are found, there should be a moratorium on deportation with a view to identifying a possible trafficking situation.

Secondly, particular skills are needed, especially on the part of border authorities and judicial police. Effective training programmes need to be set up which target improving the evaluation of indicators and introducing standards for the identification process.

Thirdly, a specific procedure is needed for effective collaboration between the police and NGOs. In order to establish a strategic partnership between public institutions and NGOs, some elements have to be emphasized.

#### **1. The role of NGOs should be formally recognized**

The Council of Europe's Draft Convention on Action against Trafficking in Human Beings, provides for a recovery and reflection period; consequently, NGOs are the most important filter between the victim and public institutions.

In conformity with the Draft Convention, a recovery and reflection period must be granted when the competent authorities have grounds to believe that the person has been trafficked, regardless of whether the person is willing to co-operate with the police and judicial authorities. Therefore, for that period of time, the victim has personal contact only with people who are responsible for his or her assistance and support. Psychologists and social workers will consequently be the first persons who listen to the victim.

Under the European Union Council Directive on Residence Permit for the Protection of Trafficked Persons, even though the reflection period focuses on the decision of the person to co-operate with judicial authorities depends on the person co-operating with the judicial authorities, the situation remains the same, and victims have personal contact only with social workers who are assisting them.

There is an ongoing debate concerning the duration of the recovery and reflection period. We still do not know if the draft CoE Convention will contain a minimum period of duration. This decision has been submitted to the Committee of Ministers.

The experience of all those NGOs giving assistance to victims shows that it is common sense for the recovery process to take time. Even though it is impossible to fix a general standard, because the duration of the process depends on the personal situation of each victim, there is a general view that a recovery process requires months, not days.

The best standard that has been suggested so far is three months, which was proposed by the Stability Pact and the European Union Expert Group. This is also recommended in the position papers for this meeting.

However, even though international instruments do not establish a minimum period, national legislation should go further and ensure that there is enough time for victims to recover and take informed decisions about their future life, including the decision about whether to act as a witness in criminal proceedings.

In the light of these recent developments of international instruments, it is now even more important to establish a procedure by which NGOs that are skilled in giving assistance and support to victims gain formal recognition. In fact, as a result of the provision concerning the recovery and reflection period, NGOs should have an important role in the identification process that can often overlap with the recovery and reflection period. Therefore, it is imperative to take a step forward and start a confidence-building process between public institutions and NGOs.

A formal recognition of NGOs can be established in different ways.

- In Italy, legislation provides for the registration of NGOs that are considered to have the skills, premises, and good programmes for assistance and support. These NGOs are funded by the regional administrations and the city councils.
- In other countries a different approach is going to be adopted based on the idea of a Memorandum of Understanding between public institutions and NGOs.

I would also like to stress that it is important to build on what is already in place. In every country there are NGOs that already offer shelters and support programmes. Yet at the same time we must not be prejudiced and maintain that there is no such thing as a good assistance programme that is directly managed by a public institution. In Italy there are some very good examples of programmes managed by the social services of the Venice City Council and Lecce province. But generally speaking, NGOs ensure a victim friendly and non-bureaucratic approach, which has proved more effective by contrast with some situations in which shelters are managed in a way that make them seem like detention centres for illegal migrants awaiting deportation.

In fact, regardless of who manages the shelter, putting it in the same place as a detention centre makes it particularly difficult to provide a good standard of assistance based on freedom of choice and self-determination.

## **2. Need for co-operation between the police and NGOs**

One of the first tasks for co-ordination bodies at the national level is to identify a strategy to promote co-operation between the police and NGOs. First of all, it is necessary to identify different responsibilities and tasks, and to bear in mind that NGOs are not a tool for the police. Their goal is primarily to assist the victim on a consensual basis, rather than provide the police with information.

At the same time, if the person is willing to report a crime or make a statement, NGOs should understand what kind of information is important for the police and for investigation and prosecution. On the other hand, the police must be aware of the need for protection of victims, shelters, and NGO social workers. Both have to learn what is needed by the other actors. With a view to identifying the respective tasks and areas where co-operation is needed, it is helpful to hold joint seminars and joint training on a regular basis.

## **3. Indicators of trafficking**

In order to detect a trafficking case at an early stage, NGOs and the police should use specific lists of indicators, which must conform with the definition of trafficking contained in the Palermo Protocol and in national legislation. The task is made easier by the fact that the definition of trafficking is the same in the Palermo Protocol and the Draft Convention. At the same time, the definition in the Protocol is the basis for an ongoing process of harmonization of national legislation.

A list of indicators, for each country and for each type of trafficking, must be discussed and identified. Preferably this should be compiled in co-operation with the police, prosecutors, judges and NGOs, and draw on the practical experiences they have gained from cases they have dealt with.

I am going to present just a few examples of the problems that can arise in this process, and a few examples of good practice.

### **Forced labour**

In my view public institutions should focus more on forced labour in the future. There are indications that this phenomenon is increasing in many countries. However, so far it has not been investigated effectively, and remains almost unknown.

In conformity with the ILO Forced Labour Convention n. 29 (1930), forced labour is a work or service exacted from any person under the menace of any penalty, and for which the person has not voluntarily offered him/herself.

The element of voluntariness is problematic, especially taking into account the definition of trafficking under the Protocol, where the means used by traffickers include not only violence, threats and coercion, but also abuse of a position of vulnerability. According to the ILO Guidelines on Human Trafficking and Forced Labour Exploitation, legislatures and law enforcement authorities have to take into account that the seemingly «voluntary offer» of the worker/victim may have been manipulated or was not based on an informed decision.

Where migrant workers were induced by deceit, false promises and retention of identity documents, or force, to remain at the disposal of the employer, the ILO supervisory bodies noted a violation of the Convention. They have also noted that where an employment relationship is originally the result of a freely concluded agreement, the workers' right to free choice of employment remains inalienable.

The ILO Guidelines state that failure to pay a worker the statutory minimum wage does not constitute forced labour. However, failure to pay a worker the minimum wage, combined with other indicators, can be taken into consideration as evidence of forced labour. Consequently, attention should focus on situations where work or service is extracted from workers by physical or sexual violence, through their confinement in the workplace, by debt bondage, by retention of passports or identity documents, or by threat of denunciation to the authorities.

### **Domestic servitude**

Domestic servitude is to be considered a form of forced labour. A personal relationship between the worker and the employer, which frequently implies cohabitation, is characteristic of domestic servitude.

The worker is particularly vulnerable because there is no negotiation. The person is supposed to be a member of the family, but in fact he/she does not have any space or time for himself or herself. He/she must be available for any personal needs of family members. No time for rest or leisure during the day or the week is given. If it is granted, it is not regular, and so cannot be enjoyed by the person autonomously. Often he/she is subject to racist, discriminatory behaviour, and sexual abuse.

### **Sexual exploitation**

Indicators of sexual exploitation are different depending on whether prostitution is performed on the streets or in brothels in those countries where prostitution is legalized, as in Germany or the Netherlands.

Indicators which the Essen Police in Germany look for include the following:

- Special mechanical locks on entrances and exits
  - Technical electronic monitoring
  - Guards at the entrances and exits
  - Protected and barred windows
- 
- Women without passports or identity cards or visas
  - Women whose personal data cannot be verified
  - Women who speak only their native language
  - Women who seem to be very anxious or in a helpless situation
  - Women who are not able to explain how they entered the country

In the Netherlands some additional indicators are used, concerning, inter alia, working conditions and earnings, for example:

- Women are not in control of their earnings
- The price of sexual services is considerably lower than market prices
- Women have to earn a minimum amount of money per day
- Women are limited in their freedom of movement
- Women have relatively high debts

In all cases of trafficking, concerning both forced labour and sexual exploitation, some common indicators of trafficking can be found:

- The documents of the person are in the hands of the employer;
- Contact with people other than the employer or other people subjected to the same exploitation is forbidden or severely restricted;
- Threats are used to compel the person not to leave and to keep on performing the same work or services;
- There is a situation of isolation, no knowledge of the language, separation from friends and relatives;
- The exploiter is connected with organized crime.

Once an assessment has been carried out and some of these indicators have been found, the person should be immediately granted a recovery and reflection period, and then a residence permit. It is important to understand that issuing a residence permit must be unconditional, at least at the first stage of the procedure. I will not elaborate on this point as a specific panel will deal with the problem of residence status.

However, I would like to stress that good practice shows that two elements are essential:

- Issuing a residence permit should not be conditional on the co-operation of the victim with the police or judicial authorities. Victims do not have the mentality or an adequate background to bargain with competent authorities. They are simply terrorized and do not trust public institutions. First of all, they have to be reassured about their situation in life;
- Issuing a residence permit should not be based on a discretionary decision. Victims should be reasonably sure that they can obtain a residence status, if some legal requirements are met. It is only in this situation that they will be able to decide to co-operate. The Italian experience shows that in the large majority of cases victims are willing to act as witnesses once they have been reassured about their safety, and their residence status. In just the first year of implementing article 18 of the Law on immigration, which provides for a residence permit unconditionally, there has been a tenfold increase in the number of criminal proceedings (from about 200 to 2,930).

## Anelise Gomes de Araujo

### Residence Regimes for Victims of Trafficking

Ladies and Gentlemen,

#### Principles based on the «Position Paper»

- The provision of legal residence status in countries of destination is among the basic preconditions and intrinsic provisions necessary to ensure the protection and assistance of trafficked persons as victims of a serious crime.

However, it is important to point out that current international decisions made rather poor provisions e.g., United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Draft Council of Europe Convention on Action against Trafficking in Human Beings, and the European Commission Council Directive on Residence Permit for the Protection of Trafficked Persons, since these documents are either not binding or containing only minimum standards. This omission creates a missed opportunity to link the fight against THB to a human rights/victim centred approach. For example, UN Protocol section covering the status of victims of trafficking in receiving countries stated: «1. In addition to taking measures pursuant to Art.6 of this Protocol, each state Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently in appropriate cases; 2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factor».

In most countries with a Residence Regime for victims of trafficking, the latter is awarded only to those willing to co-operate in criminal proceedings. This means that those who cannot, due to a lack of detailed information about the criminal networks, or will not, because of fear of retaliation, co-operate with authorities could be subjected to a number of difficulties, including fast-track deportation, thus leading to a double punishment as well as a two-tiered system of victims. As a result, it is important that participating States go beyond the provisions agreed in these international decisions.

- Asylum and residence regimes should not be mutually exclusive, thus trafficked persons should be able to enjoy the protection of either system at any given time in accordance to their specific profile and protection needs.

#### Residence Regimes

Overall, it is important that participating States have in place a system of protection which provides the victim of trafficking with legal status. This would facilitate the delivery of services to those in need and ensure clarity in terms of their entitlements and limitations which can assist in the decision making process for victims of trafficking regarding their situation.

**1. All presumed trafficked persons whether or not they co-operate with the competent authorities in countries of destination should be entitled to a reflection delay/recovery period.**

**What is a reflection delay/recovery period?** It is an established time period, no less than three months, provided to a presumed trafficked person, during which he or she cannot be deported or held in detention centres and is provided with legal status.

The European Commission Council Directive on Residence Permit leaves the duration and starting point to be determined by national law. Moreover during the Council of Europe negotiations in February 2005 of the Convention, no agreement was reached to set a minimum standards of 30 days for the reflection/recovery period as requested by the Parliamentary Assembly. This has serious implications in terms of harmonization of minimum standards, since currently «per practice» durations in countries of transit and destination average between 28 days to a 3 months period.

**Rational:** This period is provided to presumed trafficked persons to give them time to recover and to build self-confidence and trust in the State support before voluntarily identifying themselves as victims of trafficking. This enables them to make an informed decision about their future, such as whether to assist in or pursue criminal proceedings, whether to claim compensation, and whether to enter a social protection program or to opt to return to their country of origin.

**Usefulness for the competent authorities:** The reflection period enables the authorities to properly identify the person as a victim, avoid hasty removals and to offer appropriate assistance, while enabling victims to receive appropriate psycho-social assistance and to fully disclose facts.

During this period presumed trafficked person should be promptly supplied with the following minimum items:

- suitable and safe accommodation for the reflection delay/recovery period, as well as being promptly referred to protection and support services;
- a stay permit which specifies the time period awarded to the person.  
This would mean a document authorizing temporary stay to be issued immediately so as to ensure the person has access to service. In addition, this document can also assist in the prevention of mistakes which could lead to deportation;
- information about the current state of their case and future prospect.

**2. A residence permit should be granted to trafficked persons to allow the holder to stay in the country of destination temporarily or permanently depending on her/his own specific needs.**

When should such a residence permit be delivered? Following identification as trafficked persons, which may include the reflection period, victims should receive a temporary residence permit, which is to **be valid for at least six months** and renewable, allowing the holder to work and study, in conformity with the rules for third country nationals.

Temporary status is a starting point, yet it is important to underline that there are cases in which temporary measures may not provide the type of safety and security needed in the long term, thus it is important that the renewal of permits is not reserved to only those «deemed useful» in an investigation. It is important that participating States lay down clear criteria for issuing residence permit, the conditions of stay and the grounds for non-renewal and withdrawal as called upon for example in the EC Council Directive on Residence Permit.

Experience shows that granting a residence/stay permit, regardless of the person's willingness and/or ability to co-operate with the competent authorities, offers victims clear legal status and a perspective of social inclusion that, in the long run, has proven to be a contributing factor in the fight against organized crime syndicates.

**3. In practice, permanent or long term residence permits are delivered to victims of trafficking under the following procedures:**

- residence based on successful completion of a social assistance programme and insertion into the labour market
- co-operation with the judiciary
- refugee status
- humanitarian grounds.

**Points for Action**

**Identification**

- Special attention should be paid to trafficked persons from new European Union Member States to avoid oversights. This is so since they now benefit from free movement of persons within the Union and can stay up to three months.

**Immediate assistance**

- All presumed trafficked persons should be promptly given a period of recovery, which entails a legal status for «reflection delay».

**Residence regime**

- Trafficked persons should be provided with legal residence status in the country where they are located on the basis of their status as victims of a serious crime, who have suffered serious harm or abuse, and because they are at risk of reprisals or further human rights abuses if they return home, including the risk of being re-trafficked.

**Children**

- The provision of a legal status to children must not be made conditional on/or linked to co-operation in investigation and prosecution. Unaccompanied minors, including those seeking asylum, should be provided with a legal guardian.



**Grainne O'Hara**  
**Residence Regimes for Victims of Trafficking**

I am pleased to participate in this panel discussion and to have the opportunity to address the important issue of the appropriate use of asylum as part of broader efforts to respond to the protection needs of victims of trafficking.

UNHCR participated in the preparatory meeting which preceded this event and we have worked closely with Dr. Konrad and her team in the drafting of the asylum component of the background paper that you have before you today. In drafting that document we faced some challenges as to how to best articulate the sometimes complex interaction between asylum, humanitarian residence permits and other complementary efforts to provide adequate and appropriate protection to victims. In other words how to ensure asylum is not misinterpreted as a useful catch-all response to trafficking and to guarantee that resort to the asylum system is limited to those cases for which it is truly appropriate.

UNCHR was an active participant during the drafting of the Palermo Protocol. As a result of our participation and the co-operative collaboration between various UN agencies during this process, the Protocol against Trafficking contains a saving clause, intended to safeguard the rights of asylum-seekers and refugees under the 1951 Convention and the 1967 Protocol. It seems to us that the primary effect of this saving clause is to ensure access to some form of identification and screening process so that persons in need of international protection are able to submit applications for refugee status. The clause, along with the definitions contained in the Protocol, would also in effect exclude persons whose illegal entry is procured by traffickers from the penalties that the Protocol envisages against traffickers.

**UNHCR's interest in the issue of trafficking is essentially two-fold:**

- First, there is the fact that refugees, and especially refugee women, are particularly vulnerable targets for trafficking rings. In camp situations refugee women may be alone as a result of the loss of other family members or due to separation of families during flight. As a result they are at heightened risk of becoming targets for sexual abuse generally and sexual exploitation in particular. A lack of access to legal integration possibilities in host communities can contribute to negative dynamics in which refugee women agree to take up low-paid jobs in the host community, later finding themselves the victims of trafficking in situations of forced prostitution, sexual slavery or in situations of forced labour. It has also been seen that trafficking rings and their activities flourish in armed conflict and other situations of insecurity and chaos. In such situations, refugee women and girls are particularly susceptible to being targeted in a general situation of lawlessness.
- Second, some victims of trafficking, in particular but not exclusively women and children may in fact be refugees under the 1951 Convention refugee definition, as a result of the trafficking experience and the inability or unwillingness of their country of origin to provide protection against such harm.

It is this second scenario that raises the potential for the use of the asylum system as an appropriate protection response for some victims of trafficking. In order to address this issue in a practical and pragmatic way we need first to take a step back and consider the core components of the refugee definition. For this we need to look in the first instance to Art 1 A (2) of the 1951 Convention on the Status of Refugees which lists the following key elements:

- a refugee is someone who is outside their country
- owing to a well founded fear of persecution for reasons of
- race, religion, nationality, membership of a particular social group, or political opinion.

Reflecting on this definition and applying it in the context of trafficking already takes us a long way to identifying those cases of trafficking for which asylum could provide an appropriate response. Some of these pointers are self evident. The asylum regime will not be of any relevance to those victims who remain within their home countries. For those trafficking victims who find themselves abroad, either as a result of having been trafficked to a foreign country or having escaped trafficking at home and fled, the applicability of the asylum regime to their individual needs is not determined merely by the fact that they are victims of trafficking but on the establishment of a causal link between their having been trafficked and one of the Convention grounds. There is a high degree of consensus on the fact that trafficking is a serious human rights violation and as such can be properly called persecution. However, for the asylum regime to come into play as a response this persecution must be linked to a Convention ground. There are many possibilities as to how this might occur. Though financial gain on the part of the traffickers tends to be the overriding motive, a victim may well be able to establish that their ethnicity, religion or other relevant characteristic contributed to them having been singled out by their traffickers. Such cases may thus be deserving of refugee protection and it is the duty of caseworkers deciding on asylum applications to take due account of trafficking and its causes in their deliberations.

In short my message today is to highlight the fact that asylum is not the automatic solution for all victims of trafficking but can be a highly effective protection response in specific cases.

Before I close I have been asked by the organisers to provide some practical examples of how the interface between asylum and trafficking can be addressed at national level. How do we know which victims of trafficking should be channelled into refugee status determination procedures and which would more appropriately be the beneficiaries of some other status – humanitarian leave to remain, residence permits on a humanitarian basis, etc. How, for example can States ensure that their national procedures are set up in such a way as to ensure that victims of trafficking have appropriate access to asylum procedures.

There are two practical examples currently in place in OSCE member states in which UNHCR is actively involved and which I would like to bring to your attention:

In Albania, a co-operative pre-screening mechanism involving the national authorities, UNHCR, IOM, OSCE and an NGO partner ensures that when irregular migrants are detained, the pooled resources of each of the participating partners are put to use to undertake a preliminary assessment and channelling of each case be they an asylum-seeker, a victim of trafficking or a stranded migrant. This programme has contributed to the provision of improved protection for individuals whilst simultaneously working to build national capacity in this regard;

In Slovenia, the national authorities have incorporated as standard in their asylum procedures, one on one counselling sessions on the risks of trafficking. The practical results of this are that single women and unaccompanied children within the asylum system are given direct practical information on trafficking and how to avoid falling victim. The idea is to empower individuals to protect themselves. Because of their vulnerability some may still be at risk as they pursue clandestine options to move on to other countries in Europe but the delivery of a practical reference booklet during the counselling sessions aims to serve as a protection resource by giving contact details of NGOs that can help victims in different European countries.

These are just two practical examples of how some OSCE member states are already addressing the interface between trafficking and asylum. I am sure there are many more such experiences that we could learn from and build upon.

**Vera Gracheva**  
**Acting in the Best Interest of Children Victims of Trafficking**

Thank you, Ms. Moderator,  
Excellencies,  
Ladies and Gentlemen,  
Dear colleagues,

Let's be honest. All of us – each person participating in this Conference – at least once has faced a situation which could be assessed as a clear demonstration of child trafficking. We are talking about groups of small children begging, stealing, selling stolen items in the streets of our capitals, children working in conditions which threaten their health in sweat-shops or on farms and plantations, teenagers standing along highways or brought in cars by pimps to hotels; boys and girls, whose age may vary from 6 to 18, abandoned by society, family, and by the State. These children have been intimidated and beaten. They are often sick and drug or alcohol addicted. They are mentally, physically and psychologically traumatized, at times – fatally. Their real numbers are unknown, while those roughly estimated by various organizations or governmental institutions reflect just the tip of an iceberg.

National and international experts in this hall and in many other similar gatherings are quite familiar with the root causes of human trafficking, with the increasing threat imposed by organized crime to the civilized world and its values. We make strong statements, our governments sign and ratify treaties, we elaborate recommendations on how to implement our commitments. But yet we haven't succeeded. We have gotten used to slavery. We discuss it as a phenomenon to address and yet all too often we, officials, fail to hear the voices of child victims pleading for help. Horrifying stories told by such children, when identified and rescued, are a living accusation of all those responsible for the well-being of nations.

Let me stress the urgency of combating child trafficking.

The social and economic root causes of child trafficking remain insufficiently addressed and are fully exploited by criminal networks or individuals.

The numbers of unprotected children, easy prey for traffickers, are endless. These children are orphans, so called social orphans (children deprived of parental care), homeless children, lost or missing children, child-victims of domestic violence, separated children, child migrants, children from incomplete families or families addicted to drugs and alcohol, children living in areas of armed conflict or affected by natural or techno-disasters. Other relevant categories may include children of trafficked persons and/or children born to trafficked mothers who either «inherit» the status of a slave or face social stigmatization.

The demand for children by adult predators is so high, and the cash rewards so great, that it overcomes any potential risks involved. Children are readily exploitable because they are intimidated and kept under control by traffickers easier than adult victims. They often consider their involvement in an exploitative situation either as «normal», or as unavoidable. If not identified and rescued within a short period of time, child victims themselves become a part of criminal groupings, and this vicious circle continues.

The problem of combating child trafficking is aggravated by the fact that internal child trafficking (or regional, within certain groups of States) often exceeds transnational trafficking, but nevertheless remains less detected (even unrecognized), and its victims – unidentified.

Child trafficking is a most egregious violation of the human rights of an individual who by age is incapable of protecting himself and this violation has to be addressed in all its entirety – in its humanitarian, economic and security dimensions. Nevertheless, let me underline the core principle of any action taken with regard to combating trafficking in children – that is pursuing the best interest of the child. It should be paramount and remain a primary consideration for all agencies, institutions, courts of law, administrative authorities or legislative bodies. Instead we have numerous examples of deportations of children who are considered not as victims of a grave crime but as illegal migrants and offenders. Results are predictable – repetitive re-victimization and re-trafficking of children.

Other core principles, such as non-discrimination, the right to be heard, respect of cultural identity, confidentiality of personal data, and others are often ignored as well. In many instances the failure (or reluctance) of authorities to render immediate protection and assistance to a child in need comes from denial of the status of a victim, with a forthcoming chain of mistreatment. Therefore, the issue of identification should be recognized as a point of priority. Taking into account the factor of exploitation as the main aim of trafficking. The clear legal recognition of all forms of exploitation has to become an essential part of the identification process. We are privileged to have with us Ms. Tine Staermose, who represents the International Labour Organization. Ms. Staermose will present her vision of the problem, and I would not dare to go into detailed description of these aspects. I would only stress that child trafficking includes all forms of exploitation – sexual, economic, forced or bonded labour, servitude, forced marriages, extraction of organs, etc. Mostly these forms, other than sexual, remain «unnoticed» by society and law enforcement.

The Position Paper, reflecting the opinion of international experts, is duly focused on the following areas of priority, once a child victim of trafficking is identified: immediate protection from further exploitation, search for individual long-term solutions, and preventive measures. Each area envisages a number of concrete and practical measures in countries of destination, origin and transit, measures specially designed for child victims of trafficking. Such measures, if implemented in their entirety, decrease the trauma experienced by a child victim; allow for recovery in the course of a reflection period and an extended stay; and assist with the gradual integration of the trafficked child into a normal social environment. Needless to say, this is a long process which requires attention and care from all relevant officials – be it police or immigration officers, guardians, social workers, psychologists, teachers, community, foster families, or the media.

Let me underline the significance of individual long-term solutions based on a precise risk and security assessment prior to making a court decision on repatriation of a child victim, or care arrangements in the country of destination, or relocation to a third country as an option in case the family of the child resides in a country other than that of origin. Such relocation may become the only option due to safety considerations. Unfortunately, reality is quite far from such an approach, and we see too often that the best interest of the child as the core principle in combating child trafficking is neglected due to multiple but unclear reasons including lack of resources, lack of awareness, inadequate training, destruction of a system of social protection and assistance, corruption, gaps in legislation, or restrictive migration policies.

Finally we address prevention. It is an area which demands long-term economic and educational strategies targeted at the most vulnerable categories of children and youth, as well as involvement of all sectors of society, including the private sector, if we are to successfully begin tackling the root causes of child trafficking. We have to recognize that any society tolerating human trafficking and especially trafficking in children for various forms of exploitation cannot be considered as civilized. We have everything at hand to «think globally – act locally» (legally binding treaties and political commitments, guidelines and recommendations, action plans and national programs, great expert potential, civil society institutions). And still we have the problem affecting and threatening safety of our own children – tell me what is more precious than that?

**Tine Staermose**

## **Acting in the Best Interest of Children Victims of Trafficking**

Dear National Experts from the OSCE member countries, Dr. Helga Konrad, OSCE Special Representative on Combating Trafficking in Human Beings, Ms. Michele Clark, Mr. Brendan Moran, colleagues from UN Organisations, International NGOs and national NGOs active in the field of combating trafficking in human beings.

Following Vera Gracheva's presentation of the widespread problem of trafficking in children (TIC) in OSCE countries, the specific vulnerability of children, I will be summarizing the main points from the last part of the position paper which is based on discussions on child trafficking in the expert group meeting in December. I will in particular elaborate on some aspects of the labour dimensions. Colleagues from other agencies have earlier today dealt in detail with victim assistance and residence regimes.

### **Let us start with the most important thing though: children.**

Through all various steps that are taken by any actor in the field one must put the child and her/ his best interests in focus. It is not always clear however, what these best interests are, how these interests are defined and who is best placed to do this. Children have different needs than adults and their obvious higher vulnerability towards harmful events demands urgent attention. Girls have different needs than boys and this also needs special consideration in interventions.

The main principles to be kept in mind are reflected in the position paper and enshrined in the different international treaties such as UNICEF guidelines for protection of the Rights of Children Victims of Trafficking and UNHCHR's Recommended Principles and Guidelines on Human Rights and Human Trafficking as well as the ILO Convention 182 on the worst forms of child labour, incl. Recommendation 190. When a child is identified as a victim in another country or in a place other than his/her normal environment, these principles are: non- discrimination, same treatment for resident and non resident children, right to participate in decision-making on aspects that relate to the child, respect for cultural identity, (language, religion), confidentiality of personal information and access to information. Long-term solutions are even more important undeniable rights, when it comes to children as too much disruption can cause psychological instability.

### **I will in the following elaborate on some selected issues from the paper.**

The first issue pertains to the purposes of trafficking and «the over-all non-recognition of various forms of exploitation» as such which prevents timely identification of children as victims of trafficking and/or as objects of exploitation». It is important to stress that not all children who are identified as exploited are trafficked. However, as part of the definition of trafficking according to the Palermo protocol, the identification of trafficked children always includes the element of exploitation.

In this regard it is important to stress that children, as adults, not only are being trafficked for the purpose of sexual exploitation but also, and increasingly so, for labour exploitation. Children are being engaged in begging, menial jobs, domestic labour, street vending, dancing, prostitution, agriculture, etc.. In Europe, as elsewhere, in the wake of globalization, more emphasis is now being put on labour exploitation including forced labour.

Forced labour represents a severe violation of human rights and restriction of human freedom, as defined in the ILO Conventions on the subject and in other related international instruments on slavery, practices similar to slavery, debt bondage or serfdom.

When it comes to the exploitation per se and exploitation of children in particular as an outcome or within the process of trafficking itself, it is often very difficult for countries to draw the line between what is exploitation and what is not.

This brings us to *the problem of identification and the difficulties in determining when and where trafficked children end up in exploitative labour conditions*. Many countries do not have clear definitions of all forms of exploitation (including an overview and listing of hazardous forms of child labour). Convention 182 (on which all OSCE member countries report every two years), provides for unconditional WFCL\*, prostitution for example, which are to be eliminated as a matter of urgency. It also provides for a broader category of hazardous child labour requiring a process at country level for their determination. We highly recommend that countries who have ratified the ILO C. 182 and the UNCRC\*\* embark on a process of determining these forms in their respective countries. There is a handy guideline outlining six steps for determining hazardous child labour and additional technical assistance ILO can provide in this regard.<sup>1</sup>

*The second and third areas of action combine a focus on the immediate protection and long-term solutions with the view to ensure the best interest of each individual child.*

Functioning of child friendly national referral mechanisms in countries of origin, transit and destination is a very important overall framework for providing immediate protection rapidly and smoothly. But it is widely acknowledged that making it function optimally is very difficult because many different actors with different priorities have to work together in unison. Different interests may be put aside if the guidelines on how to deal with cases through a case-management system, is built around clear principles that put the best interests of the child as a top priority. The priorities in relation to the protection includes establishing a guardianship system, ensuring that reception centres are child friendly and that staff, including immigration and border police staff are properly trained to take care of children under distress, that national standards and guidelines for care facilities are developed, met, monitored and evaluated, that child trafficking victims are serviced at an individual level, that alternative family arrangements are taken care of, that security assessments and legal status are clarified as a matter of urgency, that the child takes part in decision-making processes, that a child upon return to country of origin or third country is monitored to ensure her/his well-being, ensure a transparent system of services and follow-up including reporting to a state entity, special educational opportunities and vocational skills training.

All these areas for special consideration relate to both host countries and countries of origin, whenever applicable.

Countries of origin and host countries can work together through signing of bilateral agreements on co-operation covering all the steps from identification of a child victim of trafficking to post rehabilitation follow-up.<sup>2</sup>

\* WFCL, ILO Convention No 182 on time bound measures to eliminate the worst forms of child labour

\*\* UN Convention on Rights of the Child



## Preventive measures

National legislation that regulates the labour market should harmonize their legislation reflecting the principles related to the minimum age for admission into employment in accordance with the ILO Convention 138 and article 32 of the CRC.

There are over a billion young people in the age bracket 15-25 in the world, 85 % of them in developing countries. Most of them, are economically active, either working or looking for work. ILO estimates put the current number of young unemployed people at around 74 million. Many more millions do have a job and may in fact be working long hours but are nevertheless «underemployed» as they struggle to make ends meet in the informal economy with low productivity and little pay.<sup>3</sup>

The youth unemployment rate tends to vary closely with the adult unemployment rate but it is consistently higher – typically two to three times higher – in a wide range of countries and across gender. This consistency across countries at different stages of development points to some systemic factors that are at work. For a variety of reasons having to do, inter alia, with their limited skills and experience, inadequate protection in labour law, and their proneness to exploring alternative opportunities, young people tend to be the last to be hired and the first to be fired. Unemployment rates are often higher among young females than young males. Rapid assessments on child trafficking indicate a link between the large number of youth unemployed in some of the OSCE countries and the risk of trafficking.<sup>4</sup> A new study by the ILO shows that although young people under 24 represents 25 % of the working age they make up as much as 47 % of the 186 million people out of work worldwide. Some 88 million, aged 15 – 24, are out of work. Massive youth unemployment is also a social menace, breeding vulnerability and feelings of exclusion and worthlessness which may lead to «personally and socially destructive» activities.<sup>5</sup>

The OSCE position paper points out that countries can work together through the development of aid assistance projects to reintegrate victims of trafficking and to prevent out-migration of large portions of the young population through youth employment schemes, educational sponsorship schemes and the creation of economic opportunities for vulnerable families.

Of specific relevance in this connection is the UN Secretary General's Youth Employment Network (YEN)<sup>6</sup>, (which is a collaboration between the WB and the UN, with the ILO acting as its secretariat) and provides assistance to countries for the development of National Action Plans on Youth Employment. Countries interested in becoming lead countries can contact the ILO for further information.<sup>7</sup>

From the multitude of studies on trafficking in children, as well as from IOs' and NGOs' experience in project implementation, we have found that much more is known about trafficking of women for sexual exploitation in Europe than trafficking of boys and girls (and men and women) for labour exploitation including commercial sexual exploitation. We also still do not know enough about the demand dynamics and here we talk about not only how the organized criminal gangs operate, but in a broader sense, we look at issues such as the delicate balances in how economic forces operate. There are indications that traffickers use the labour market dynamics to tip the supply of victims in their direction.

They are increasingly using the «**abuse of a position of vulnerability**» as a means of coercion, providing or promising an income above what the victim would get in his/her home place. This shows the importance of firstly: strengthening poverty reduction measures and secondly mainstreaming the needs of children and populations at risk within the broader social and economic development policies, as a way to reduce trafficking.

The issue of re-trafficking points towards the need to have an all-inclusive approach to human rights. If a victim makes the informed and conscious choice to re-enter the trafficking market, it is certainly because his/her rights – especially his/her economic and labour rights, if she/he is above the legal working age, – have been abused in his/her place of origin possibly to a greater extent than during his/her trafficking experience. There is scope for a broader inclusion of the international labour standards complementing other international legal frameworks in the consolidated response. This is far from being exploited to its full capacity. The first position paper identifies the active participation of labour unions and labour inspectors in anti-trafficking actions.

### **Finally, a word on capacity building**

Invoking long-term change through capacity building around principles of human rights needs careful planning and a good deal of flexibility from donor's and international organisations' side. Most importantly, the role of external donors and organisations should be one of facilitation. Unfortunately, in some parts of the world, quick-fix solutions seem still to be in place in rehabilitation work with regard to trafficking of boys, girls, men and women.

**It is important to start the dialogue from within.** Today capacity development is recognized as central in the fight against poverty and the attainment of the Millennium Development Goals. Further, it is commonly accepted that capacity development is not only a means towards achieving such development targets, but a legitimate development outcome in its own right.

1. Eliminating Hazardous Child Labour Step by Step, ILO Worst Forms of Child Labour Convention, 1999 (No. 182), ILO
2. Article 8 of the ILO C. 182 specifically recommends ratifying states to do this.
3. ILO, GB.286/ESP/5, 286th Session, pp. 1-2.
4. Rapid Assessments of Trafficking in Children for Labour and Sexual Exploitation in Albania, Moldova, Romania and Ukraine, ILO-IPEC 2003. <http://www.ilo.org/public/english/standards/ipec/themes/trafficking/index.htm>  
For further information, contact ILO-IPEC regional trafficking project PROTECT-CEE, Mr. Patrick Daru, [patrick@protectcee.ro](mailto:patrick@protectcee.ro)
5. Global Employment Trends for Youth 2004, International Labour Office, Geneva, 2004, ISBN 92-2-115997-3
6. The December 2002 Resolution on promoting youth employment (A/RES/57/165) and Resolution A/RES/58/133, of January 2004, concerning policies and programmes involving youth.
7. Improving prospects for young women and men in the world of work: A Guide to youth employment. Policy considerations and recommendations for the development of National Plans on Youth Employment. ILO, 2004, ISBN 92-2-115945-0. Available at [www.ilo.org/yen](http://www.ilo.org/yen) or contact Regina Monticone for more information, [monticone@ilo.org](mailto:monticone@ilo.org)

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Judge for Preliminary Investigation in the Criminal Court of Rome. She drafted the Italian legislation on Domestic violence, Immigration and Trafficking in human beings. She is one of the scientific experts in the Ad Hoc Committee on action against trafficking in human beings of the Council of Europe, which is drafting the Convention of the Council of Europe on Trafficking in Human Beings. Author of numerous essays and publications on human trafficking, she has been also a legal expert in a number of legal reform projects in the OSCE region.

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