



Europa gegen Menschenhandel

Berlin Conference, 15-16 October 2001

Europe Against Trafficking In Persons

Conference Report



Auswärtiges Amt



This report was compiled and edited by the OSCE Office for Democratic Institutions and Human Rights. The opinions and information it contains do not necessarily reflect the policy and position of the ODIHR.

ACKNOWLEDGEMENTS

"Europe against Trafficking in Persons" was organised by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in co-operation with the German Ministry of Foreign Affairs. Support for the conference and related activities, including a poster campaign and exhibition, was provided by the German Ministry of Foreign Affairs and the ODIHR's Anti-Trafficking Project Fund.

The conference organisers would especially like to thank **Minister Joschka Fischer**, German Ministry of Foreign Affairs, **Minister Mircea Geoana**, Romanian Ministry of Foreign Affairs, **Ambassador Reinhard Bettzuege**, Head of the Permanent Mission of the Federal Republic of Germany to the OSCE and **Ambassador Gérard Stoudmann**, Director of the OSCE Office for Democratic Institutions and Human Rights, for making this issue a priority and for their participation, which framed the discussion and affirmed their commitment to future anti-trafficking efforts.

In addition, we are grateful for the high attendance from governmental bodies, as well as international and non-governmental organisations, which reflects the commitment of a wide variety of actors with different mandates and perspectives, whether from countries of origin, transit or destination, to work more closely together to combat trafficking and to assist its victims.

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1. EXECUTIVE SUMMARY

In recent years much has been done in the field of prevention to raise awareness about the risks of trafficking. Programs in countries of origin also seek to combat poverty, inequality, discrimination and violence against women. While it is crucial to increase and continue support to such prevention activities, we must also examine the situation in countries of transit and destination.

It is in countries of destination where the rights of trafficked persons are often ignored and violated by state actors. States should be as vigilant in their efforts to address complicity and corruption as they are in protecting their borders. Furthermore, victim assistance and protection mechanisms must be developed to respond to the real crisis, involving debt bondage, violence, slavery-like practices and exploitation, that exists in many OSCE countries.

Bearing this in mind, "Europe against Trafficking in Persons" was organised by the ODIHR, in co-operation with the German Ministry of Foreign Affairs, to raise awareness about the situation of trafficking in human beings in countries of destination and to exchange good practice in the fields of prevention, prosecution and protection. By bringing together a wide variety of actors, the conference's six working group sessions also aimed to develop new recommendations for enhanced co-operation and a better legal framework to address trafficking.

As a result of the working groups' expert interventions and lively discussions, a wide variety of recommendations for the legal framework, as well as for follow-up activities, were generated. The conference's preliminary report highlighted some of the most concrete recommendations including that OSCE participating States should ratify relevant international documents including:

United Nations Convention against Transnational Organized Crime, as well as its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and its Protocol against the Smuggling of Migrants by Land, Sea and Air;

United Nations Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, which allows for individual complaints and commissions of inquiry;

United Nations Convention on the Rights of the Child, as well as its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography;

The Rome Statute in order to allow for the establishment of the International Criminal Court.

Furthermore, provisions on human rights protection including addressing the issues of compensation and temporary residence permits, as well as anti-corruption requirements, should be incorporated into all anti-trafficking legislation.

Several recommendations specifically addressed the responsibility and the potential to improve the response to trafficking in human beings in European Union (EU) member states. For instance, the timeframe for developing EU guidelines for victim protection, as defined in the European Commission "scoreboard," and as necessary to complement the EU Council Framework Decision, should be moved up from the proposed deadline of 2004. Following the EU Council Framework Decision, each EU member state should develop new legislation to identify the offence of trafficking and to ensure that the provisions on protection, as set forth in the UN protocol, are taken into consideration. Another suggestion by conference participants is that the EU Council Framework Decision should become part of the *acquis communautaire* and be used as a condition in negotiations with Stability Pact member states.

In addition to a concrete analysis and discussion on the legal framework being developed to combat trafficking, participants committed themselves to improving the implementation of legislation and to

enhancing co-operation. When exchanging good practice in the fields of prevention, prosecution and protection, it became clear that there is a serious need for better trained professionals in this field. Good practice from various countries illustrates that our efforts will only be successful if we learn to co-operate effectively – across borders and among actors who possess different skills, mandates and resources.

Taking this into consideration, Ambassador Bettzuege, Head of the Permanent Mission of the Federal Republic of Germany to the OSCE, and Ambassador Stoudmann, Director of the OSCE/ODIHR, closed the conference by expressing the commitment to follow-up with similar meetings on specific topics such as legislative reform. It is necessary to continue the momentum to encourage countries of destination to acknowledge trafficking, to assist and to protect its victims, as well as to adequately punish its perpetrators. The Berlin conference was organised to raise awareness and to introduce a wide variety of diverse actors to the complexity of the trafficking issue in countries of destination. The conference succeeded in highlighting not only the contrasting and complementary approaches of different actors such as law enforcement and NGOs, but also in showcasing the multitude of responses and solutions taking place at the national level.

These contrasting viewpoints and approaches, which are reflected in the following report, leave us with the challenge of exploring how we can work together more effectively in the future and with the question why successful models in some countries should not also be initiated by their neighbours.

2. AGENDA

Monday, 15 October 2001

9.00 – 10.00: Registration

10.00 – 11.00: Opening remarks

Joschka Fischer, German Minister for Foreign Affairs

Mircea Geoana, OSCE Chairman-in-Office

Christine Bergmann, German Minister for Family, Senior Citizens, Women and Youth

Anna Diamantopoulou, EU Commissioner for Employment and Social Affairs

Marion Böker, General Secretary of International Affairs, KOK Germany

Moderator: *Gérard Stoudmann*, Director OSCE/ODIHR

11.00 – 11.30: Coffee Break

11.30 – 12.30: Panel Discussion A: **Victim Protection: Human Rights versus Repression**

Mike Dottridge, Director of Anti-Slavery International, United Kingdom

Monika Smit, Senior Researcher at the Bureau of the National Rapporteur on Trafficking in Human Beings, The Netherlands

Cornelie Sonntag-Wolgast, Parliamentary State Secretary at the German Ministry of Interior

Patsy Sörensen, European Parliament, Belgium

Moderator: *Peter D. Eicher*, First Deputy Director OSCE/ODIHR

12.30 – 14.00: Lunch Break

14.00 – 15.00: Panel Discussion A: **Victim Protection: Human Rights versus Repression Continuation**

15.00 – 15.30: Coffee Break

15.30 – 17.30: Panel Discussion B: **Breaking the Cycle: East – West Co-operation**

Geert-Hinrich Ahrens, Head of OSCE Presence in Albania

Björn Clarberg, EUROPOL

Leyla Kayacik, Council of Europe

Marina Pisklakova, ANNA, Russian Federation

Martina Vandenberg, Human Rights Watch, United States of America

Moderator: *Helga Konrad*, Chair of the Stability Pact Task Force on Trafficking in Human Beings

18.00: Reception & Opening of the International Poster Exhibition

"Europe Against Trafficking in Persons" hosted by Fed. Gov. Commissioner for Human Rights Policy & Humanitarian Aid, Gerd Poppe, in the Atrium Reception Area "Lichthof"

Tuesday, 16 October 2001

WORKING GROUP I: PREVENTION – Weltsaal

9.00 – 11.00: **Migration Policies within the European Union**

Chair: **Mike Dottridge**, Director of Anti-Slavery International, United Kingdom

Interventions: **Mathias Köngeter**, Office of the Government's Commissioner for Foreign Issues, Germany
Renate Heubach, Zentrale integrierte Anlaufstelle fuer PendlerInnen aus Osteuropa, Germany

Rapporteur: **Gabriele Reiter**, OSCE/ODIHR

11.00 – 11.30: Coffee Break

11.30 – 13.30: **Awareness Raising**

Chair: **Marco Gramagna**, International Organization for Migration

Interventions: **Christiane Howe**, Agisra Frankfurt/Main, Germany
Katya Levchenko, La Strada Ukraine

Rapporteur: **Jyothi Kanics**, OSCE/ODIHR

13.30 – 15.00: Lunch Break

WORKING GROUP II: PROTECTION – Europasaal

9.00 – 11.00: **Models of Co-operation between Non-Governmental Organisations and Governmental Bodies**

Chair: **Renate Augstein**, German Ministry for Family, Senior Citizens, Women and Youth

Interventions: **Heidi Rall**, Federal Criminal Police Office, Germany
Don Cesare Lodeserto, Regina Pacis, Italy

Rapporteur: **Jyothi Kanics**, OSCE/ODIHR

11.00 – 11.30: Coffee Break

11.30 – 13.30: **The Status of Trafficked Persons in Countries of Destination**

Chair: **Bärbel Uhl**, OSCE Mission to FRY

Interventions: **Marina Pisklakova**, ANNA, Russian Federation
Georgina Vaz-Cabral, Comité Contre l'Esclavage Moderne, France

Rapporteur: **Michaela Küfner**, OSCE/ODIHR

13.30 – 15.00: Lunch Break

WORKING GROUP III: PROSECUTION – Aussenministersaal

9.00 – 11.00: **International Law Enforcement Co-operation**

Chair: **Leopold Schuster**, Head of the Federal Criminal Police Office, Germany

Interventions: **Simon Humphrey**, Metropolitan Police Service, United Kingdom
Gabriela Konevska, Director of the Regional Center for Combating Transborder Crime, Southeast European Co-operative Initiative

Rapporteur: **Michaela Küfner**, OSCE/ODIHR

11.00 – 11.30: Coffee Break

11.30 – 13.30: **The Legal Framework to Protect Human Rights and Prosecute Traffickers**

Chair: **Martina Vandenberg**, Human Rights Watch, United States of America

Interventions: **Elaine Pearson**, Anti-Slavery International, United Kingdom

Thomas Fitschen, Ministry of Foreign Affairs, Germany

Rapporteur: **Gabriele Reiter**, OSCE/ODIHR

13.30 – 15.00: Lunch Break

15.00 – 16.30: Plenary: Recommendations and Conclusions

3. OPENING REMARKS

Joschka Fischer

German Federal Minister for Foreign Affairs

Ms Bergmann,
Minister,
Excellencies,
Members of Parliament,
Ladies and Gentlemen,

I should like to welcome you to the "Europe Against Trafficking in Persons" conference here in Berlin. The idea for this conference came from Ambassador Stoudmann, Head of the OSCE's Office for Democratic Institutions and Human Rights in Warsaw, who approached us at the beginning of the year. I have from the outset supported this initiative out of a firm sense of conviction.

Human trafficking is a particularly brutal and loathsome violation of human rights. It has rightly been called a modern form of slavery. Its victims are primarily women and children, the weakest and most defenceless members of our societies.

The problem is not a new one. However, it has taken on alarming proportions in recent years, occurring in new and ever more pernicious guises, sadly particularly in Europe. This has much to do with the changes that have taken place on our continent since 1989. The end of the division of Europe opened up borders and gave many people both freedom and the prospect of a life in peace and security.

In many countries, however, it also led to profound domestic crises, bitter poverty, hopelessness and the disintegration of political and social structures, which in turn unfortunately also broadened the scope for organized crime in all its sinister forms. The trade in "people as goods", a dreadful phrase, is – sadly – a very lucrative one. This fact is inescapable, not least here in Berlin, which has become a hub of international trafficking in persons.

Human trafficking is a global problem that requires a comprehensive response. Politicians are called upon to remove the existing inequalities in Europe as quickly as possible by consolidating peace, stability and economic prosperity in order to prevent human trafficking. The problem must be tackled at its roots. But that will take some time.

Already we must therefore counter the problem of human trafficking with a package of very concrete and specific measures. The adoption of the United Nations Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons was an important step. In Europe, the European Union, the Council of Europe, the OSCE and the Stability Pact are active in many fields, including harmonisation of legal standards and co-operation between police forces and judiciaries. Germany welcomes and supports all such collective endeavours in the fight against human trafficking.

The countries represented here today bear a particular responsibility. As members of the OSCE they have committed themselves to a human rights standard unique in the world, and in Istanbul they also explicitly undertook to resolutely combat human trafficking. The members of the OSCE are therefore called upon to play a pioneering role in improving the rights of women and children by implementing them in full in their own countries and by pressing for their consolidation and effective monitoring at international level.

This conference rightly identifies two focal points:

It highlights the situation of the victims. Human trafficking must not be viewed merely from the point of view of national protective interests, i.e. as a fight against organised crime and illegal immigration. Human trafficking is first and foremost a human rights problem. Far too often, however, the defenceless victims of cynical traffickers are regarded as perpetrators, and are criminalized and deported before the true circumstances are investigated – with no care or support and with no regard for the severe trauma these people frequently suffer. What is needed is a shift in perspective, and this conference can and should help bring one about. Criminal prosecution must be reconciled with the protection of human dignity.

The status and protection of the victims deserve particular attention. In this area in particular, governments should make use of the experience and possibilities of non-governmental organisations, which are often more than any other bodies the advocates of the weak and weakest in our societies. I am therefore pleased that so many NGO representatives are here today.

Let me make one further point: the dreadful terrorist attacks of 11 September force us all to introduce more stringent security measures. Democratic governments owe it to their citizens to do so. However, these necessary measures must not jeopardise the fundamental liberal values of our societies and human rights. The Federal Chancellor set this out very clearly in his policy statement on 11 October. I say this not least with an eye to the current debate in Germany on immigration policy.

A second focus of this conference is the situation in the countries of destination. The problem of human trafficking by no means concerns only the countries of origin; rather, it affects us all equally – in East and West alike. Every OSCE member state is affected in some way or another – as a country of origin, of transit or of destination. Only if we all together intensify our efforts will we be able to master this challenge. Germany has already made some progress in legislation, victim protection and criminal prosecution. We are aware, however, that we will still have a great deal to do in the future.

The aim of this conference is not merely to add further reports and declarations of intent to the many that already exist. Rather, it must come up with concrete objectives for effective co-operation and subsequently to implement these resolutely. I hope this meeting will give major impetus and wish you every success for this important task.

Mircea Geoana

Chairman-in-Office of the OSCE, Minister of Foreign Affairs of Romania

Allow me first to thank the co-organisers, the German Ministry of Foreign Affairs and the OSCE Office for Democratic Institutions and Human Rights, for their initiative and the excellent job they have done in organising this Conference. We do appreciate it.

It is indeed a pleasure to be with you here today, in Berlin, a city of renewed hope. As I look at the way it has been revitalised, it reinforces my conviction that when people are determined to accomplish any goal, no task is too difficult for them.

We are here to discuss a phenomenon, which we have recognised as the slavery of the 21st century. It is a disgrace to human dignity and an affront to all of us.

Human trafficking continues to flourish and expand throughout Europe. It has become the third most lucrative activity of organised crime globally.

Poverty, unemployment and an inadequate response to economic concerns encourage the growth of corruption and organised crime. Our effort to combat trafficking is a battle against one of the faces of organised crime.

Trafficking in human beings threatens the security and stability of countries throughout the OSCE area, whether source, transit or destination countries. It endangers social cohesion for it cuts the individual off from the rest of society. It violates human rights and attacks basic human dignity.

This appalling trade transcends national borders. The only effective way we can tackle it is by joining our efforts, at national, regional and international levels.

Speaking not only as OSCE Chairman-in-Office, but as a European citizen, I say: It is time for action, not just words.

National and regional strategies need to be put into place which cover prevention and public awareness campaigns; which provide the right instruments for prosecuting traffickers and law enforcement; and which offer victims protection and the chance to rejoin society.

Prevention

Economic disadvantage is one of the key factors in the spread of human trafficking. Programmes to enhance education and economic opportunities at home would help to remove some of the pressures for migration among young people looking for a better life. But opening up legal labour markets and easing immigration regimes would remove the need for these young people to approach and be exploited by illegal gangs of people-smugglers.

More intense economic reform within transition countries and more flexibility from the European Union would go a long way to reducing the problem.

We should remember that most of the victims of traffickers are young women who are forced into prostitution. These young women need to be better informed about the dangers and what rights they have. Public awareness campaigns are being launched in a number of countries, including my own. It is still too early to judge the results. One way to make our campaigns more effective is to involve former victims who can tell their story in their own words.

Law Enforcement

All OSCE countries, whether countries of origin or of destination, should have the right legislation in place. Many countries are now giving priority to adopting anti-trafficking legislation and strengthening enforcement and prosecution measures. This activity should include regional information exchange and joint enforcement operations.

In Romania we are actively working on our national anti-trafficking law and are heading up a task force against trafficking within the SECI Regional Centre for Combating Cross-Border Crime.

Regrettably, in many OSCE countries, trafficking is approached primarily as an illegal immigration or a prostitution problem.

Victims of trafficking receive inadequate assistance, protection or legal remedy. Without proper witness protection programmes, victims of trafficking are reluctant to give evidence. This is why witness protection legislation should be a priority. Law enforcement strategies should target the traffickers and the criminal networks behind them.

We need to punish the criminals, not the victims. What the victims need is support and shelter when they get home; they should not be condemned or ostracised.

Let us remember for a moment that human beings would not be trafficked in destination countries if there were no demand.

The EU estimates that 120,000 women and children are brought illegally into Western Europe and that women that are trafficked are forced to work mainly in the sex trade.

And large numbers of women end up in regions where there is a large international presence. This is particularly disturbing. We should not close our eyes to this nor apply double standards. Those who are there to preserve peace and stability should not be a party to destabilising activity. The international community must take tougher action against those who abuse their position of trust.

Clearly there is a need to review existing legislation and correct the legislative "loop-holes" that make trafficking possible. And there is a need for common standards, in legislation, in law enforcement and in punishment.

The recent European Council decision to speed up the introduction of an EU-wide Search and Arrest Warrant, which will apply not only to acts of terrorism but also to trafficking in drugs and people, is welcome and timely. To be truly effective, thought should be given to extending this system beyond the EU Member States.

Assistance from the EU and individual Member States in strengthening border services in EU candidate countries and the Western Balkans is making a real difference. But this is a long-term process and requires a co-ordinated approach, both from the EU and from the countries of Central and South East Europe. I would urge the EU to give thought to working more closely with the SECI Regional Centre.

OSCE Role

Why is the OSCE well placed to contribute constructively to regional and international efforts?

The OSCE is the only forum that covers all of Europe. It has been instrumental in developing commitments on a broad range of issues: political, security, and economic.

We are promoting and consolidating the rule of law and respect for human rights. We are building and strengthening democratic institutions, including police and judiciary. We are helping to develop civil

society, independent media and the role of NGOs. And we are turning our attention to new areas, such as policing, and the fight against organised crime. Each one of these tasks is relevant to the fight against human trafficking.

Within the OSCE, a number of decisions have been adopted which stress the need to combat trafficking.

Together we have drafted the OSCE Anti-Trafficking Guidelines, which encourage OSCE institutions to develop activities and projects to combat trafficking and mainstream anti-trafficking objectives into their daily routines and activities. I hope the Bucharest Ministerial Meeting in December will add to this commitment, in practical terms.

We should remember that the OSCE has two strong advantages.

First, we have a tremendous resource and facility in the form of our institutions, notably the Office for Democratic Institutions and Human Rights, and especially our missions on the ground.

Secondly, we already work closely with major international organisations – the UN, the EU, NATO, and the Council of Europe – and are developing closer links with more specialist organisations like the International Organisation for Migration (IOM).

OSCE/ODIHR, together with the IOM and NGOs, are already doing a tremendous job in developing public awareness campaigns and designing programmes to reintegrate victims into their own societies. In many respects, they have been pioneers in this field. They have helped focus the attention of OSCE governments.

Our OSCE field missions are well placed to keep track of both national efforts and international programmes. They have excellent contacts with national and local authorities. They have links with NGOs. They have good working relationships with field representatives of other international organisations. They can ensure that programmes throughout the region are developed in a consistent and co-ordinated fashion. The key is co-ordination.

For instance, in Kosovo, the OSCE Mission and their colleagues from the UN and the IOM have drawn up a new piece of legislation, which makes trafficking of human beings a criminal offence and asks state authorities to provide assistance to victims. And, still in Kosovo, the IOM and the OSCE have set up a special repatriation programme to help several hundred trafficked women go home.

Our joint work should continue. We are looking at ways to improve consultation and co-ordination so that jointly, what we do is more effective.

Trafficking in human beings is a terrible human rights abuse and a serious crime that demands a more comprehensive and co-ordinated response from OSCE States and the international community. The OSCE will play its part.

Thank you.

Christine Bergmann

German Minister for Family, Senior Citizens, Women and Youth

We are all long since agreed that the only real way to fight against Trafficking in persons is to fight against it in international co-operation with one another. This conference will play its part in this by developing strategies. But on a national level too, we must do everything possible to target and prosecute the perpetrators and better protect the victims. Trafficking in persons is a particularly despicable crime against human dignity and must be fought at every level. Allow me to detail the situation as it stands in Germany. We are geographically placed at the intersection of the Western countries on the one side and the countries of Central and Eastern Europe on the other.

That has made Germany not only a destination country, but also a transit country through which people are trafficked.

According to the criminal statistics, the police registered 1,197 victims of Trafficking in persons in the year 2000, of which 1,174 were women. We are all too aware that the undetected figure is high.

Trafficking in persons means predominantly trafficking of women.

The reason for the high number of women victims in these statistics lies in the fact that under German law only trafficking for the sex trade is regarded as Trafficking in persons, and that almost exclusively affects women.

Other forms of trafficking people for exploitation fall outside our current narrow legal definition of trafficking, although these offences are punishable under other regulations.

We will be subjecting our legal regulations to a review in the light of the implementation of the UN Supplementary Protocol and the future EU Framework Decision on combating trafficking in persons.

Women are reduced to the status of merchandise in what is a wicked trade. Their human rights are snuffed out. The perpetrators are operating internationally and increasingly in association with organised crime. Trafficking in women has become a lucrative business.

Traffickers usually take advantage of their victim's distressed circumstances to carry them off under false pretences to a destination where they are sexually exploited without mercy. Of the victims known to the police in Germany, almost 90% come from Central and Eastern European countries, with Ukraine at the top of the list of countries of origin, followed by Russia, Belarus, Lithuania, Latvia and Poland.

We are all agreed that the fight against trafficking in persons can only be prosecuted successfully when we are able to uncover the criminal networks in both the countries of origin and the destination countries.

That is why we must improve cross-border collaboration and international co-operation – especially with the states of Central and Eastern Europe – that are so necessary to achieve that aim.

In the last few years it has been possible to take some first steps in this direction. More must follow. In the last year, for example, we have co-operated with the Czech Republic in running a public information campaign on the German borders with the Czech Republic.

With this program we have raised awareness of the problem of child prostitution. I am convinced that alongside thorough pursuit of criminality and protection of the victim, we also need preventive measures of this sort.

In securing the conviction of the perpetrator, the decisive factor is that the victim reports them and testifies before a court. This is where we come to a crucial point. The victims of trafficking in persons are under massive intimidation. They are held in hidden isolation, threatened with violence and put under enormous pressure.

Emphasising their illegal status as a foreigner in the country, their tormentors instil the fear in them that they can expect a prison sentence if they are caught by the police. That this doesn't happen to be true, doesn't make the threat any less effective.

The women often have their passports confiscated from them, so their entry and stay in the destination country is illegal as a rule. These women usually do not speak the language, have no knowledge of the country they have been brought to, or its customs, and are completely isolated. It's hardly surprising that women in this situation don't rush to seek help from the German authorities.

Why is this struggle against Trafficking in persons so arduous? There are many explanations, but consider the two **main causes** of Trafficking in persons: namely the **desperate situation** of many families in their home countries, which are not alleviated by economic aid in the short term; and the **demand** in the destination countries for prostitution and cheap labour. These are hardly things that individual states can tackle and this is a key problem.

In recent years we have been working very hard to find how we can meet the challenge of this situation.

- How can we pursue the perpetrators more effectively?
- How do we treat the victims of Trafficking in persons?
- How can we better protect the victims who decide to testify?
- Without victims who are prepared to testify, the courts are in no position to convict traffickers.
- How can victims be protected from the perpetrators? Who is going to see to it that nothing happens to their family back home?
- What role do immigration laws play in all this?
- How do we avoid clashes of interest and conflicting aims in the fight against trafficking in persons?

We have come a good step closer to answering these questions, thanks in part to the engagement of the many women in our own country who have taken up this issue. They have set up advice centres for victims and have ensured along the way that Trafficking in persons has become an issue of public concern.

Important progress has been achieved recently through the work of the Nation-wide Working Group on Trafficking in Women, a group set up by my ministry in 1997 which includes all federal and state ministries that are involved in the issue.

But also NGOs, which have experience in counselling and assisting women who have been victims of traffickers, were also brought in. The working group has elaborated concrete measures for the protection of victims. All-department working groups have also been established in the meantime in many of the federal states. The working group has already been able to introduce significant measures:

Information for women distributed in the countries of origin.

A special legal procedure for dealing with the victims of trafficking in persons ensuring, for example, that they do not face immediate expulsion, that they are put into contact with advice centres and that the costs for their journey home are paid.

The working out of a special witness protection and care program which is sensitive to the needs and concerns of witnesses who have been victims of trafficking in persons.

The discretionary payment of medical and counselling expenses in accordance with the victim compensation law.

The granting of work permits to witnesses who have been victims of trafficking in persons, for the duration of their stay in Germany

These are only a few examples of what can be achieved through co-operation, and there is still much to do. The fight against trafficking in persons is a long way from being fought the way it ideally should be.

But I consider that with this nation-wide co-operation and network building, we in Germany are taking prescient action, which, incidentally, also meets the oft-raised demand that we work side by side with the NGOs. This conference was planned in c close co-operation with NGOs and I am delighted to be able to welcome many of you here today.

I know that you will have an important contribution to make to the debates. Lastly, I would very much recommend that you all pay a visit to the poster exhibition and information stands in the air well, where you can learn about the many and varied activities of German NGOs and their campaigns.

I wish you all fruitful discussions and great stimulation at this international exchange, which is of course so imperative in the face of this cross-border crime.

Anna Diamantopoulou

EU Commissioner for Employment and Social Affairs

Speech given by **Barbara Helfferice**, Member of the Cabinet, on behalf of Anna Diamantopoulou

Ladies and Gentlemen,

Introduction

The scale and scope of trafficking in human beings makes it a global tragedy. An ongoing tragedy. It ruins tens of thousands of lives each year. Women, men and children, with modest hopes of a better life, forced into slavery and prostitution. The fifty people found dead in a container at Dover are just the tip of a very big iceberg.

Let it be clear: this huge global industry is a threat to the fundamental values on which our societies are built. It is an affront to the rule of law and to basic human rights acquired with the abolition of slavery.

In particular, for thousands of women, this modern form of slavery does not just mean forced labour, but systematic sexual exploitation, violence, and psychological abuse.

At a political level, trafficking eats away at democracy. In some countries struggling to establish democratic systems of government, the profits from trafficking feed corruption.

The threat is less obvious and less direct than the terrorist atrocities committed a month ago, but it is a serious threat nevertheless.

The criminal networks behind trafficking are run with ruthless efficiency. They are powerful, well organised and well funded. Trafficking is a highly profitable business, now thought to be one of the biggest sources of criminal income, along with narcotics and arms smuggling, with which it is closely linked, of course.

Beating the traffickers

In short, trafficking networks are a formidable enemy. We cannot hope to eliminate trafficking unless we are as well organised, as determined and as well funded as they are.

A coherent international strategy is essential. It must have three main aims: to bring the perpetrators to justice, to respond effectively and compassionately to the plight of the victims, and to address the factors generating supply and demand in the trafficking market.

The European Union is now moving forwards on all fronts. I am also very pleased at the positive signal Germany is sending by co-hosting this conference. Germany's size and geographical position make it one of the main markets for trafficked human beings. Its commitment and co-operation is essential.

Understanding the market

To succeed against trafficking, we need to gain a better understanding of it: how it works; what specific factors affect supply and demand for trafficking.

The basic mechanism is already clear. We know that the EU is a major source of demand for cheap labour, and for women and children to be exploited in the sex industry.

This is an industry that feeds on and reinforces the notion of women as tradable disposable commodities. One London pimp summed it up perfectly. I quote: "She cost me 800 pounds. And I can sell her for 250 pounds an hour."

The raw material is cheap and plentiful. Supply, we know, arises from poverty and lack of opportunity. Desperate people will believe traffickers' lies, and they will take risks. In parts of central and Eastern Europe, the feminisation of poverty, economic dependence on men and domestic violence have driven many women into the hands of traffickers.

For instance, the disappearance of collective farms has resulted in large numbers of unemployed women in rural areas. At the same time, many of the women affected are well educated, and know what they should be able to achieve. This frustration makes them extremely vulnerable, especially when coupled with a lack of information concerning the dangers.

But we need much more detailed local knowledge of what is happening, better data and analysis. I can only welcome the valuable work the OSCE is doing in this field. And I hope that the EU will be able to co-operate more closely with the OSCE, given its obvious commitment to the issue of trafficking.

The legal front

The EU is already very active. A lot has happened even in the short time since the OSCE human-dimension implementation meeting in Warsaw at the end of last month.

First of all, the Council of the European Union has agreed on the substance of a Framework Decision to combat trafficking. Essentially, this Framework Decision sets out to facilitate law enforcement and judicial co-operation by providing a common definition of trafficking and ensuring that trafficking is a criminal offence in all Member States. It also stipulates that the maximum penalty for trafficking in any Member State must not be less than eight years. There should be no safe haven for traffickers in the European Union.

I hope that the Council will soon adopt a second Decision on combating the sexual exploitation of children and child pornography.

Second, it is clear that EUROPOL will be called on to play a greater role in the fight against trafficking. I very much welcome this, as laws are only as effective as the systems designed to enforce them. National forces acting alone cannot deal effectively with international trafficking networks. It is therefore essential that EUROPOL is given the means it requires.

Third, the Council has launched Eurojust; a network of national prosecutors, magistrates and police officers to facilitate co-ordination and support criminal investigations in organised crime cases, including trafficking.

Victim support

Trafficking is also very clearly a human rights issue. This is underlined in the European Convention of Fundamental Rights. The Commission wants to see the relevant UN Protocol signed, ratified and implemented as soon as possible.

Organised slavery, forced work, sexual abuse and exploitation, systematic violence and murder are clearly serious human-rights abuses. Victims of trafficking require support and assistance – a point made by the firm conclusions of the European Forum on Prevention of Organised Crime.

The EU has been asked why it did not include victim support measures in the Framework Decision. The answer is simple: A Framework Decision is an instrument for approximating laws and regulations.

Victim support, on the other hand, calls mainly for financial support and the building of appropriate structures and facilities. Though I should add that legal measures are already in place to protect witnesses giving evidence in trafficking cases.

We are already in the process of drafting a new legislative proposal on short-term residence permits for victims of trafficking. This will make it easier to deliver assistance: legal, medical and psychological assistance, safe accommodation, education and training to equip victims with skills they can use when they return home.

And it will enable the EU to use its programmes to strengthen and expand the network of support that exists for victims of trafficking. For instance, the Daphne Programme to combat violence against women, or the EU's Fifth Action Programme for Gender Equality could benefit the many thousands of women who are smuggled into the EU for purposes of sexual exploitation.

If victims are in the EU legally, Member States will also be able to use European Structural Funds, and in particular the European Social Fund to fund direct support to victims.

At national level, we need to make sure that, when victims turn to the authorities in countries of destination, they get a positive initial response. Free help-lines, like the Italian one, can help women who are too afraid to approach authorities directly.

And I would encourage the candidate countries to participate in our programmes, and to make best use of Phare and Tacis. We are currently working to simplify the procedures for doing so. These programmes could be used to fund much-needed information campaigns to warn potential victims what is likely to happen to them after they are trafficked.

Attacking the underlying causes

Criminalisation of trafficking and victim support cannot be our only lines of attack. We also need to start addressing the underlying causes: the complacency of people who tolerate slavery and sexual exploitation within the EU's borders. And the attitudes of men who use trafficked women for profit and for sex.

At present, 60% of the Phare budget is spent on helping the candidate countries to improve their borders in preparation for joining the European Union. One aim is to stop the traffic in human beings. So, in one sense, this figure, of 60%, is a measure of the high supply and demand for trafficking. It reflects the desperation of many people outside those future borders.

It is a high figure and it is only acceptable if we are doing everything we can, through our foreign and development policies, to deliver better opportunities for people in their own countries. That goes in particular for women, who, as a group, suffer from a serious lack of opportunity and, in some countries, a disregard for their basic human rights.

Ladies and Gentlemen,

In the wake of the attacks on America, it is clearer than ever that problems like terrorism and trafficking cannot be kept out through intelligence and law enforcement alone. We have no alternative but to engage with the root causes, no matter how complex, difficult or overwhelming they may seem.

There are many things that the EU and its Member States can do to improve the plight of women in the supply countries. Following the commitments that we gave at Beijing six years ago, we need to make sure that gender issues are incorporated into all our policies: on development, trade and foreign policies.

The attacks on the US have underlined the importance of international co-operation in tackling international problems. The new STOP Programme, adopted at the end of June, is designed to promote such co-operation at EU level. But we also need to build a wider coalition against trafficking. I am pleased to see such strong support for it here today, and would like to assure you of the Commission's determined co-operation.

Thank you.

Marion Böker

General Secretary of International Affairs, KOK – Federal Association Against Trafficking in Women and Violence Against Women in the Migration Process, Germany

Your Excellency,
Lady Minister,
Minister,
Ladies and gentlemen,

Trafficking in persons and more specifically trafficking in women is a violation of human rights.

The workings of this trade today are typified by both discrimination based on gender and racial discrimination combined in a new, internationally organised assault on human rights of global proportions. It is a trade whose European roots reach back to the time of transatlantic and colonial slavery, which the media, women's movement and judicial system only woke up to in the 19th century when 'white' women from Eastern Europe became its victims.

The 38 consulting agencies and NGOs in Germany which I represent for the KOK, the "Federal Association Against Trafficking in Women And Violence Against Women in the Migration Process", as well as the international partner NGOs with which we are associated, approach trafficking in persons and trafficking in women from this basic standpoint: as a violation of human rights.

Only this human rights perspective can do justice to what the victims of trafficking go through.

They are caught up in a vicious spiral of subjugation, coercion, psychological and physical brutality, degradation and the stripping and robbery of their freedom, dignity and personal security. Even if they do escape or survive this experience, the consequences can be with them for the rest of their lives.

In order to restore something of their human dignity and freedom to them, it must be recognised both in this country and internationally that these women – and also frequently, children under the age of 18 – are victims of human rights violations.

In the meantime tackling the multi-faceted problem of trafficking in persons is the order of the day on the international, national and regional level. It must now be demonstrated that co-operation can work in practice, and that co-operation must be expanded internationally.

Experts in this field already have concepts for action on three levels that have been put before this conference: action through prevention, protection and through legal means.

Prevention – tackling of root causes

Trafficking in persons and trafficking in women follows the international and national development of migration.

The causes lie in a state of gender relations – now global and not confined to the West – that does not fundamentally recognise a woman as a person with her own dignity and rights, and instead defines her as 'worthless'. It is a state of gender relations in which it is men who define a woman's worth. Since industrialisation men have defined women in terms of a monetary and trade value. Men can trade women's bodies and their labour as merchandise around the world, without coming into conflict with the basic principles of their societies. Traffickers in women often make more money than drug traffickers do!

In the last few decades this state of gender relations has at least been changing slowly, but changing all too slowly if the persistence of deep-rooted structures of patriarchal control in societies and in their state systems is anything to go by.

The negative economic effects of globalisation or the effects of the radical political and economic changes to state systems in many of the EU accession states – effects such as poverty or unemployment – also affect women more keenly and in much greater numbers than they do men.

That is why, since the UN World Conference on Women in Peking at least, we have been talking about a 'feminisation' of poverty and migration. This phenomenon is deepened anew with each armed conflict in one of the world's regions. This is something we in Europe had to watch unfolding so unmistakably in the Balkans. In the search for a secure livelihood to support their families, women fall into the hands of the people traffickers.

Prevention work as a means of tackling the problem at its roots can only be effective if a comprehensive program is implemented in destination countries and countries of origin.

In the case of trafficking in persons and trafficking in women, prevention means tackling poverty. Systems also need to be changed in line with a world-wide re-shaping of societies in favour of human dignity, and societies need to be organised around the principle of the equality of women and men and around principles of human rights and human dignity. It means fighting against every form of discrimination and racism. It means enabling men and women to participate in economic life and share in resources.

Events in the world today beg the question: shouldn't it be possible for us, finally, to establish some kind of pre-emptive and sustained reconstruction or Marshall-type plan, which can be implemented in regions of the world when early warning indicators of crisis and conflict are triggered?

One of these indicators should be the extent to which women are able to participate in society and the extent to which their rights are guaranteed, or rather withdrawn or flouted and whether women are being systematically terrorised.

For the future, prevention also needs to be based on human rights education that should include – at the earliest possible opportunity – sensitisation to gender issues and problems. It should include realistic instruction in the alternatives to illegal migration in search of work on a regional, national and international level, and information on the true nature of trafficking in persons.

Girls and boys in both destination countries and countries of origin must be aware of how people are duped by the traffickers. They must be able to recognise the false promises and false pictures of living and working standards painted by traffickers and able to recognise as fairy tales the supposedly wealthy marriage partners awaiting trafficked people in the so-called Western countries. They must learn about the sort of experiences victims of trafficking in persons and their families really have to go through.

Prevention is also very much dependent on a socialisation of boys and men to conceive of girls and women on a basis of equality; to conceive of sexuality free of violence and dominance – one that respects the free will of all partners.

This task of socialisation should begin at an early age. It demands a carefully designed and developed education program. But this task is being blocked in many places today by taboos and a false sense of embarrassment. Seen from the perspective of HIV prevention, these will need to be tackled head on if an entire generation is not to be lost.

Prevention work has only just begun, in the shape of state and NGO awareness campaigns targeted at potential victims of trafficking in women in the countries of origin, and also aimed at the milieu in destination countries where victims may also be.

Insofar as the women actually go to embassies in person to get a visa, these embassies are helping by having information material from both government departments and NGOs to hand.

Another integral part of prevention would be to address the legalisation of prostitution and more generally the creation of legal avenues of migration, so people traffickers can no longer criminalise their victims and threaten them with deportation.

Protection

In order that victims of trafficking in persons can be readily identified, it is exceptionally important, over and above the progress already achieved in internationally agreed definitions and in relevant legal terminologies and institutions in Germany, that we draw a clear distinction between illegal immigrants on one hand and the victims of trafficking in persons on the other.

In this respect, awareness also needs to be focussed on the other forms of trafficking in women that exist alongside forced prostitution. We find it much harder to raise awareness of these other forms through our education and prevention campaigns.

There is a contradiction in Germany. Next to the very same rights and arrangements that Minister Bergmann has been outlining for us, we find that in their budgeting federal states are occasionally calling certain provisions into question. For example, in North Rhine Westphalia, there have been attempts to save on interpreters' fees and joint-plaintiff actions, other states have tried to cut costs in the accommodation of victims. This does not help efforts to provide protection.

Victims must:

- have a right to trauma counselling (this is frequently denied by social security offices).
- be entitled in general to permission for an extended stay in the country, which provides time for their situation to stabilise and breathing space for them to recover physically, medically and psychologically, to reorientate themselves, and secure the means to support themselves.
- have a right to the provision of training and further education that that entails.
- have economic and political rights and entitlements.
- have a right to permission to work, because everyone should have the right to work in line with principles of human dignity.
- have a right to support in uniting their family. Many barriers hinder the exercising of this right for the future in spite of the EU and UN Convention on the Protection of Migrant Workers and their Families.
- have a right to be spared arrest, imprisonment and detention awaiting trial or deportation. Such treatment must be banned by the state in cases of trafficking in persons.
- have a right over and above the provisions of the witness protection program to the protection of their personal data. The provisions of the draft immigration law are currently threatening such protection. It envisages an international checkable database, fingerprints in passport documents and so on. Victims of trafficking in persons must be excepted from screening under the new regulations.
- have a right to protection of their personal data on return to their country of origin.
- have a right to know about any upcoming release of their trafficker and the right to have their protection stepped up should the situation demand it.

Victims also have other requirements:

They have an equal requirement for the protection and support detailed above after returning home. More NGOs should be supported in this provision, so should the state in the countries of origin, and money should be set aside from economic co-operation funds for this purpose.

Victims should be entitled to compensation, which should not be taken into account in the calculation of social and other benefits to which they are entitled.

Under age victims of people traffickers, that is children under 18, must be guaranteed direct assistance from youth welfare departments. This is frequently not forthcoming and youth welfare departments need to be sensitised to the situation and play their role as partners in tackling trafficking in persons.

In fact, we need more co-ordinated co-operation from government departments in general:

Their staff should undergo anti-racist training in human rights, gender issues and trafficking in persons.

Lawyers, defence lawyers (especially those representing suspected traffickers), doctors, police and customs officers – all those coming into contact with trafficking in persons, should also benefit from such training to protect and guarantee the human rights of the victims and prevent the recurrence of certain incidents.

The state should unconditionally, and without periodic threats of cutbacks, take on all costs of protecting the victim. It is the very least the state can do to take on some responsibility for the actions of its citizens who act as 'customers' of these merchandised women: so called clients, dealers and middlemen.

The development of strategies for the prosecution of the traffickers is of course another side of the fight, and is something will be discussing today and tomorrow. We must be careful all the while, not to allow the rights and requirements of the victim to slip from view.

To sum up, I hope that in the workshops we will be able to discuss implementation of some of the proposals and demands of the KOK and will be able to furnish the conference with some concrete recommendations.

Thank you for your attention.

4. PANEL DISCUSSIONS

4.1 Panel Discussion A: Victim Protection: Human Rights versus Repression

Identifying trafficked persons as victims and protecting their rights is the first step in taking a human rights based approach towards this complex problem. As long as there is no clear distinction made by state authorities between illegal immigrants and trafficked persons, victims will continue to be criminalised, in addition to the severe human rights violations they have already suffered.

Unfortunately, victims of trafficking are often arrested, detained and prosecuted because of their irregular migration status or for having worked in an illegal industry. In many countries, they are simply summarily deported. The perception that removing trafficked persons thereby removes the 'problem' is incorrect, and often ends with the victim falling back into the hands of traffickers. During this panel presentation, experts will discuss how destination countries currently treat trafficked persons and what measures should be included in a victim protection mechanism. This discussion may explore how best to protect victims and to what extent states should be responsible for ensuring a timely and appropriate response to the needs of victims.

Participants

- **Mike Dottridge**, Director of Anti-Slavery International, United Kingdom
- **Monika Smit**, Senior Researcher at the Bureau of the National Rapporteur on Trafficking in Human Beings, The Netherlands
- **Cornelie Sonntag-Wolgast**, Parliamentarian State Secretary at the German Ministry of Interior
- **Patsy Sörensen**, European Parliament, Belgium

Moderator *Peter D. Eicher*, First Deputy Director OSCE/ODIHR

Mike Dottridge

Anti-Slavery International, United Kingdom

There are many others present who specialise in defending the human rights of people who are trafficked and who can list out the various measures which activists have been calling for to protect women, children and even men who are victims of trafficking.

(These protections are in addition, of course, to the measures that we believe States must take to protect everyone from slavery, servitude, forced labour and trafficking).

So I want to concentrate on the particular experience of my organisation, Anti-Slavery International, going back to our origins more than 150 years ago.

You see, in the anti-slavery movement we have successfully created many myths, usually in an effort to bring about an end to slavery. When you see a picture showing how African slaves were crammed into boats for their forced migration across the Atlantic, it is as likely as not to be a picture created by our founder – a successful piece of late 18th Century anti-slavery propaganda.

One of the misleading myths surrounding slavery is that the main action required to get rid of it is the enactment of a law declaring slavery to be abolished – removing its legal basis and requiring law enforcement officers to prosecute slave traders and exploiters. And yet this has very rarely been an effective way of getting rid of slavery; it has merely been an essential precursor to a further set of much more practical steps to stop people being reduced to slavery; that is to say:

- to specify who is to ensure the release of those enslaved, and how;
- to give those freed sufficient economic autonomy to prevent them having to return to their former owners;
- and to spread the word that certain forms of employment and exploitation are no longer acceptable and will henceforth be punished.

Without these practical steps, slavery simply persists.

In particular, a whole set of practical measures are necessary to enable people who have been enslaved to enjoy their human rights properly: most importantly, this creates an obligation on States to provide some sort of material assistance to enable former slaves to become self-sufficient economically and thus avoid perpetual dependence. The failure of States to do this on many occasions has meant that slavery has only been half-abolished¹, that the victims are left in a limbo of dependence on their former exploiters or others, and that long-term resentment builds up, as witnessed with the claims for reparations at the recent UN World Conference Against Racism. Needless to say, as in the case of any other victims of crime or major human rights abuse, the immediate health and other practical needs of victims of slavery also have to be attended to.

Once, and only once, slaves are free, both in their own eyes and in the eyes of their former exploiters, and are no longer in a position of dependence; once the process of ending slavery has been completed, then a solid law prohibiting slavery again becomes sufficient to guard against the odd case when it arises.

In Europe today, however, we don't have "the odd case" of trafficking. My organisation does not believe the claims that half a million women are being trafficked into EU countries each year, but we know that there are tens of thousands of cases – a very substantial pattern resulting in women (mainly) being forced to earn money for others in all sorts of ways, with commercial sex as the most profitable.

Translating the message of our experience over the past two centuries into the contemporary context of combating trafficking in human beings, all this means that having good law to identify trafficking as a

¹ For example, in the Islamic Republic of Mauritania.

criminal offence and prescribe penalties is a necessary first and last step – but completely insufficient to actually bring about an end to trafficking by itself. Consequently, if policy makers limit themselves to strengthening repressive laws without embarking on a corresponding set of preventive and protection measures, I and my organisation would be bound to criticise them for deliberate negligence, even for condoning slavery and forced labour.

I realise this sounds harsh, when we have, of course, already welcomed last December's announcement of a new initiative by the States of the European Union – a Framework Decision on Combating Trafficking in Human Beings.

However, the importance of action to protect the human rights of trafficking victims has been stressed by the OSCE on several recent occasions. Last November, the Ministerial Council's *Decision on Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings* committed OSCE Participating States to "adopting and implementing legislation to criminalize trafficking in human beings" and stressed that "such legislation should take account a *human rights approach to the problem of trafficking*, and include provision for the protection of the human rights of victims ...".²

Virtually all the international institutions which have provided comments to the European Union about the provisions of the proposed Framework Decision have commented on the inadequacy of its provisions on protection and assistance for victims. The weakness is all the more surprising, as the EU adopted a Framework Decision last March (proposed by Portugal) "on the standing of victims in criminal proceedings", which guarantees the rights to protection and compensation, notably the protection of victims of crime and their families in situations where "the competent authorities consider that there is a serious risk of reprisals".³

The United Nations, in the form of both the High Commissioner for Human Rights and the High Commissioner for Refugees, have suggested that the protection and assistance provisions in the Framework Decision should be at least as strong as those adopted in last year's UN Protocol to Prevent and Punish Trafficking in Persons, Especially Women and Children.⁴ In particular they have suggested

- 2 The July 2001 Organization for Security and Co-operation in Europe Parliamentary Assembly resolution on trafficking expressed concern that the laws in many OSCE States "remain inadequate to deter trafficking, to bring traffickers to justice, and to protect their victims" (para. 10). It urged States "to harmonize their procedures" not only concerning prosecutions, but also as far as the legal, medical, and psychological assistance to victims of trafficking was concerned (para. 15).
- 3 Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA). Article 8 (to be implemented from 22 March 2002 onwards) concerns the Right to protection and specifies "1. Each Member State shall ensure a suitable level of protection for victims and, where appropriate, their families or persons in a similar position, particularly as regards their safety and protection of their privacy, where the competent authorities consider that there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy." Article 8.4 guarantees that "Each Member State shall ensure that, where there is a need to protect victims – particularly those most vulnerable – from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles."
- 4 Supplementing the UN Convention against Trans-national Organized Crime (General Assembly resolution 55/25, annex II). Article 6 of the Protocol concerns Assistance to and protection of victims of trafficking in persons, and specifies:
"1. In appropriate cases and to the extent possible under domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
"2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
(a) information on relevant court and administrative proceedings;
(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
"3. Each State Party shall consider measures to provide for the physical, psychological, and social recovery of victims of trafficking in persons, including, in appropriate cases, in co-operation with non-governmental organizations, other relevant organizations, and other elements of civil society, and, in particular, the provision of:
(a) Appropriate housing;
(b) Counselling and information, in particular as regards their legal rights, in a language that the victim of trafficking can understand;
(c) Medical, psychological and material assistance; and
(d) Employment, educational and training opportunities.
"4. Each State Party shall take into account in applying the provisions of this article, the age, gender, and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
"5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
"6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered."

that EU States should "provide for the physical safety of trafficking victims within their territory, counselling and information, as well as basic measures for their physical and psychological recovery".⁵ The European Parliament has called on the European Council to include a considerable number of protection provisions, notably suggesting that States must provide, free of charge:

- accommodation;
- medical and psychological assistance;
- financial assistance and assistance in getting vocational training or jobs;
- and safe and voluntary return to the trafficking victim's country of origin.⁶

An additional opinion of one of the Parliament's committees recommended that States should grant "a special permanent residence permit on humanitarian grounds" if called to do so on account of the vulnerability of someone who has been trafficked, or the dangers they are considered to run.⁷

We realise, of course, that some EU States currently provide a temporary residence permit to trafficking victims who agree to testify against their traffickers. However, from the human rights viewpoint, this incentive often appears abusive and discriminatory. The practice seems to have been adopted in order to increase the ability of prosecuting authorities to bring charges and to secure convictions, rather than because, as a matter of principle, anyone who has personal experience of being trafficked has a right to protection and this should include regularising their residence status and granting them a residence permit.

We non-governmental organisations (NGOs) have been particularly vocal in calling for protection measures to be included in the Framework Decision. For the past five years, we have been disappointed both by the failure of the EU's Member States to act unanimously against trafficking and by the apparent failure of those measures that have been agreed to actually benefit the women, children (and occasionally men) whom the measures were ostensibly designed to help. We are concerned that adopting a Framework Decision to agree a common definition of the offence and to standardise penalties, without simultaneously agreeing minimum standards for protection and assistance is, at best, a lost opportunity, and at worst serious negligence. We have heard the explanation that the EU has its particular ways of going about things, and that there may be, or could be, agreement in the future on the various measures needed to protect trafficking victims, but on the whole we are far from convinced by such arguments.

In considering the rights under international law which victims of trafficking and other forms of slavery have, I and others are aware of dozens of measures which States already have an obligation to take under various provisions of international law to protect and assist the victims. In proposing what protection provisions should be included in the EU Framework Decision, we have actually been very modest. The recommendations submitted last July by some 40 NGOs⁸ specified a range of measures that we wanted to be included, starting with practical assistance, such as appropriate shelter, financial

⁵ The UN Special Rapporteur on Violence against Women has urged in her recommendations in her Report to the 56th session of the Commission on Human Rights (E/CN.4/2000/68 of 29 February 2000, para. 116) that trafficking victims must be guaranteed:

- (a) Freedom from persecution or harassment by those in positions of authority;
- (b) Adequate, confidential and affordable medical and psychological care by the State or, if no adequate State agency exists, by a private agency funded by the State;
- (c) Strictly confidential HIV testing services should be provided only if requested by the person concerned, and any and all HIV testing must be accompanied by appropriate pre- and post-test counselling;
- (d) Access to a competent, qualified translator during all proceedings, and provision of all documents and records pursuant to having been victims of trafficking and/or forced labour or slavery-like practices;
- (e) Free legal assistance;
- (f) Legal possibilities of compensation and redress for economic, physical and psychological damage caused to them by trafficking and related offences."

⁶ European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, 30 May 2001.

⁷ European Parliament Committee on Women's Rights and Equal Opportunities.

⁸ NGO Recommendations on the EC Proposal for Combating trafficking in human beings, COM (2000) 854 final/2.

assistance and health and psycho-social services, and emphasising, of course, the importance of specific protection against further violence or threats.

Last month, we focused down on even fewer measures, specifying that the Framework Decision should include protective measures to ensure that trafficking victims are not detained, prosecuted or punished for status-related offences or crimes related to them being trafficked, measures to protect witnesses of trafficking, and protective measures for victims of trafficking in general, including children. These protective measures, we recommended, should include:

- appropriate shelter,
- financial assistance,
- legal assistance,
- information about their rights in a language they understand,
- physical safety,
- counselling,
- information,
- health services, and
- psycho-social services.

We pointed out that children under 18 who have been trafficked must be provided with an opportunity to express their views, and that any victim of trafficking who wishes to apply for asylum must have the right to do so.⁹

We very much hope that all European Union and OSCE States will soon adopt national legislation to ensure that anyone believed to have been trafficked has the right and the opportunity to have access to these forms of protection.

⁹ Recommendations on the Framework Decision on Combating Trafficking in Human Beings COM (2000) 854 final/2 of 24 September 2001. Paragraph 4 states:

- Provisions for victims of trafficking with the opportunity to seek legal redress and compensation, regardless of their immigration status. Assets confiscated from traffickers (in accordance with due process protection) should be made available to settle financial claims of trafficking victims
- Protective measures to ensure that trafficked persons are not detained, prosecuted or punished for status-related offences or crimes related to them being trafficked. National laws, policies and procedures must not stigmatise, criminalize or further marginalize victims of trafficking. Particular attention must be paid to the needs of unaccompanied children who are especially vulnerable and should not be criminalized neither should they be detained for immigration reasons.
- Protective measures for witnesses of trafficking including e.g. physical safety, protection from retaliation, right to be informed about the progress of the case, psychological and physical well-being, dignity and privacy. Child victims and witnesses should be assisted in a manner appropriate to their age and maturity and the best interests of the child shall be a primary consideration.
- Protective measures for victims of trafficking including children. This should include appropriate shelter, financial assistance, legal assistance, information about their rights in a language they understand, physical safety, counseling, information, health services, psycho-social services, having in mind durable solutions that prevent re-trafficking. Children should be provided with an opportunity to express their views, particularly within the framework of any administrative or judicial proceeding related to them.
- The Framework should incorporate a Safeguard Clause in order to maintain the right to submit an application for asylum, in accordance with the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and other relevant international instruments. This will prevent victims of trafficking who wish to apply for asylum or for a residence permit on humanitarian grounds, from being expelled or returned before having had an opportunity to apply for asylum, or before the assessment of the substance of their application. If the circumstances warrant, such as the existence of imminent danger if returned, the right to remain permanently.

Monika Smit

Senior Researcher at the Bureau of the National Rapporteur on Trafficking in Human Beings,
The Netherlands

The situation in the Netherlands, regarding victims of trafficking

In the Netherlands, as in Germany, and different from for example Belgium, legislation on trafficking is limited to trafficking for exploitation in prostitution.

Prostitution is permitted and even exploitation of prostitution is not prohibited. The ban on brothels was lifted on the first of October last year. This in order to get a better grip on prostitution and to make it easier to tackle crimes associated with it, amongst other things human trafficking. Of course legalising the exploitation of prostitution is not without risks. However, I think that prohibiting it is not a solution. Experience teaches us that prostitution has always existed and that it continues to exist, even under restrictive circumstances.

So, in Holland, the exploitation of prostitution by consenting adults is no longer punishable.

But transportation across borders for the purpose of prostitution is. So is placing and holding individuals in prostitution by means of coercion or deception and exploiting minors.

How are victims dealt with?

We have the so-called B-9 regulation. When illegal aliens are discovered in a sex club in the context of a control visit or criminal investigation, the police should indicate the option of reporting human trafficking.

How are possible victims detected? Police and public prosecutors use a checklist of signals that should put officers concerned on the alert.

Those signals are:

- somebody else arranged the journey or the visa;
- not having disposal of ones own travel documents
- using false papers, provided by somebody else;
- illegal entrance can, but does not have to be a signal;
- fear of expulsion;
- not having access to medical care;
- having to earn a minimum amount of money per day;
- having to pay off an exorbitant (sometimes rising) travel fare before the victim gains control over her own earnings, or is free to leave prostitution;
- having to hand over a large part of the earnings to the exploiter or to another party;
- receiving a lower percentage of the earnings than a Dutch prostitute;
- the exploiter paid a transfer sum and/or pays a percentage of the earnings to another party;
- limited freedom of movement;
- relatives in the country of origin are being blackmailed or threatened;
- poor economic situation and/or relatives in the country of origin depend on the earnings;
- having to work under all circumstances and for long hours;
- being threatened with violence, or abused;
- the work location varies;
- some-one applies for visas on behalf of many other persons;
- often acting as a guarantor with regard to visa appliances;
- acting as a guarantor for visas in cases of persons who do not all return to their country of origin.

The potential victim is entitled to three months to consider bringing an official accusation. During this time, expulsion of the possible victim is suspended.

The B-9 rule states that victims of and witnesses to human trafficking may stay in the Netherlands for the duration of the criminal investigation and proceedings. B-9 includes a right to shelter, medical aid and legal assistance during that time; the individual's expenses are also provided for.

Although in the Netherlands trafficking in human beings is prosecutable without formal complaints, victims and witnesses are important in proving a case. They (and therefore the B-9 rule) are important for criminal investigation and prosecution reasons.

Once the criminal proceedings are over, victims can ask for a permanent residence permit, to be issued on humanitarian grounds. Unfortunately, different from Belgium and Italy, it is only in exceptional cases that victims are allowed to remain in the Netherlands.

Drawbacks of the regulation are, apart from the fact that it offers victims only a temporary right to stay, the fact that victims are not allowed to work during the procedure. Education possibilities are scarce. So it is not surprising that some of the victims disappear during the often very lengthy procedure, sometimes into illegal prostitution, thus once again becoming an easy prey for exploiters.

Statements

- 1) Prevention of human trafficking is to be preferred to a criminal approach, but as long as there are people, and especially women, who lack a reasonable perspective for themselves and their children, preventive measures will prove insufficient.
- 2) Human trafficking implies a serious violation of human rights, but at the same time, it is a kind of crime that does not cause a visible violation of public order. Sexual exploitation is not visible if we are not attentive to it. That is exactly why some countries could maintain for a long period of time that they do not know the problem, thus playing into the hands of the perpetrators and leaving victims out in the cold. They are being expelled only to be trafficked again, or replaced by 'fresh meat'.
- 3) People who fall prey to human trafficking must be viewed and treated as victims and not as illegal immigrants. At the same time they must not be degraded to just being victims, thus removing all individual responsibility for their future. Psychologically that would be very wrong. It would result in 'learned helplessness'. The longer one lacks power of control over one's life, the harder it will be to regain control. That's one of the reasons why it is important that victims can do something they consider useful during the criminal investigation and prosecution, be it work or education. Besides, victims do not always fit the image others sometimes have of the timid, demure, suffering young women. This may be one of the reasons why it is sometimes difficult to convince the court of the fact that forced prostitution is not only not acceptable, but also a grave violation of human rights.
- 4) Treating victims as victims means one must not expulse them, but offer them support and help to overcome the impact of what has happened to them. Otherwise one causes what might be called secondary victimisation: damage as a result of the way a victim is treated.
- 5) Someone who originally opted to work as an illegal sex worker can also become a victim. If someone is forced to work under certain conditions, or held back from leaving prostitution he or she is a victim.
- 6) Ample attention should be paid to victim protection and to juridical assistance of victims. Particular attention should be paid to claiming back earnings that were never paid out via civil procedures. This money could be used to start a new life. Reimbursement is important, but so is hitting perpetrators where it hurts: by taking away financial profits.
- 7) Sometimes the impression is given that one either supports the victim and his or her human rights, or one directs the attention at repression. However, they are no opposites and can be in line.

Cornelie Sonntag-Wolgast

Parliamentarian State Secretary at the German Ministry of Interior

The pursuit of unscrupulous people traffickers and the smashing of their existing networks are urgent tasks for the western European destination countries, including Germany. At the same time, we also require the countries of origin to take initiatives to reduce the migration incentives for potential victims of people trafficking.

It is frequently the case that it is only with the testimony of the affected women themselves that we are able to trace the perpetrators, prosecute them and so prevent further offences. So, it is important not least for this reason that we guarantee victims the necessary protection until their situation stabilises, both physically and psychologically. Both state and non-state organisations in the Federal Republic of Germany contribute considerably to that aim. In the sphere of people trafficking, human rights and criminal prosecutions are not irreconcilable aims. It is a question of bringing these goals into harmony with one another.

In the year 2000 in Germany 321 cases of people trafficking were brought, involving 926 victims. The undetected numbers must be enormous. The victims involved – almost exclusively women – came predominantly from the states of Central and Eastern Europe, in particular from Lithuania, Russia, Poland, Ukraine and the Czech Republic.

People trafficking is a detestable crime which is being increasingly shaped and dominated by organised international criminal networks. Frequently, the affected women are deceived about their true destination and are completely unaware of what has happened to them as they journey to Western Europe.

Close and comprehensive international co-operation is necessary and, given this background, co-operation with the accession states of the EU is especially important. In the meantime, Germany has dispatched 13 police liaison officers to the states of Central and Eastern Europe, where they will work in close co-operation with the host country's authorities in combating people trafficking.

Germany has both legal and organisational frameworks in place to combat people trafficking, but this by no means the case in all countries. In many countries there is a lack of political and social sensitivity to this issue. Existing judicial sentences are frequently inadequate. The social and economic problems that developed after the fall of communism have not yet been dealt with, although there has already been considerable progress. A good example of this is a lack of employment prospects especially for young people, increasing migration to the cities and wages rates that are too low compared to the EU average.

Legal sanctions alone are insufficient to tackle the problem of people trafficking effectively. We need to formulate policies in many different areas and strengthen co-operation between a variety of offices.

The existing legal apparatus permits women from abroad to stay in Germany while this is necessary for the bringing of a successful prosecution, for their protection or until their personal situation stabilises.

Should the need arise, leave to stay in Germany or a toleration can be granted. Many victims do actually want to return to their home countries and non-governmental organisations provide support in these cases.

In 1997 the Nation-wide Working Group on Trafficking in Women was founded. It developed multi-disciplinary strategies and measures working across the relevant authorities, not just for the prevention and combating of trafficking in women but also for the protection of victims

The group has articulated a concept for co-operation between the specialist advice centres and the police, with the aim of protecting women who are both victims and witnesses of people trafficking. In doing this,

the group has made a very important contribution to overcoming the apparent conflict in the simultaneous pursuit of human rights and criminal prosecutions.

We are signing up others to this form of co-operation, on an international level, and are working above all with the states of Central and Eastern Europe for a close collaboration in the combating of people trafficking.

At the same time I am completely committed to the implementation of the agreements which have already been reached on both the national and international level.

That goes particularly for the resolutions in the Supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children in the

UN Convention against Trans-national Organised Crime, which all EU states and the Commission signed in Palermo in December 2000.

On the basis of a draft Framework Decision of the European Commission, we are at present also examining to what extent further regulations are necessary at the EU level.

It is however of prime importance that the effectiveness of our measures is not jeopardised by uncoordinated and parallel initiatives running on top of one another. We must be particularly vigilant that our resources are not divided. Therefore, I would like to appeal explicitly for us all to co-operate closely and within the framework of the established bodies and infrastructures.

Patsy Sörensen

European Parliament, Belgium

Ladies and Gentlemen,

As I am addressing you as a MEP, I would like to focus on the European level, though I will draw your attention as well on the Belgian situation.

Here in Germany Trafficking in Human Beings is only penalised by the Penal Code with regard to sexual exploitation.

Economical exploitation as well as smuggling are being penalised through the Labour Legislation and the Law on Immigration.

A real 'procedure' for victims does not exist although in a few Länder a certain tolerance has been adopted. This, however, does not give the victim a lot of rights. That is why I want to stress once again the need for a regulation on European level.

In the Annual Report on Human Rights of 2001 of the European Union one can read the Parliament's position.

On the matter of Asylum and Migration the Commission published a Communication to the Council and the European Parliament: "the Scoreboard". This is setting out a precise legislative programme for the creation of an area of freedom, security and justice and was updated on May 23rd 2001.

During the debate concerning my report 'Assistance to Victims of Crimes' on June 14th 2000, in the Committee on Citizens' Freedom and Rights, Justice and Home Affairs, I particularly drew the attention on the fact that it is according to me unacceptable that victims should wait according to this scoreboard until 2004.

In the same Commission my colleague Eva Klant made a very fine Report on the Fighting of Trafficking in Human Beings in May 2001.

According to international estimates, traffickers in human beings abduct up to 700 000 women and children every year; approximately 9 million human beings world-wide are living in conditions akin to slavery. The Commission estimates that 120 000 women and children a year are lured from the countries of Central and Eastern Europe alone to the European Union.

These figures highlight the urgent need for concerted action to combat trafficking in human beings. Because of the multiple facets of this crime and the links to organised criminals, a multidisciplinary approach is imperative. The fight against trafficking in human beings is impeded, however, by the wide divergences between national criminal law. Definitions and penalties vary profoundly; there is in fact no reference to trafficking in human beings in the criminal law of some Member States.

The European Union has endeavoured over a number of years to develop a comprehensive approach to the fight against trafficking in human beings. The European Parliament adopted a resolution as long ago as 1989 on the exploitation of prostitutes and the traffic in human beings (OJ C 120, 16.5.1989, p. 352) and has vigorously condemned trafficking in human beings repeatedly in other resolutions.

Although the Member States committed themselves to reviewing their own national laws in the Joint Action of 24 February 1997 adopted by the Council concerning action to combat trafficking in human beings and sexual exploitation of children (OJ L 63, 4.3.1997), only a few definitions were laid down as guidelines.

The 'Protocol to Prevent, Suppress and Punish Trafficking in Persons', an optional protocol to the UN Convention on Trans-border Organised Crime, signed in December 2000 in Palermo, represented the first agreement on specific common definitions. On the basis of some aspects of the UN optional protocol, the Commission proposal now aims to lay down, by means of a framework decision, minimum rules concerning the constituent elements of criminal acts, and minimum penalties.

The Commission draws a clear distinction here between the crimes of smuggling migrants and of trafficking in human beings. The first is deemed to constitute a crime against the state, which frequently involves mutual interest between the smuggler and the smuggled. Trafficking in human beings constitutes a crime against a person and involves an exploitative purpose.

Ms. Klamt takes the view that the Commission proposal is to be welcomed, bearing in mind the constraints of national criminal law and the legal instrument of a framework decision (Article 34(2b) TEU). She also welcomes the fact that the proposal covers not only the criminal act of trafficking in human beings for the purposes of sexual exploitation but also trafficking for the purposes of labour exploitation and that the UN optional protocol has been observed to that extent.

However, the rapporteur would hope for a somewhat more ambitious approach on a number of points. She therefore proposes to extend the scope of Article 1 – trafficking in human beings for the purpose of labour exploitation – by deleting two of the Commission's proposed qualifications:

- the *continued* suppression of fundamental rights
- infringement of labour standards.

In view of the fundamental legal rights which are infringed by the crime of trafficking in human beings, it is not apparent why one single infringement of fundamental rights should not be regarded as constituting the act of trafficking in human beings, provided all other conditions are fulfilled. Where there is an infringement of a fundamental right, as a rule there will also be an infringement of labour standards, since the latter are considerably more specific and provide less extensive protection; an infringement of national labour standards is therefore not only unnecessary, but there is the additional risk that, in countries with a low level of protection or less rigorous provisions, this requirement implies that trafficking in human beings has not occurred.

The rapporteur would also like to establish a minimum definition of legal concepts (such as the concept of 'aiding and abetting'), which are defined differently among the Member States. She also considers it important to ensure that victims of trafficking and individuals called upon to testify are protected during judicial proceedings. As a large number of individuals are abducted and hidden away in connection with trafficking in human beings, or must live under a false identity, a database containing information on missing persons should be set up and maintained, particularly by involving the non-governmental organisations.

In the field of police and judicial co-operation in criminal matters, the Commission adopted a proposal on 21 December 2000 for a Framework Decision to combat trafficking in human beings. The objective of the proposal is to provide common definitions and common penalties for the very serious offence of trafficking in human beings. Common definitions and penalties will in turn provide a basis for enhanced law enforcement and judicial co-operation. On 28 May 2001 the Council reached an agreement in principle and recently the European Parliament made the final adoption.

On 17-18 May 2001, the Commission launched the European Forum on Prevention of Organised Crime. One of the workshops addressed trafficking in human beings. The workshop concluded that it will continue its work and seek to identify concrete and targeted measures to prevent trafficking in human beings and the sexual exploitation of children: the STOP II Programme.

Combating Trafficking in Human Beings: Prevention, Assistance and Protection

As a member of the WRC I would like to stress as well the importance of *Gender equality* in the matter. Gender-based discrimination is one of the main reasons leading women and girls to emigrate. Gender-based discrimination is shown by the inferior status of women, particularly in developing countries, thus leading to lack of educational and vocational opportunities for girls, the lack of opportunities for employment the expectation of women to perform certain family and community roles and the discrimination against women in political participation, sexuality, religion, and social life.

Therefore there is a need to develop strategies to promote and implement gender equality issues into national, regional and international plans and to strengthen existing mechanisms at national and international level to promote gender mainstreaming.

Prevention, Information and Awareness Raising Campaigns

Information campaigns are crucial short-term instruments in preventing trafficking in human beings. Often potential migrants, in particular women and minors, lack sufficient information on the real conditions they would face in the country of destination. Traffickers often take advantage of this lack of information to lure their victims with promises of employment and a better life.

Information campaigns should aim at providing persons wishing to emigrate with accurate information on migration issues in order to help them making well-balanced decisions regarding their migration. The campaigns should offer facts on the possibilities, advantages and limits of regular migration as well as providing practical information such as visa requirements, residence, working and other immigration procedures.

In the framework of a counter-trafficking strategy information campaigns should be developed in cooperation with NGO, IOs, concerned government authorities, research institutions and media. It is important that the campaigns provide information on the realities and disadvantages of irregular migration covering the risks and dangers of exploitation associated with irregular migration. Information should also be given on referral addresses in the country of destination such as service providers who can assist migrants. Special attention needs to be paid to women and minors, as they are particularly vulnerable to trafficking. In case of trafficking for the purpose of sexual exploitation it is advisable to stimulate awareness raising campaigns targeting male clients in countries of destination with regard to the violence used by traffickers as well as the living conditions of trafficked women and children.

There is also a need to raise awareness of the problem of trafficking in human beings among relevant authorities as in order to sustain the effects of information campaigns. Moreover, measures must be developed by policy-makers to prosecute traffickers and to protect and assist victims of trafficking.

In the case of one of the countries I have visited, Ukraine, IOM designed brochures and posters to provide potential victims of trafficking with more detailed information on the phenomenon and available resources of assistance. The brochures and posters were distributed through grass-root organisations, the local and regional employment centres of the Ministry of Labour and Social Policy, and the regional offices of the Ministry of Family and Youth Affairs.

The project also set up a hotline, which provides information on social, legal, and employment conditions abroad, as well as counselling for potential and actual victims of trafficking.

Co-operation and Development

The underlying root causes for trafficking in human beings often comprise the lack of educational and employment opportunities.

Programs need to be developed, combining the co-ordinated efforts of both national and international entities, to address the social and economical differences pushing people to emigrate and the adverse impact suffered in particular by women and girls. Often migration is perceived as the solely income-generating strategy for women and girls.

It is therefore advisable to set up in close co-operation with local NGOs, IOs, and government authorities, projects in the countries of origin to enlarge income-generating facilities such as vocational training facilities, skills-training, business-training, livelihood training and micro-credit programs. Likewise there is a need to support funding for projects aimed at strengthening organisations working with vulnerable groups thus promoting the above mentioned activities which would enable vulnerable groups to develop a positive sense of community, identity and self esteem as well as their social and economic development. Reconstruction of the social system is imperative in order to develop a grass roots network of service providers who would assist these vulnerable groups, thus decreasing the risk of being recruited by criminal networks.

It is also imperative to include and mainstream trafficking sensitisation into income-generating programs, thus integrating would-be and returned victims of trafficking into income-generating activities.

Victim Assistance Programs

Many trafficked migrants do not hold the proper documents required for staying legally in the country of destination. Therefore they are often not regarded as victims of a criminal offence but are considered as offenders. It goes without saying that governments in the countries of destination as well as in the countries of origin should treat trafficked migrants as victims rather than offenders.

One way to combat trafficking in human beings is to render testimony against traffickers advantageous for victims of trafficking. However, under most legal frameworks it is not attractive for victims to testify against traffickers as they face high risks of retaliation against themselves or family members. Some governments have set up protection programs for victims and the possibility to obtain a residence permit in the country of destination when they co-operate with the law enforcement bodies and the judicial system.

Due to the clandestine and criminal nature of trafficking, victims are often exposed to significant risks to their health and well being. Fear for deportation and retaliation members as well as coercion, exploitation and violence committed upon them by the traffickers pushes victims more to often into marginal and vulnerable situations.

In order to contribute to the protection and assistance of victims of trafficking in human beings in a durable and sustainable manner there is a need for integrated policies and programmes aiming at the protection and improvement of their position. Therefore it is advisable to set up victim protection programs tailored on their individual needs. These programs should offer a residence status for victims of trafficking alongside services such as protection, socialisation, counselling, psychosocial and medical support, legal assistance, shelter, vocational training, job referral and follow-up.

The Case of Belgium

Residence procedure, employment facilities and welfare support for victims of trafficking.

By circular of the federal Ministry of Justice and the federal Ministry of the Interior regarding the deliverance of residence documents and working permits to foreigners, victims of trafficking, a special residence procedure for victims has been outlined.

In accordance with this circular a victim is entitled to the following residence procedure:

- An authorisation order granting the victims an official rest period of forty-five days after leaving the environment of exploitation and is under assistance by a specialised centre.
- A "declaration of arrival" for three months is granted if the victim decides to bring charges before a court of law or file an official complaint or declaration with the police within the above-mentioned forty-five day period.
- After the three months period the prosecutor's office decides to withhold the complaint and considers the person as a possible victim of trafficking the victim is recorded in the Immigration Register and is granted a six-month document.
- The victim concerned can apply for a staying of unlimited duration, if the person against who the complaint has been lodged is summoned to appear before a court of law. The permanent residence document is only granted if the declaration or complaint made by the victim has played a meaningful part in the judicial investigation.

The victim who possesses a declaration of arrival or a certificate of registration in the Foreigner's Register is entitled to work officially.

Three specialised reception centres for victims of trafficking: Pag-Asa, Payoke and Sürya are entitled to apply for the documents related to this residence procedure.

These centres offer a wide variety of services to victims of trafficking in human beings such as legal assistance, counselling, mental and health care, vocational guidance, referral for job training, shelter and follow-up.

It should be underlined that the circular is applied for victims of trafficking in the broadest sense; trafficking for the purpose of sexual and economical exploitation and clandestine immigration.

According to the same circular a victim of trafficking can officially be employed in Belgium. Therefore the employer has to apply to the Ministry of Labour for a permission to employ a third national and for a working permit for the latter.

In accordance with a Royal Decree concerning the financing of the reception of victims of trafficking the residence document entitles the holder to a social benefit which is paid out either by the specialised reception centre or by the Social Welfare.

However, recently a new residence procedure has been submitted to the Ministries of Labour, the Interior, Social Affairs, Public Health and Justice on the initiative of the three specialised centres and the Foreign Service.

Yet being (September 2001), the new procedure hasn't been yet ratified officially but is already used in practice.

First phase, deliverance of an "order to leave the territory" within 45 days

- A 45 days "order to leave the territory" is granted to the victim who leaves the environment which has led to the exploitation and is assisted by a specialised centre.
- This period allows the victim to decide whether he or she will put down a complaint against the traffickers.
- When the victim put down the complaint immediately the specialised centre can demand the Foreign Service for the application of the second phase.

Second phase, deliverance of the "declaration of arrival".

- The victim who puts down a complaint within the 45 days period is entitled to receive a declaration of arrival for a three months period.
- The victim is under the obligation of being assisted by a specialised centre.

- One month before the expiring date of this document the Foreign Service requests the Prosecutor's office the following information:
- Is the complaint still part of a judicial investigation?
- Can the person in the current stand of the investigation be considered a victim of trafficking?

Third phase, deliverance of a "certificate of registration in the foreigner's register".

- If the Prosecutor's office replies positively on the above mentioned questions the victim is granted a 6 months residence document.
- If the Foreign Service didn't receive an answer from the Prosecutor's office the declaration of arrival is extended for another three months period. If the Prosecutor's office still didn't reply before the extension of the second three months period the Foreign Service will nevertheless issue a 6 months residence document.
- During the whole period the victim is under the obligation to be assisted by a specialised centre.
- The certificate is extended for the duration of the judicial investigation.

The victim can apply for a permanent stay if:

- the complaint of the victim has led to the sentencing of the trafficker in the first instance.
- If, even when the accused hadn't been sentenced for infringements regarding trafficking, the Public Prosecutor had included in his claim against the accused infringements regarding trafficking or when the complaint had been significant for the whole procedure.

Discussion Summary

Compensation for Victims

Mr. Mike Dottridge (Anti-Slavery International) first addressed the issue of compensation for the victims of trafficking. Many states systematically avoid calling any assistance "compensation" while some admit that specific compensation is necessary. Mr. Dottridge cited the example of the United States where new provisions on compensation are now in place, but States remain wary of empowering the victims to make claims.

Ms. Monika Smit (Office of the National Rapporteur on Trafficking, The Netherlands) described the three avenues open to a victim of trafficking in seeking compensation in the Netherlands. Firstly, by applying directly for compensation. Secondly, according to the so-called "pick-the rule" which strips the perpetrators of their criminal earnings, but this money does not go directly to the victims. And finally, through a civil procedure in court, which usually proves to be difficult and lengthy. In 80% of all criminal cases the prosecutor at least attempts to take money from the perpetrators. The concept of direct compensation has so far not been discussed in Germany, Ms. Sonntag-Wollgast (German Ministry of the Interior) remarked.

Addressing Demand

The moderator of the Panel Discussion, Mr. Peter Eicher, Deputy Director of the OSCE/ODIHR, brought the discussion to addressing the question of demand in countries of destination. Ms. Smit said clients of prostitutes would mind if they knew that a prostitute was forced to be one. Ms. Patsy Sörensen (European Parliamentarian) agreed that there is good experience of a lot of clients reporting victims of trafficking to the authorities. Mr. Dottridge remarked that we have created a situation in which we know that there is high demand for poorly paid labour within the sex industry, but also in other areas. At the same time there are only few opportunities for non-EU citizens to earn money legally in the EU. As recently as last year, trafficking was simply equated with prostitution and viewed as the same thing.

State Responsibility

Ambassador Stoudmann, Director of the OSCE/ODIHR, said it was time to take trafficking out of the "prostitution box" and to tackle the underlying problem of slavery. The media has a valuable role to play in raising awareness about this complex phenomenon. Sentences for traffickers should also be adjusted to the gravity of the crime. This is also where the international community should take responsibility and international organisations should see their role. He referred to the OSCE's revised Code of Conduct demanding more accountability of international staff for their actions.

Ambassador Kai Eide, the Head of the Norwegian delegation to the OSCE, agreed. He remarked that during war, rape is considered a war crime. However unfortunately, when the international community comes in to fight crime and to establish rule of law in a post-conflict situation often it does not always adhere to the standards it promotes which may result in further human rights violations.

Not just an awareness raising campaign is needed, but a concerted effort by all nations to bring the perpetrators to justice. International staff must face legal prosecution at home for their alleged actions. This must be done in a way that does not discredit the international community, but if current practice continues, the international community is bound to discredit itself.

La Strada Ukraine also called for persons working with victims to be better trained and to improve relations between law enforcement agencies and NGOS. Ms. Vandenberg (Human Rights Watch)

remarked that police corruption in post-conflict areas remains a serious concern. In conclusion, NGOs called for a human rights approach, rather than an anti-immigration approach, to be taken towards the problem of trafficking. Furthermore the number of women in relevant professions such as law enforcement and border guards must be increased.

The chair of Panel A: Victim Protection – Human Rights Versus Repression, Mr. Eicher, summarised the following minimum requirements/recommendations for victim protection from the discussions:

- Capacity building
- Compensation
- Fighting corruption
- Financial resources
- Increasing qualifications of relevant professionals
- International co-operation
- Job/skills training
- Legal framework
- Political will
- Prosecution
- Seizure of assets
- Shelter
- Social and health services
- Targeted public awareness campaigns
- Temporary residency
- Witness protection

4.2 Panel Discussion B: Breaking the Cycle: East-West Co-operation

From the perspective of countries of destination, finding a solution for trafficking in persons frequently means stricter immigration policies, tighter border controls and fighting organised crime. Yet, this narrow approach fails to address the true causes of the problem, which include inequality, discrimination and poverty. As long as repatriated trafficked persons return to the same circumstances from which they sought to escape, the cycle of trafficking will continue. Upon returning home, many trafficked victims additionally have to face the social stigma connected with having worked in the sex industry, as well as to cope with the long-term psychological and physical scars of trafficking.

Therefore, anti-trafficking initiatives should aim to develop and offer real prospects of escaping this cycle of poverty, abuse and exploitation. In addition to supporting awareness raising campaigns that highlight the risks of trafficking and one's rights abroad, destination countries should consider supporting programs to enhance education and economic opportunities in countries of origin, keeping in mind a gender-sensitive approach to development work.

Furthermore, in addition to taking proactive steps to address the root causes of trafficking, countries of destination, including European Union (EU) member states, can make a real difference by providing technical assistance within the framework of cross-border law enforcement co-operation. Specifically, more should be done to proactively investigate the activities of traffickers, rather than depending only on witness testimonies.

Participants

- **Geert-Hinrich Ahrens**, Head of OSCE Presence in Albania
- **Björn Clarberg**, EUROPOL
- **Leyla Kayacik**, Council of Europe
- **Marina Pisklakova**, ANNA, Russian Federation
- **Martina Vandenberg**, Human Rights Watch, United States of America

Moderator **Helga Konrad**, Chair of the Stability Pact Task Force on Trafficking in Human Beings

Geert-Hinrich Ahrens

Head of OSCE Presence in Albania

Why is it that out of the 23 countries listed as category three in the first US State Department Report on anti-trafficking, 1 country is from the European union and 6 are from Eastern Europe?

Does this mean that it is Eastern European Countries that bear more responsibility for 'the cycle' let alone breaking it? Of course not, supply requires demand and the West largely provides that demand. We are here to find ways and means of practical co-operation between West and East to end this scourge of the 21st Century.

Of course co-operation between regions or indeed between countries, especially in some parts of Europe, is problematic. The problem is so serious that we must do all within our power to address the differences causing these problems. The more so because some of the existing regional tensions may or may not be driven by organised crime and/or trafficking

Since its inception the CSCE/OSCE has believed that East-West problems can best be addressed by conditioning assistance on results. I would like to identify a number of practical actions that may be linked to specific results. This I would like to do on the basis of my experience as Head of the OSCE Presence in Albania.

In preparation for this meeting I met the Ministers of Justice and Public Order, the President of the Constitutional Court and the General Prosecutor of Albania to discuss the problem of trafficking. I asked for these meetings for two reasons:

First, the Justice and Home Affairs task force of the EC had asked our Mission to identify principal concerns about trafficking in Albania. Second I wanted to know what concrete action had been taken by the Government to combat trafficking.

Based on the information of our Field Stations the Legal Office of the Presence had assessed the proportion of successful prosecutions in relation to arrests, and had concluded that the figure was around 10%. Of those very few had received prison sentences within the range identified in the Draft Framework Decision on Anti-Trafficking guidelines. The General Prosecutor did not speak about successful prosecutions. Instead he focussed on the lack of co-operation between police and prosecutors.

If trafficking is to be effectively tackled, this simplistic kind of explanation cannot be allowed to stand.

Instead Eastern European Countries must be required to produce concrete results such as successful prosecutions with long-term prison sentences for the crime of trafficking if aid is to be granted. One other such example of conditionality could be the implementation of criminal procedural law requiring the forfeiture of assets, a provision which exists in almost all codes in the region, but is rarely if ever implemented in the trafficking countries of Eastern Europe. International donors could offer to give money in proportion to assets seized which in turn could go to fund such national programmes as witness protection and/or victim rehabilitation programmes such as shelters.

Conditionality can be applied either positively as above, perhaps the 'carrot approach', or negatively 'the stick'. It has been my experience in Albania that when funding appears to be threatened or international political pressure applied things happen. When the European Commission issued a report criticizing Albania's anti-trafficking results and pegged their improvement to negotiations on a Stability and Association Agreement, the Albanian Government finally nominated an Anti-Trafficking Co-ordinator and established an Inter-ministerial working group for the creation of a National Strategy and Action Plan.

Unfortunately this pressure has not been maintained with the result that no feasible plan or strategy has either been drafted or adopted.

Attaching conditions to funding must be a priority if trafficking is to be tackled effectively. Although the OSCE has made trafficking an organisational priority, this is not reflected in national practice on the ground in many Eastern European Countries. Political will, however eloquently expressed must be translated into recognizable results. We in the OSCE Presence in Albania have created a monitoring programme, which allows us to measure the effectiveness of anti-trafficking efforts.

The reason why this programme was developed was that there were no consistent or reliable statistics on arrests, prosecutions and convictions. Further there was, and is no proper understanding of the difference between the smuggling of illegal migrants and trafficking in Human Beings. There was and is no distinction made between arrest and prosecution of victims and perpetrators.

Indeed Government practice shows that it is the victims who are more likely to be imprisoned than the perpetrators, for whom all manner of creative excuses are found. For example it was declared by a senior prosecutor that the driver of a vehicle transporting illegal migrants was a victim. I ask - Would a speedboat driver engaged in the trafficking of women be likewise categorised?

To summarize, funding must be predicated on results, which in turn must be independently monitored. Donor countries however must judge their own behaviour according to the same standards. They too must prosecute traffickers and seize their assets. As reported in the press at the recent trial of the Hells Angels in Hamburg the maximum sentence handed down was four years and eight months; and this for running 130 brothels serviced, most likely, by victims of trafficking - some of whom are no doubt Albanian. Surely this is a blatant example of double standards.

If the scourge of trafficking is to be curbed the actions of each and every country here present must speak louder than words. A start must be made by the European Union in linking Stability and Association negotiations to real and recognisable results, in parallel with the United States, forcefully and strictly applying the very useful and innovative Anti-trafficking legislation.

Introduction

The phenomenon of trafficking in human beings (THB) has extensive implications for the social, economic and organisational fabric of society in the source countries, as well as a negative impact in the destination countries. There is also a moral imperative to counter this modern slavery.

The actions needed to address many of these factors go beyond the scope of law enforcement activities and therefore must be addressed through other fora such as development and co-operation programmes. Both sets of measures however, should be integrated and co-ordinated.

The external borders of the European Union (EU) will potentially expand within the next decade to include ten to twelve new countries. These so-called Applicant Countries are currently in the process of acceding to the EU through the fulfilment of an extensive list of criteria, which will bring them into line with the EU in such areas as economy, legislation and security.

Therefore, in this context EUROPOL has developed a strategy for the European Union Law Enforcement Services to counter Trafficking in Human Beings focusing on sexual exploitation and illicit labour.

Major Threats

The threat of THB comes from a number of well-identified source countries/ regions and is a danger to all EU Member States. It stems from dissatisfaction with the overall conditions of life there, relative to life here.

The most significant elements of the threat are:

Organised Crime: THB is increasingly falling into the hands of OC gangs/networks who make use of existing routes and infrastructures for moving illicit goods. OC is renowned for aggressively maximising all business possibilities and for using violence to protect its interests.

Victim naivety: The continued willingness of victims to believe in the promises of a better life in the rich west plays into the hands of the traffickers.

Documentation: Fraudulent documents are easily obtained by the criminals and used successfully to travel. The involvement of OC and the use of corruption facilitate this.

Border control: Many of the borders in source, transit and destination countries are inadequately managed such that the entry of trafficked persons cannot be prevented.

Corruption: Compounding the problems already mentioned regarding documentation and border control, the widespread corruption of officials facilitates the trafficking of persons and may undermine efforts to prevent it.

Carriers: a lack of diligence, or of concern, on the part of high-volume commercial carriers regarding the authority to travel of passengers can undermine law enforcement efforts to prevent THB.

EU Expansion; EU Applicant Countries are both THB Source & Transit countries. They may not apply current EU standards, nor be covered by this strategy; but shortly, they may all be members of the EU.
Invisibility of victims: Many THB victims are out of the sight of the public and accordingly out of the mind of the police.

Fear of victims: The real physical danger that the victims of THB find themselves in makes them unwilling to cooperate with law enforcement efforts against the traffickers who threaten them.

Inadequate legislation: The current legislative measures available against THB are inadequate to provide sufficient deterrent, investigative options or punishment for traffickers.

Overall Strategy

The overall strategy must be to "defend beyond the borders". Action should take place in the source countries, as close to the root of the problem as possible. When the problem emerges on the territory of the European Union, it becomes much more difficult to counter.

Three distinct lines of defence where measures and responses should be applied can be identified.

- Source countries
- Transit countries
- The borders of the European Union

Recognising that some traffickers will still penetrate the defences, actions also need to be developed at the regional and local level in Member States.

Clearly, some of the actions proposed in this document fall outside the scope of policing, and therefore a multi-agency approach, involving State Immigration Services, Customs, Coast Guards, Diplomatic Services and other concerned parties (Fiscal Authorities, Social and Health Services, Labour Unions, etc.) as well as the involvement of Inter- and Non-Governmental Organisations is needed.

Following the 11 September terrorist attacks on the United States, the EU Justice and Home Affairs Council has urged a number of measures to create and maintain the highest level of security. These relate to:

- The strengthening of controls at external borders.
- The need for maximum rigour regarding the issue of visas, including the establishment of an information exchange network concerning the visas issued.
- The need for the utmost vigilance when issuing residence permits (particularly to avoid duplicates) and the systematic checking of identity papers to detect any falsification.

Being aimed at preventing unlawful travel and residence, these measures should also have a significant impact on trafficking in human beings.

It must be stressed that Member States acting in isolation cannot put an end to their own, or the EU problem of THB; therefore the need for a co-ordinated response involving all Member States has to be acknowledged.

Strategies in Source Countries

It is obvious that since most source and transit countries are outside the European Union, pro-active operational policing measures cannot be applied directly by the Member States. Thus, Organised Crime groups operating in the source and transit countries are effectively beyond the reach of enforcement action by the law enforcement agencies of Member States.

Accordingly, the actions and initiatives that the European Union Police Forces can promote within these countries must fall within the scope of "Crime prevention". These can be run under existing development and co-operation policies, and in parallel with the promotion of democracy and human rights.

The threats and weaknesses apparent in the transit countries are similar to those in source countries, so the same actions and initiatives can be applied.

"Crime prevention", promoted through Liaison Officers and training programmes, can be focussed on the following areas:

- Potential victims
- Organised crime
- The Member States diplomatic representations
- The borders
- Carriers / Transporters

Strategies in Transit Countries

It is more practical and realistic to concentrate just on those transit countries that form either the "jumping off point" for entry into the EU, or the last "leg" of the journey to the destination country. It should also be recognised that launching initiatives beyond the external borders has an inherent complexity that can lead to unpredictable or unsatisfactory results.

A distinction must be made regarding the types of transit countries used to reach the final destination EU Member State:

- External (Non-EU) Transit Countries
- Internal (EU) Transit Countries.

External transit Countries will respond to the same Specific actions proposed above for application in Source Countries.

In Internal Transit countries, action must be taken to promote an EU-oriented, not just a State-orientated focus on the part of all law enforcement officials dealing with THB matters. This would require an acceptance of the need to actually deal with trafficking, not just pass it on to the next country down the line.

Strategies in Destination Countries

The development and implementation in Member States of specialised units at the national, regional and local level for combating THB, sexual exploitation and illicit labour must be encouraged. This will further serve to give the appropriate priority and ensure the allocation of the resources needed for the fight against THB.

As already mentioned, a multi-agency approach involving Immigration Services, Customs Services, Coast Guards, Fiscal Authorities, Health and Social Authorities and other relevant authorities, Labour Unions etc. is necessary to effectively counter THB; a coherent framework to achieve this needs to be developed in each Member State.

There is also a need to ensure appropriate national legislation, which explicitly criminalises THB as a crime in itself, with recruitment, transportation, harbouring, selling and exploitation as the composite elements of the crime. This legislation should enable the use of special police techniques such as wiretapping, video surveillance, under-cover agents, financial investigation etc and allow the findings to be used as evidence in court. Seizure of the criminal's assets should also be allowed.

A national counter-THB strategy should be developed to ensure the full co-ordination of all these aspects.

The free movement of persons in the European Union makes it possible for more than one person to use the same identity or for one person to have multiple identities in several different Member States.

If this were to occur widely, it could in the long-term destabilise the internal security of the European Union. Therefore, registration of EU citizens and persons with EU residence permits must be harmonised and co-ordinated between the Member States. Compulsory national identity cards and the fingerprinting of migrants, though politically contentious, would help further.

The law enforcement services in the Member States should take specific actions and measures in the following areas:

- Intelligence led policing
- Organised Crime
- Legislation
- Multi-disciplinary approach
- Financial aspects
- Invisibility of exploitation
- NGOs & witness assistance / support

Final Remarks

Tackling the growing problem of THB requires a comprehensive and multidisciplinary approach involving all relevant actors (NGOs and social authorities, judicial, law enforcement and migration authorities). Such an approach involves national and international co-operation.

To ensure the successful implementation of this strategy, Member States Police must:

- ensure that the issue of trafficking remains high on the Law Enforcement agenda, moving beyond the "see no evil" orientation,
- strengthen the multi-disciplinary approach and improve information sharing amongst all the involved agencies,
- address the phenomenon of THB through actions against the whole trafficking chain (i.e. recruiters, transporters, exploiters, other intermediaries and clients),
- develop partnerships with NGOs to improve access to information, as well as to obtain support for victims,
- where necessary, influence politicians to change legislation to increase the level of punishment for perpetrators of THB, and also enable sanctions against illegal income and confiscation of assets earned through THB.

Marina Pisklakova

ANNA, Russian Federation

The Russian Association of Crisis Centers for Women (RACCW) became involved in the issue of trafficking in women since the first hotlines for women started working in Russia in 1993. Trafficked women who were able to return to Russia after escaping from the trafficking situation called existing Crisis Centers to talk about their experience and get assistance. Since 1996 members of RACCW started working together with Global Survival Network on finding a way to bring the issue of trafficking in women to the attention of the Russian Government and public. Starting from 1997 several Crisis Centers including "Sisters" (Moscow), "ANNA" (Moscow), Alexandra (St.Petersburg), "Lana" (Nizhni Tagil) as well as Centers in Irkutsk, Ekatherinburg and Saratov made the first attempt to develop and conduct educational programs for girls at the schools, colleges and Universities. At that time they could not make their work publicly known because of the potential danger from organized crime groups.

In 1998, the first Conference on the issues of trafficking in women, organized by Sexual Assault Recovery Center "Sisters" was held in Moscow. At that conference RACCW members had the opportunity to state the problem, to present approach and to offer solutions to the representatives of the Government, NGO community and mass media.

In 1999 Coordinating Council of RACCW included prevention work on trafficking in people as one of the priorities of the legally incorporated Association of Crisis Centers for Women "Stop violence".

In July 2000 RACCW conducted a two-day event with support from OSCE/ODIHR organized by ANNA and the Ministry of Foreign Affairs of the Russian Federation. The first day meeting involved discussion of representatives of about 20 NGOs working in the area of trafficking in women where they came with a strategy to propose on the second day to the Russian Government. The second day representatives of RACCW had a round table discussion with over 40 representatives of different Russian Federation Ministries, Duma, and international organizations.

Trafficking in human beings is an international crime by its nature and the only way to be effective in combating it is to have a well-coordinated international co-operation. There are two levels of approach to the problem of trafficking first of which is national multi-agency approach and second international.

In the Russian Federation trafficking in human beings is officially recognized as one of modern form of slavery and most sever human rights violations. On April 20, 2001 The Commission on improvement of status of women under the Government of the Russian Federation had a meeting on the measures of prevention of trafficking. The Commission has developed recommendations of the change in the legislation, mass media education campaigns and advised law enforcement agencies to analyze activity of companies potentially involved in trafficking in human beings. The Commissioner on Human Rights in the Russian Federation created a working group on women and children's rights, which will also deal with the issue of trafficking in women.

RACCW as an NGO network is working on creating a system of the joint multi-disciplinary response to the crime of trafficking including assistance to the victims of trafficking. We have a good support from OSCE ODIHR office in terms of assisting us with information, strategy building and establishing international networking with other women's NGOs but in order to be more effective in our country we need more support from our Government.

RACCW has good working relationships with the Russian Ministry of Foreign Affairs Department of Human Rights in combating trafficking, but we do not have any support from Law Enforcement agencies at the federal level, which makes our work less effective and puts in danger victims of trafficking. The only

effective way to combat trafficking at the national level seems to be to have a multi-agency working group at the national level that will be headed by a specially appointed person, which will be responsible for the development of the governmental policy in combating trafficking in women. That working group would be involved in the coordinated international activity.

There are also issues related to the investigation of trafficking crimes in the countries of destination. I would recommend that every law enforcement officer, judge, prosecutor or anyone involved in working with trafficking cases will be trained in for better understanding of emotional status of victims/witnesses as well as why they say what they say, including some cultural aspects of victim's/witnesses behavior.

Women's NGOs have already established some level of international co-operation and networking but we need to be included as a very significant partner in any governmental or intergovernmental plans, including financial. Women's NGOs should be provided with enough financial and technical resources to continue efficient and effective work in rehabilitation and re-integration of victims of trafficking.

We face the international crime that we can combat only with well-coordinated national and international response and we are dedicated to be a part of it.

Martina Vandenberg

Human Rights Watch, United States of America

Madame Chair, Your Excellencies, Ladies and Gentlemen:

It is an honor to address you today. I and my colleagues in the NGO community appreciate the attention that the OSCE and some member states have dedicated to the grave human rights abuses associated with trafficking in human beings.

Over the past decade, Human Rights Watch has documented the trafficking of persons, particularly women and girls into forced labor and servitude. In the OSCE region, we have worked closely with local non-governmental organizations to monitor this highly profitable modern day slave trade. Most fervently we seek to expose state complicity, without which trafficking could not flourish. In the former Soviet Union and Eastern Europe, local, grassroots non-governmental organizations with expertise in trafficking play an essential role in the fight against trafficking. **In fact, without support for local, grassroots NGOs in the region, U.S. and European anti-trafficking policy will fail.** This must be the core of East-West co-operation.

This afternoon I will touch on concrete strategies for combating trafficking and make recommendations for policy. I'll begin with one fact that we have discerned from our interviews: most of the women we interview have migrated voluntarily. Many know that they will work in the sex industry. But what they do not know, and could not know, is that they will be sold into slavery. The women Human Rights Watch has interviewed over the years in prisons and in brothels knew their price? these women were sold as chattel from prices as low as \$500 and as high as \$15,000.

NGOs in the former Soviet Union and Central and Eastern Europe, Western Europe and the United States (although there are few) serve as the only institutions committed solely to protecting the human rights of trafficking victims

I would like to focus today on Human Rights Watch's research in the OSCE region and then turn to success stories – cases where East-West co-operation led to enhanced protection of the human rights of trafficking victims. Fundamentally, that is our concern protecting the human rights of trafficked persons in countries of origin, transit, and destination.

I begin with Human Rights Watch's own findings in the field. In March 1999 and March 2001, Human Rights Watch researchers travelled to Bosnia to document the trafficking of women from Eastern Europe and the former Soviet Union into forced prostitution. Our research uncovered brothels scattered throughout Bosnia and filled with women from Ukraine, Moldova, Bulgaria, Belarus, and Romania. Many had transited through Belgrade; it was there that the realisation first dawned that their traffickers had sold them. Women in the brothels reported to us that they had been sold from brothel owner to brothel owner, placed in debt bondage, threatened, and beaten. Lena¹⁰, a Ukrainian woman, told us, "I came to work in a bar. I knew nothing when they took me to Serbia. I was sold there four times to different men. They brought me to a bar in Republika Srpska and told me I had to work as a prostitute. I worked and they never paid me. Every time I refused to work, they beat me." Court documents and police reports obtained by Human Rights Watch indicated extensive police complicity in the trafficking: in some towns local police held women's passports at the police station, making escape impossible. Corrupt local police officers frequently patronized the brothels, and in one town police partially owned the brothel as members of a local soccer club. In another case, a local police officer moonlighted as a waiter in the

¹⁰ All names have been changed to protect the women concerned.

brothel. We also found some evidence of SFOR and U.N. International Police Task Force involvement, confirmed recently by a United Nations report on trafficking into Bosnia.¹¹ That involvement included purchase of women for personal use by at least one American IPTF officer and purchase of women by American SFOR civilian contractors. While these men faced repatriation to the U.S., they did not face criminal charges. Between March 1999 and July 2001, the International Organization for Migration, with funding from the U.S. government, repatriated 296 women and girls trafficked into Bosnia. Their ages ranged between 13 and 36 years.

In Greece, Human Rights Watch found that trafficking victims suffer doubly, first at the hands of their traffickers, and then at the hands of the state. In research conducted in November 2000, Human Rights Watch researchers found that the government of Greece has failed to combat trafficking, continuing instead to treat trafficking victims as criminals, allowing the real criminals – the traffickers and their protectors within government structures – to profit with impunity. Detained and deported, trafficked women do not have access to even the most minimal human rights guarantees – no shelter, no witness protection, no medical care, psychological support, or assistance. Nor do they have access to justice. The government of Greece has failed abysmally to indict and prosecute traffickers and corrupt officials.

A trafficked woman from Bulgaria, interviewed at Korydallos Women's Prison in Athens, told a Human Rights Watch researcher:

I paid a man 350 German marks to go to Greece since I had no papers. Instead, he brought me to Greece and sold me to a bar. He told me he would kill me if I left. We could not leave the house. There were twelve women, all of us from fifteen to twenty years old... We slept with a lot of men, ten men a day. We were beaten if we tried to leave... The police came and arrested all of us women and brought us to a small prison... The women were from Bulgaria, Romania, Russia, not from Africa really. I stayed for four months in prison. After that I went to court. Because I did not have papers, the court gave me three months suspended sentence and immediate deportation and told me I could not return to Greece for five years.

This case illustrates the failure of the Greek government to live up to its international obligations. No traffickers faced prosecution. The victim did. No traffickers went to prison. The victim did. And finally, the victim earned no money that she could keep, leaving Greece empty-handed. In contrast, traffickers reaped huge profits.

Trafficking cannot flourish without corrupt and complicit state officials, including police officers, eager to facilitate this trade and share in the profits. In a meeting with the Minister of Public Order Michalis Chrysochoidis last week, I learned that over 200 police officers have gone to jail for corruption and many of those for involvement in trafficking women into Greece.

Beyond corruption there is also official complicity, indifference, and failure to act. Human Rights Watch found one case of a Romanian woman trafficked into Greece. In another case, an intergovernmental organization passed on all key information necessary to find the woman to the Ministry of Public Order – her description, name, location, name of her trafficker, and the mobile phone number of the trafficker. The organization never received a reply from the Ministry. The victim was never found. The trafficker told police that she had returned to Romania.

So what can be done to combat these abuses? I'd like to turn now to success stories of East-West co-operation.

¹¹ UNMIBH Legal and Human Rights Offices and the UN Office of the High Commissioner for Human Rights in Bosnia and Herzegovina, AReport on Joint Trafficking Project of UNMIBH/OHCHR, May 2000.

Success Stories of Co-operation

As many of you know, the La Strada program, funded by European development agencies, has created a sophisticated network of services for victims of trafficking, including hotlines, psychological counseling, medical care, and legal assistance. In Bulgaria, the Czech Republic, Poland, Ukraine, and The Netherlands, La Strada activists find shelter for women victims of trafficking, and assist them in recovering from the trauma of rape, sexual abuse, and terror used by the traffickers. La Strada's hotlines in each of these countries receive hundreds of calls annually from women trapped in slavery-like conditions in Bosnia, Kosovo, Western Europe, the Middle East, and the United States.

In one case reported in early 1998 by the *New York Times*, La Strada Ukraine received a call from a woman imprisoned in a brothel in Italy. She had stolen a customer's cellphone to call the Ukrainian hotline. La Strada co-operated with Italian police; using her descriptions of the buses she saw passing outside her window, law enforcement authorities located the brothel, and the woman returned home.

In another case, I participated on a raid in Bosnia. A trafficked woman trapped in a brothel near the IEBL managed to call her father. He went to the police. The police contacted Interpol. Interpol contacted Bosnian police and the United Nations. Two days later IPTF and local police conducted a joint raid and found the woman in question along with three friends who also wanted to flee the brothel. The International Organisation for Migration provided transportation for voluntary repatriation out of Bosnia.

La Strada Ukraine, after long negotiations, received permission from Ukrainian customs authorities to meet trafficking victims immediately at the arrival gate. When the returning trafficking victims disembark from the aircraft, La Strada counselors escort them through passport control and then slip them out a rear exit from the airport. Women returning without La Strada's assistance may find their traffickers waiting in the arrivals area, ready to take them back into custody and sell them again to another willing buyer abroad.

And in the United States, the Coalition to Abolish Slavery and Trafficking (CAST), an NGO in Los Angeles, has assisted twenty-five clients in LA over the past year. Of those, fourteen have come from the OSCE region. Several found themselves trafficked into forced prostitution, others into domestic servitude. CAST is one of a tiny handful of organisations in the United States trying to support victims of trafficking and protect their human rights. Their funding situation is dire – they need funding.

La Strada Ukraine successfully pressured the Central Channel of Ukrainian television to show the Global Survival Network's documentary, *Bought and Sold*. This documentary, made in the West, received wide showing in Ukraine, largely due to La Strada's efforts.

Conclusion and Recommendations

I have sought to provide examples of effective East-West co-operation. I'd like to draw some brief conclusions at this stage:

1. NGOs form the key to fighting trafficking. In the United States, the former Soviet Union, and the East European countries, anti-trafficking initiatives are hobbled by lack of funding. Few shelters exist to house trafficking victims in need of secure housing. And the La Strada centres and nascent NGOs in the U.S. are stretched to capacity, dealing daily with individuals in crisis. Funding must be made available for NGOs to provide legal assistance, safe shelter, and victim support services.
2. Without witness protection, there can be no prosecutions. One enormously important and under explored area for East-West co-operation is the area of witness protection. Countries should cooperate actively to protect victims and provide them and their families safe resettlement, if necessary in a third country.

3. East-West Co-operation has tended to focus on immigration blocks and law enforcement. East-West co-operation must now incorporate human rights protections for victims NGOs from East and West can be partners in that effort. In addition, NGOs can be partners in fighting corruption.

Leyla Kayacik
Council of Europe

Madam Chair, Your Excellencies, ladies and gentlemen,

I am particularly pleased to participate in this Conference as it provides an excellent opportunity for me to address two questions:

What are the concrete actions undertaken by the Council of Europe in order to fight against trafficking in human beings and **how** these actions are undertaken.

What are the actions undertaken

The Council of Europe, based in Strasbourg, is an intergovernmental Organisation founded in 1949 with a clear human rights mandate (it is known for its European Court of Human Rights). It has 43 member states, among which 19 countries of Central and Eastern Europe. Therefore the Council of Europe groups countries of **origin, transit** and **destination** of trafficked persons. That is the reason why it has been confronted with the issue of trafficking ten years ago in the 1990s.

The member states and the NGOs the Council of Europe worked with raised the issue of trafficking and several **awareness-raising** actions were taken.

If, at that time, the question was not perceived as a political issue, this has changed dramatically over the past ten years.

Since the 1990s we have been through several phases and trafficking is no longer a minor, sometimes hidden problem. It became higher and higher on the political agenda.

In May 2000, the Committee of Ministers of the Council of Europe adopted Recommendation N° (2000) 11 on Combating trafficking of human beings for the purpose of sexual exploitation. This Recommendation which is meant to be implemented in member countries contains a range of measures related to **prevention**, to **assistance** and **protection of victims**, to penal legislation and judicial co-operation, but also measures to **ensure co-ordination** and **co-operation**, both at **national** and **international** levels. Beyond this co-ordination action, the text is to be used also to raise the awareness of decision-makers in the member states of the Council of Europe. It is one of the first attempts to co-ordinate action internationally among governments with a legal text.

Since then, an International Seminar on "Co-ordinated action against trafficking in human beings in South Eastern Europe: towards a Regional Action Plan" was held in Athens in July 2000. It was organised in the framework of the Stability Pact Task Force on Trafficking in partnership with the OSCE, ODHIR and the International Organisation for Migration. It is recalled in that context that the Council of Europe is responsible for relevant legislative reform under the Task Force on Trafficking in Human Beings. **Recommendations** for actions to be undertaken at national as well as regional level were adopted including launching **national action plans** against trafficking. Elements for a Regional Action Plan were also adopted.

Another concrete action took place on 12-13 June 2001: a seminar organised at the request of the Ukrainian authorities on "Perspectives of public initiatives on preventing trafficking in women" was held in Kyiv. Its objectives were to inform broadly the Ukrainian community and competent authorities on the latest developments in Ukraine and in Europe concerning trafficking in human beings, to raise awareness among mass media representatives concerning the stereotyped image of women in the media and the issue of trafficking and, finally, to contribute to the second programme to combat trafficking in women to be launched by the State authorities. Conclusions and Recommendations were also adopted.

Two concrete actions which are going to be organised in the future:

First one: as a part of the Council of Europe to the aims of the Stability Pact Task Force on Trafficking as well as of the Stability Pact Initiative against Organised Crime (SPOC), the Council of Europe (Directorate General for Human Rights in partnership with Directorate General I – Legal Affairs/PACO Programme) will implement a pilot project in Romania and Moldova. This project, entitled "Criminal law reform on trafficking in human beings in South-Eastern Europe" is to contribute to the effective criminalisation of trafficking in human beings at the regional level and to **ensure protection of victim's human rights** in accordance. The first of the three scheduled meetings will take place in Bucharest (Romania) on **24 to 25 October 2001**. The second meeting will take place in Chisinau (Moldova) on **12 to 14 December 2001**. During these meetings, legal requirements under relevant international and regional instruments will be discussed, the existing draft anti-trafficking legislation in both Romania and Moldova will be analysed. Proposals for training for the police, for the judges, in the implementation of legislation on trafficking and opportunities for enhanced co-operation among countries will be determined.

By the end of this pilot project, Moldova and Romania will have strengthened their legislation and their co-operation with each other and they will have improved their capacities to implement relevant international and regional agreements. **If successful, the experience of this project will be repeated throughout South Eastern Europe to ensure a sub-regional approach.**

The second concrete action in the future is the organisation in November, in Belgrade, in co-operation with the Stability Pact Task Force on Trafficking in Human Beings, of a regional training course on criminal law reform on trafficking in human beings in South Eastern Europe. This training course aims at establishing a framework for the necessary legislative reforms taking into account relevant international instruments. The main objective will be to ensure that the preparation, adoption and implementation of comprehensive legislation cover all aspects of trafficking in human beings according to European and other international standards. These aspects include **effective prosecution** and punishment of traffickers, as well as **protection of victims**

The Regional Training on Criminal Law Reform will be attended by local experts from each country of the region: one expert from the Ministry of Justice and one Parliamentarian actively participating in legal reforms. An international training team composed of Council of Europe, IOM, UN, ODHIR experts will assist the local experts in developing reform steps based on the relevant international instruments and on current best practice model anti-trafficking legislation.

These are the main past and future concrete actions undertaken by the Council of Europe.

The second question I wanted to address was **how** these actions are undertaken by the Council of Europe.

When undertaking these actions in order to fight against trafficking in human beings, experts in the Council of Europe realised at an early stage that a **multidisciplinary** approach was **essential**. The work of the Council of Europe in the fight against trafficking is clearly based on a **multisectoral** and **multipartnership** approach. The aim is to work with all the actors concerned in all the relevant fields.

That is how the Recommendation (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation was prepared.

The Council of Europe also ensures the implementation and follow-up of the measures necessary to combat trafficking in co-ordination and co-operation with other international organisations and bodies, such as the European Union, Interpol, EUROPOL, the OSCE/ODHIR, IOM and of course the Stability Pact for South Eastern Europe.

Co-ordination and **co-operation** are therefore key words and the only way to more effectively combat trafficking in human beings. The Council of Europe with its 43 member states plays a key role in this East-West co-operation.

Ladies and gentlemen, discussions on many themes will take place during the following days and particular attention will be given to the status and protection of victims. These discussions will help us advance the issue. I would now like to conclude by underlining that the Council of Europe is fully prepared to contribute its share to this joint effort against the trafficking in human beings.

More than ever co-ordinated action should be pursued and all necessary means should be taken to fight a phenomenon, which constitutes a violation of Human Rights. Criminalisation of trafficking is important, but the protection of the victims' Human Rights is essential: without this basic element, the fight against trafficking loses its fundamental meaning.

Discussion Summary

Cycle of Dependence

Ms. Pisklakova (ANNA, Russian Federation) opened the floor by reporting that women's NGOs face great threats from organised crime in Russia. She described the cycle of dependence and violence in which many women find themselves. Around 70% of young Russian women under the age of 27 are unemployed. If they do work, their income is on average only 50% of man's salary for the same position. There is also a tremendous sexual harassment issue that is not being addressed.

There is no legal provision addressing labour migration, therefore women are being pushed into the hands of traffickers. Traffickers target vulnerable women who are often unaware of what is legal and what is not. This makes them criminals, locking them into a cycle of illegal activity and dependence – it appears that everybody is supporting everybody against these victims. They are often faced with the underlying assumption that if they got themselves into trouble, they deserve it. More cultural sensitivity is needed throughout the investigation process. It must be understood that if one question is phrased wrongly, the victim may remain silent forever. Victims will also not seek support out of fear of the authorities. Laws are not enough – there is a need for a more expedient process of victim identification.

Ms. Vandenberg stressed that without support from grassroots organisations the combat against trafficking will fail, particularly in the context of East-West co-operation. Most women migrate voluntarily but are unaware that they are being sold. The police often plays a part in this: local police have been found holding the passports of victims. She specifically criticised Greece for having failed to combat trafficking and cited Human Rights Watch's recent report on the complicity of the Greek State in perpetrating human rights violations against persons who have been trafficked to Greece. (Human Rights Watch World report 2001: Greece: Human Rights Developments <http://www.hrw.org/wr2k1/europe/greece.html>). In Greece, she said, victims have no access to justice.

The Role of Non-Governmental Organisations

Often traffickers are not prosecuted, do not have to face imprisonment and make large profits. Victims, on the other hand, usually have to face prosecution and imprisonment and are left without earnings. Often women flee from violence at home only to find themselves exposed to more violence and discrimination in countries of destination. The police may also blame them for what has happened to them. But there are some success stories of victim support like activities of the NGO network "La Strada". Ms. Vandenberg called for stable funding of NGOs, adequate witness protection measures as well as for the protection of human rights of the victims to become the focus of East – West co-operation.

The Italian NGO Regina Pacis called for better political co-operation and criticised that the policies of a number of East European States are not favourable towards the individual. There is also a clear lack of adequate laws to combat trafficking and adequately address the circumstances of the victims. Women need a real chance to run their own lives again. Therefore local development needs to be reactivated to relieve social hardships that drive women to seek opportunities abroad in the first place. By creating economic development, economic growth will become a mechanism of defence. East – West Co-operation should mean to actively provide services and opportunities in the countries of origin, rather than to patronise countries of origin by telling them how to act.

National Efforts

The representative of Lithuania emphasised the need for the need for transborder co-operation and highlighted that Lithuania has clear procedures for effective co-operation with Belarus, the Russian Federation and Ukraine. Furthermore, he promoted a regional seminar on the implementation of the UN Convention Against Transnational Organized Crime and its supplementing Protocols in co-operation with UNODCCP to be held in Lithuania in January 2002.

IOM agreed that the root causes of trafficking, namely the lack of opportunities and poverty in countries of origin, need to be addressed. IOM added that institution and capacity building also needs to be a priority in East-West co-operation. The Ukrainian delegation to the OSCE agreed with this assessment and added that it considers trafficking to be an international crime asking for an international solution. Ukraine signed the UN Protocol against Trafficking and has already designed and is implementing a national programme to prevent and combat trafficking in human beings. EUROPOL agreed and stressed that this particular issue is a multi-disciplinary problem requiring a multi-agency approach from the law enforcement agencies.

5. WORKING GROUP I: PREVENTION

5.1 Migration Policies within the European Union

Unquestionably, there is a real demand for labour in the EU. At the same time, the demographic shift that the region is currently experiencing means that the EU needs immigration to increase its workforce in order to support its ageing population. These two factors should be an incentive to think strategically about adaptation of immigration and labour policies.

Examining current practice, one may draw the conclusion that stricter immigration policies are not a successful means for combating trafficking. Restrictive policies of immigration put more pressure on those who seek to migrate and leave them with no option but to turn to traffickers, who take advantage of their dependency to place them in a position of debt bondage, exploitation and abuse. The demand for labour and services from countries of destination, coupled with the willingness to migrate in countries of origin, could become the starting point for constructive discussion of adapting immigration policies, in ways that will not fuel the activities of organised criminal groups.

Chair: *Mike Dottridge*
Anti-Slavery International, United Kingdom

We would especially like to thank Mr. Dottridge for taking on the role as Chair of this working group on short notice.

Intervention 1: *Mathias Königeter* elaborated on the text of *Uta Pioch*
Office of the Government's Commissioner for Foreign Issues, Germany (see Annex)

Introduction

The Government's Commissioner for Foreigners' Issues places its emphasis in the discussion about human trafficking on the need for improvement of victim protection in Germany. This contribution considers the protection provided by the residence legislation in force and the administrative procedures for female migrants harmed by human trafficking. Four stages of the official procedure for dealing with victims of human trafficking are described. Due to the definition of the German Penal Code, the focus here is directed exclusively on the victims of trafficking for the purpose of prostitution. The different legal situation of those victims who were trafficked for the purpose of marriage or exploitative employment is not being dealt with for reasons of brevity, which is required from this contribution.

I. The legal situation

To stay lawfully in the Federal Republic of Germany, foreigners need a residence authorisation, as well as a work permit if they take up work. Prostitution is not prohibited in Germany but *work permits may not be issued* for this purpose. In accordance with the prevailing interpretation of the law, migrants who work as prostitutes are thus engaged in gainful employment without holding a work permit, no matter whether they do so on a voluntary basis or are being forced into it. Because of this violation of the law, there is a legal ground for expulsion even if the relevant person holds a valid visa e.g. as a tourist or an au pair and/or if she was forced into prostitution in the context of human trafficking.

II. Stages of the procedure

Stage 1: The police or other public bodies register a person's unlawful employment or illegal stay for the first time during a raid, for example, and take that person into custody. For the victims of trafficking in women, it is of decisive importance in this situation whether the authorities presume a connection with the offence of human trafficking. However, because of their traumatising and for fear that the offenders may harm them later, the women concerned are often not able to mention the connection with human trafficking themselves. In theory the procedure includes the option of a judicial examination. But yet, in practice deportations are executed without delay in a large share of the cases without investigating a connection with human trafficking more closely or calling in counselling services. This does not meet the women's need for protection, and it does not contribute to bring the offenders to justice in criminal proceedings, either.

Stage 2: If the authorities identify concrete facts or evidence indicating a connection with the offence of human trafficking, the women concerned are allowed to remain in the country for a period of four weeks to consider whether they want to give evidence as a witness or to prepare their departure. In cases where co-operation agreements exist, the women receive support from specialised counselling services from this point of time onwards.

Stage 3: The obligation to leave the country is temporarily suspended for persons who are needed as witnesses in criminal proceedings dealing with the offence of human trafficking or who temporarily co-operate with German authorities in the investigation of crimes. They benefit from a temporary suspension of deportation as long as they are involved in the criminal proceedings. This does not mean that they are given a right of residence but the enforcement of the obligation to leave the country is temporarily suspended. As long as a victim's deportation is suspended, she receives benefits under the Asylum Seeker Benefits Act and is supported by specialised counselling services, if possible. Due to two decrees issued in 2001 trafficked persons who stay for the proceedings as witnesses are given access to the labour market, and they may claim benefits under the Crime Victims Compensation Act. Even if these benefits are reckoned against the social benefits they make it possible after all to finance a psychological treatment of traumas suffered.

Stage 4: If a witness has to fear a substantial concrete danger to her physical integrity, life and freedom in her country of origin as a consequence of her participation in proceedings dealing with organised crime or human trafficking, this may be declared to be an obstacle to deportation. In these cases a longer-term suspension of deportation may be granted. In most cases though it is difficult to establish proof of the existence of such a danger. Only 2 to 3 per cent of the witnesses are given this form of protection.

Conclusion

Human trafficking is a violation of human rights. Protection for the victims of human trafficking is required already for humanitarian reasons. At the same time it is in the interest of a successful prosecution of the offenders to create framework conditions which make it as easy as possible for the victims to testify against the traffickers. As public prosecutors emphasise again and again, testimonies are in many cases the only evidence.

It should be stressed in this context that the above-mentioned decrees considerably improve the women's stay in Germany. In contrast, rash deportations serve neither the protection of victims nor the prosecution of offenders. Victims must not be treated as offenders but as persons to be protected – not only for the purpose of a successful prosecution, but also out of respect for the victims of human trafficking.

Key Recommendations

- Identification and recognition of victims of trafficking
- Protection of the victims of trafficking must be a political priority for humanitarian reasons
- Rash deportations should be avoided as they serve neither the protection of victims nor the prosecution of offenders
- Strengthening of co-operation between police and NGOs
- Access to the labour market for victims
- Compensation for victims

Intervention 2: Renate Heubach

Contact Point for Eastern European Women Migrants,
Zentrale Integrierte Anlaufstelle für PendlerInnen aus Osteuropa (ZAPO), Germany

The Demands on European Migration Policy in Regard to the Protection of Women's and Human Rights

Since 95% of trafficked persons are women and women are the main focus of ZAPO's work, I will continuously refer to trafficking in human beings as "trafficking in women."

Trafficking in women cannot be regarded as an isolated issue, but must be addressed within the greater context of women's migration. The transformation processes in Central and Eastern Europe, as well as the increasing demand for cheap labour in Europe, have increasingly encouraged women from Central and Eastern Europe to leave their home countries. Half of all migrants from this area are women. The dominant pattern of this migration is to 'commute'. Women come to Western Europe for a limited period of time with the prospect of short-term earnings and repeatedly return to their home countries. Migration policies so far do not adequately address this form of migration. When developing comprehensive and effective ways to combat trafficking in women in Germany or Europe, it is necessary to take into account the existing framework of migration policy determining the concrete options and conditions for women to migrate.

The Structure and Approach of ZAPO

ZAPO stands for "Contact Point for Eastern European Women Migrants." Founded as a reaction to the changing patterns of East-West migration by the Polish Social Council in 1997, ZAPO offers information and emergency assistance to Eastern European women migrants during their usually limited stay. ZAPO is specifically targeted at three groups of migrants:

Youths from Poland who are in Berlin for various reasons and find themselves in difficulty

Seasonal-, factory- and other workers from Eastern Europe, who require advice, particularly in respect of worker's rights.

Women from Central and Eastern Europe who are in need or have become victims of exploitation and/or trafficking.

ZAPO's practical work includes social, legal and psychological assistance, as well as the support of victims of trafficking in their daily lives. The concept of "safe houses" for Eastern European women, who have suffered extreme violence or have become victims of trafficking, was jointly developed by the NGO "In Via" and ZAPO and opened with financial support of the Women's Senate in December 1999. Apart from this practical support, ZAPO has also initiated public awareness campaigns, networks internationally and is represented in several advisory boards on women's migration.

Effects of Existing Migration Policy on the Situation of Migrants from Central and Eastern Europe

There are two main reasons why women migrants seek advice: marriage and labour migration. Both forms of migration often leave women in a legal vacuum and usually also in a hostile social climate. The perpetrators abuse this situation for their criminal activities and often use violence or threats and deceit to exploit them, take away their personal freedom and their sexual integrity and take control over their lives. The proportion of women who are victims of trafficking in relation to the total number of migrants may be small, nevertheless it is important to be aware of their plight. These women have suffered severe violations of their human rights that often leave them traumatised. Therefore it is vital that these women receive adequate protection and support.

Key Recommendations

- Comprehensive measures for protection, medical, legal, and psychological assistance for victims of trafficking must be developed and supported
- Victims should be able to seek compensation and should be advised and assisted with the necessary legal procedures
- Targeted prevention and public awareness measures addressing trafficking in women, both on countries of origin and destination are urgently needed
- The right of stay should be guaranteed regardless of marital status in cases of trafficking and/or abuse
- When a foreign national has been arrested, there should be a waiver of the assessment of their residency status in cases involving human or workers' rights violations
- Legal residency options should be made possible for all labour migrants living in Germany. As a first step, the government could consider an "amnesty" of irregular migrants
- The labour market should be liberalised. "Green cards" should be accessible for differently qualified workers
- Companies which exploit foreign nationals should face criminal charges and severe penalties
- States should ratify the UN Convention on the Protection of the Rights of Migrant Workers and their Families
- A comprehensive network of NGO advice centres should be established

Discussion Summary

The discussion focused on three main themes: the legal status of migrants in countries of destination, their working conditions and legal migration opportunities to enter the European Union for work purposes.

Addressing the Demand for Cheap Labour

The Chair opened the discussion by stating that the current labour market allows forced labour and trafficking in persons, but that the general public denies the existence of substantial economic activity outside of the law. Consequently, the question was raised, if there are laws in place to punish employers. Although such laws already exist in European Union States, they are rarely implemented. Uncovering the proof of exploitation is particularly hindered by quick deportation practises. Additionally, companies make use of subcontracting to other companies, which impedes tracking down such employers.

An NGO representative stated that undocumented migrants are not "unemployed" during their irregular stay in the European Union. Again, this raises the question of demand for cheap labour in European Union member states. Adequate prevention and protection measures, along with increased political will, could improve the situation of undocumented migrants. It is vital to guarantee basic human and social rights to undocumented migrants and trafficked persons, which implies changes in the criminal law and the alien law.

A particularly problematic situation is experienced by children of trafficked persons and undocumented migrants who want to enter school without birth certificates. The report of the German government's Migration Commission suggests that headmasters should also be able to accept pupils without documents.

Addressing Pull- and Push-factors

According to recent research, there is a need for additional labour for all different sectors and levels in the European Union. This need has to be addressed adequately. Practice from the USA shows that one alternative could be granting amnesty for undocumented migrants, as well as designing programmes to integrate them into society. However, the push-factors in countries of origin need to be addressed in order to improve the living conditions and perspectives for citizens of these countries. Long-term strategies to develop the economy and institutions such as administration, banks and courts must be an integral part of development policies of the European Union and its member states.

Harmonised Migration Legislation

What are the rights and benefits of asylum seekers in the European Union? Asylum seekers in Germany only have access to in-kind services such as shelter and are not allowed access to social services or other benefits. The representative of IOM mentioned that the asylum laws are increasingly abused by traffickers who try to exploit victims for the entire duration of their asylum procedure in countries of destination. He highlighted and discussed the need to harmonise migration legislation within the European Union, taking the respective national priorities into consideration. Migration laws such as the Italian, the Belgian or the German proposal of the migration commission could show a progressive direction for European migration policies. Furthermore, European Union member states also have to deal with swelling social problems like decreasing birth rates and the growth of xenophobia and racism.

The experts concluded with an appeal to transform mistakes from the past into problem solving strategies for the future. European Union members should refrain from pursuing stringent migration policies that further pressure potential migrants into exploitative situations. Opportunities for migration, as well as regulative models, should be discussed.

The Chair closed the session with a citation from an Indian colleague on the European way of life: "Wealth and capital are now allowed to travel across borders, but labour is not."

Key Recommendations

- In order to break the trafficking cycle, governments must address "push" factors such as poverty, inequality, discrimination, and violence against women
- Economies in countries of origin may be improved by developing institutions such as administration, banks and courts, as well as by establishing the rule of law
- European Union member states should harmonize and improve migration legislation. Countries of destination should also reconsider their migration policies with regards to establishing alternative migration models.
- Children of trafficked persons and undocumented migrants should be able to receive birth certificates and have access to education provided by the state
- Ways to promote legal migration should be better adapted to real conditions

5.2 Awareness Raising

At-risk groups in countries of origin are not only vulnerable to trafficking because of a lack of opportunity, but also due to a lack of information. Persons in countries of origin need to be better informed about the potential risks of becoming victims of trafficking and what rights they have in foreign countries. In many cases of trafficking, ignorance results in deception and exploitation. Education and awareness raising programs empower people to make informed choices about migration, marriage and employment abroad.

On the other hand, in countries of destination, a better understanding of the acute situation of the victims is imperative for the police, border guards, immigration authorities and non-governmental organisations (NGOs) to take appropriate action towards breaking up the trafficking networks while safeguarding the human rights of the victims. For instance, severely distressed victims suffering from physical and mental abuse may find themselves interrogated by police officers and immigration officials who are trained to investigate violations of immigration laws. Proper sensitisation training for police and immigration officials, as well as awareness raising amongst lawmakers, judges and prosecutors, can therefore help to ensure that victims' rights are protected during the investigation and trial process.

Chair *Marco Gramegna*
International Organization for Migration, IOM

Introduction

Mr. Gramegna took the opportunity as working group Chair to make several introductory remarks. He stressed that people may agree to migrate or to work in the sex industry, but that they do not know what lies ahead and what risks they are taking. This must be changed through better collection and analysis of relevant information followed by education and public awareness raising campaigns. In working on this issue, we must have compassion and empathy, we must try to put ourselves in the shoes of others.

The purpose of awareness raising efforts in this regard is not to stop migration, but rather to assist individuals to make informed choices. "If you think education is expensive, try ignorance." With this in mind, information campaigns must be based on sound research in order to clearly define the target audience, message and desired outcomes. Campaigns should not only be designed to target at-risk groups, but also to reach the general public, policymakers, educators and media, as well as potential clients and employers. Finally, it is extremely important that awareness raising activities take into account the local culture, ideally being designed and implemented with local, grassroots partners in the respective country.

After reviewing the questions put forward in the annotated agenda, Mr. Gramegna also asked the working group to consider where better co-operation could be developed among various actors to ensure better programmes and more sustainability. He then gave the floor to Ms. Levchenko from La Strada Ukraine.

Intervention 1 *Katya Levchenko*
La Strada Ukraine¹²

La Strada Ukraine works to combat trafficking in women and has four main areas of activity: advocacy work or lobbying, work with the media, prevention efforts and direct social assistance to victims. Designing and implementing awareness raising campaigns is one important element of our prevention work.

¹² For a summary of La Strada Ukraine's experience in the field of preventing trafficking in persons, please see the Annex

NGOs, international organisations, embassies and government agencies should all be responsible for raising awareness about the risks of trafficking and citizens rights abroad. In co-operation with these various partners, La Strada carries out awareness raising programmes targeted to educate youth, at-risk groups, and specialists such as social workers and teachers, as well as journalists and law enforcement officers.

La Strada's prevention work takes on many forms to reach such diverse and unique audiences. First of all, we do direct work by providing lectures, trainings and round tables that directly engage our audience. Secondly, we co-operate with the mass media in order to reach a wider audience and to influence public opinion. Other methods we use to reach the general public and at-risk groups are the distribution of leaflets, brochures and calendars, as well as poster campaigns. Finally, we began training teachers in 1999 and have developed a manual for teachers.

When designing an awareness raising activity, we strategize about what kind of partners and methods will help us to reach our desired outcomes. We want our results to be measurable and sustainable. Since we have been active in this field since 1995, we now share our experience and our materials with others. We promote the translation and adaptation of materials since in some cases, it is not necessary to reinvent the wheel.

In the future, in order for our awareness raising activities to be more successful, we need more information and increased co-operation. Specifically, we need information on legal frameworks, migration policies and opportunities in other countries. The OSCE and IOM could gather such practical legal information from their member States and produce a packet of information that could be made available through embassies, employment agencies, border checkpoints and NGOs. Furthermore, we would like to see co-operation with Embassies, IOs and national governments improve in the near future. As we expand our efforts, we must continue to build our own capacity and more attention must be paid to small towns and villages, which may be difficult to reach, but need to build links and resources, as well as to combat this phenomenon and to assist its victims.

Key Recommendations

- A wide variety of actors – government agencies, NGOs, embassies and international organizations – should be responsible for supporting and implementing awareness raising campaigns.
- An awareness raising campaign should be tailored to reach its target audience.
- Time should be taken to strategize about what kinds of partners and methods will help you reach your target audience.
- It should also be considered to translate and adapt materials, as it is not always necessary to reinvent the wheel.
- International agencies, such as the OSCE and IOM, should collect relevant legal information from their member States and produce a packet of information that could be made available through Embassies, employment agencies, NGOs and border checkpoints.
- Awareness raising efforts should extend to reach smaller towns and villages as their populations may be particularly at risk.

Intervention 2 *Christiane Howe*

Agisra, Frankfurt/Main, Germany

Creating an Atmosphere Where Human Rights Come First

Persons who live in Germany without residency or working permits are vulnerable to being exploited and abused. The profits that can be made by companies, pimps and traffickers continue to make the risk of

financial and other fines negligible. Illegal workers are the "oil" of the economy. They provide cheap flexible labour, which fuels the economy.

Specifically in regard to trafficking in women a better legal framework is needed for the protection of witnesses and their legal status regarding permits of stay and working permits as well as social security in Germany. Women working as prostitutes should receive working and residence permits. Thereby, women could pay taxes, contribute to social security and could report traffickers, pimps, clients, landlords and employers to the police without fearing deportation. This form of empowerment would make them less vulnerable to exploitation. At the same time the structures of organised crime involved in trafficking would become more transparent.

State measures directed at combating illegal immigration protect the state, not the victim. Instead of effectively protecting women from violence and abuse and helping women to their rights, these measures tend to further marginalize and criminalize them although they set out to target traffickers. Trafficking in women can only be prevented and the situation of women improved, if the needs of the women are taken into account. This relates to raising public awareness, as well as effective political lobbying.

Strategies to support victims of trafficking should aim to strengthen the abilities of women to defend themselves and should give them back control over their lives. These women need real economic and social alternatives.

Prevention Means Addressing Demand

It will not be possible to defeat the market mechanisms and their driving force: the demand in the destination countries. For this a much deeper debate about our abilities to form and our expectations of relationships, as well as our sexuality and consumption behaviour, but mostly about our responsibility as an economic power and industrial nation in a world-wide context would be needed. People do not leave their home country without severe existential reasons, especially when they are travelling to a country, the language and culture of which are alien to them and where they may feel unwelcome.

We will not find real solutions in Germany, unless we look closely and get to the bottom of the problem. Illegal immigration cannot be stopped, only made more difficult, usually at the expense of vulnerable migrants. In sum, trafficking is not a policing or border control problem, but a social problem with a much wider scope. It therefore needs to be discussed on a different, policy level.

Key Recommendations

- A better legal framework for witness protection must be created and implemented
- Temporary residency should be given to trafficked persons regardless of their ability and willingness to be a witness
- Residence and working permits should be provided for women working as sex workers. By addressing their illegal status, the state will be promoting their inclusion and empowerment.
- The needs of victims need to be priority in designing anti-trafficking measures
- Real economic and social alternatives should be offered to women to fend for themselves
- Poverty and the socio-political causes of illegal migration need to be tackled, rather than treating trafficking as a border control issue

Discussion Summary

Working with Youth and the Community to Raise Awareness

Following the expert interventions, the Chair of the working group, Mr. Marco Gramegna (International Organization for Migration) stressed that there should be a focus on working in schools and also with families. Participants discussed at length the need to break stereotypes and in particular to educate the young. Programs for youth should not only raise awareness about trafficking, but also provide students with life skills, communication skills and gender sensitisation. Furthermore, among the public at large, efforts need to address the double morality that we often see in approaches to trafficking – that migrants are bad, while demand is natural and positive.

Caritas asked what kind of responses there have been from teachers and youth in Ukraine who have used La Strada's materials. The representative stressed that it is important to have strong NGOs and to invest in them. It was also suggested that another means of prevention could be addressing related issues in sex education classes in schools.

La Strada has developed a manual for teachers with the support of the Ukrainian Ministry of Education. It also ran a summer school program for children with USAID support. La Strada feels it is important to create a new strategy and materials targeting youth. Also, La Strada provides special training for 16-18 year olds and then asks them to volunteer. Therefore, there is a La Strada Youth beginning to join in its anti-trafficking efforts.

When asked if there are any organisations created by families of missing persons, Ms. Levchenko replied that no such organisations exist in Ukraine. People are embarrassed to speak about this problem. However, La Strada does work with parents and families. Regarding co-operation and support from the government, Ms. Levchenko spoke positively. While La Strada does not receive financial support from the Ukrainian government, the support it receives through joint project activities is extremely important.

Awareness Raising in Co-operation with the Media and Government

The question of how to reach politicians and to influence policymakers was raised early on in the discussion. The Canadian delegation stressed that we need to make politicians realise that trafficking is not prostitution and that victims' rights should be made a priority. In this regard, she asked what the potential role of the media could be in both educating the public and decision-makers. Furthermore, she suggested that countries of destination should encourage their embassies abroad to work on this issue, especially to network with and to support local NGOs in countries of origin.

Ms. Levchenko responded that it is important to observe politicians and to find the right allies within policymaking circles. NGOs may use their co-operation with IOs to influence their government and thus, to improve co-operation with governmental agencies. In working with the media, NGOs strive to educate them regarding definitions and approaches to trafficking. Also, the focus should not exclusively be on trafficking into the sex industry. La Strada Ukraine estimates that 30-40% of victims are not trafficked into the sex industry, but into other industries.

Ms. Howe additionally commented that in Germany, NGOs visit politicians and bring their clients (female victims) with them to raise awareness. NGOs also bring interested politicians to the street. NGOs work to break the mythos around the problem.

Measuring the Results of Awareness Raising Efforts

Towards the end of the working group session, an NHO representative from Kosovo raised the issue of how information campaigns are tested and how we can judge whether they are successful. In fact, she asserted that there is no evidence that there is any impact. Furthermore, that some materials have too much text and are unattractive.

An ODIHR expert responded by stating that in order to measure outcomes, an information campaign has to be well designed with clear desired objectives that can then be measured. Such desired outcomes may include: legislative reform, more effective coverage of the issue by the media, increased activity on an information or hotline, as well as specific improvements in co-operation efforts and more resources allocated towards solutions. Campaign materials should be tested and adapted to have the maximum impact. Furthermore, audience recall, changes in attitude and behaviour may be measured as a result of very targeted awareness raising activities such as those addressing prosecutors or border guards.

Ms. Levchenko closed the session by commenting that successful awareness raising results in better co-operation, more resources and a more professional approach towards future activities. Such activities are then followed by a more sophisticated response from the target audience, who in turn require continued engagement and efforts in this field.

Key Recommendations

- There should be a focus on working in schools and with families to reach young people and raise their awareness about trafficking
- Programs for youth should not only raise awareness about trafficking, but also teach life skills, communication skills and encourage gender sensitisation. Related issues could also be addressed in sex education classes.
- Efforts in countries of destination need to address the "double morality" that migration is seen as bad, while there exists a real demand which it seeks to match
- NGOs should work directly with youth and encourage them to get involved in NGO activities, especially awareness raising among their peers
- Families of victims should consider creating support groups and sharing their experience
- Governments can support NGOs, not only with funding, but also by collaborating on joint projects and presenting their efforts jointly to the media
- Awareness raising efforts should be developed that specifically target politicians and decision-makers
- Governments of countries of destination should encourage their embassies to work on this issue. Embassies should network with and support local NGOs in countries of origin, as well as make available information on relevant national legislation such as family and labour law
- Projects that train the media on this issue and enhance co-operation between NGOs and the media should be designed and supported
- NGOs should look for political allies to further their work, influence policy and reach a wider audience
- NGOs should expose decision-makers to the reality that they deal with on the street and assisting victims so decision-makers better understand the needs and challenges that NGOs face
- In order to be able to measure outcomes, information campaigns should be designed in phases that have clearly defined objectives

6. WORKING GROUP II: PROTECTION

6.1 Models of Co-operation between NGOs and Governmental Bodies

Due to their illegal status and other factors, victims of trafficking are more likely to turn to NGOs for assistance, rather than to state agencies. However, state authorities, such as border guards and police, are also likely to discover trafficked victims who urgently need assistance. Therefore, it is important for NGOs and state authorities to co-operate in order to more effectively identify victims, to investigate alleged cases of trafficking and to protect victims.

Standard operating procedures with a clear division of responsibilities should be agreed upon and implemented to create a more co-ordinated response to trafficking cases. Such co-operative agreements should bear in mind that while NGOs often are entrusted with the care of victims there are real security concerns that should be taken into account by law enforcement bodies. Once a clear response and referral mechanism is in place, victims should be informed about the terms of co-operation existing between state authorities and NGOs, allowing a better understanding of their rights and, in particular, what alternative options they have for assistance and redress.

Chair *Renate Augstein*
Ministry for Family, Senior Citizens, Women and Youth, Germany

Introduction

Ms. Renate Augstein began the working group by outlining possibilities and challenges for NGOs and law enforcement co-operation. In particular, she stressed that this co-operation is necessary to assist victims, to protect witnesses and to ensure safe, voluntary repatriation. After briefly describing the situation in Germany, she introduced Ms. Heidi Rall.

Intervention 1 *Heidi Rall*
Federal Criminal Police Office, Germany

Ms. Heidi Rall introduced a co-operation model for NGOs and the police with the aim of protecting victims of trafficking acting as witnesses for the prosecution. Often legal action against traffickers can only be taken on the basis of witness testimony; therefore witnesses are a vital factor in the success of law enforcement procedures. Stabilising the situation of the witnesses is a precondition for receiving reliable testimony. This must include the right of stay until legal proceedings are completed.

NGO advice centres aim to support victims of trafficking independently of their willingness to act as witnesses. The goal is to reintroduce victims to normal daily routines and to give medical and psychological assistance. In order to establish a relation of trust with the potential witnesses, law enforcement agencies should co-operate with NGOs to ensure that the interests of the victims are being adequately considered and represented. Currently the care for victims, finding housing and the financial means to support victims is a complicated struggle, which further undermines the stabilisation of potential witnesses.

There is also no right to refuse testimony for NGOs working with victims. This undermines the relations of trust between victims and NGOs, as well as between NGOs and the police. A further hindrance for effective co-operation is the lack of dedicated staff in law enforcement and immigration agencies. Here there is a real danger of victims being instrumentalised by the law enforcement agencies in order to extract testimony and further their prosecution efforts.

The inclusion of witnesses into the police protection programme is a priority and the decision for inclusion should be taken according to the following guidelines:

- Is there sufficient evidence that the person concerned is a victim of trafficking?
- Is he/she fit and willing to repeat the allegations in court?
- Is this testimony vital for the proceedings?
- Is he/she in danger?
- Is he/she willing to take part in the witness protection programme?

The police should decide on participants in the programme in agreement with the prosecutor's office and after consultation with NGOs.

Key Recommendations

- Law enforcement bodies need contractual agreements with NGOs clearly outlining the responsibilities of both actors
- NGOs must have the right to refuse giving testimony in order to safeguard their relation of trust with the victim
- German federal police forces on the Länder level should co-operate to develop and implement training with an aim to raise awareness, as well as to effectively protect and assist victims of trafficking especially those who agree to be witnesses
- There should be a clear division between law enforcement and victim assistance, which must be transparent for the victims/witnesses
- Police should advise victims of trafficking of the possibilities of assistance through independent NGOs and governmental agencies
- Police should offer advice on security measures for NGO staff and offices
- NGOs should decide together with police where to accommodate a victim
- NGO staff should be present during police interrogations, if the victim so wishes
- NGO staff should offer psychological support for the witness before, during and after police interrogations and court procedures
- NGO advice centres should assist witnesses in finding training and employment opportunities that would support reintegration measures

Intervention 2 *Don Cesare Lodeserto* Regina Pacis, Italy

Don Lodeserto stressed that trafficking can only be effectively fought in co-operation with the victims. By stabilising the situation of the victims, they will feel safe and willing to give vital information about the causes of trafficking and the criminal organisations involved. Italian legislation on immigration includes an article, which provides for the social protection of the victims. It includes the awarding of permits to remain in Italy for humanitarian reasons, without the condition of having to act as a witness for the prosecution.

Thus far, in 2001 the NGO Regina Pacis has assisted 168 victims of trafficking (of whom 4 were men and 12 minors). Information given by these victims lead to the identification of 5 international crime networks and the arrest of 200 people, most of whom were convicted on various charges including some for slavery. Another precondition for effectively combating trafficking is the co-operation between the police forces, the judiciary and the NGOs. While all actors must co-operate, it is vital that each acts within the framework of its mandate. A policeman should be sensitive towards trafficked victims, but not act as a social worker. Likewise, a social worker should not take on policing duties. It is important for the credibility of all sides that these lines are not blurred.

The Italian model, by moving the protection of the victims to the forefront and encouraging NGO and law enforcement co-operation, shows that the interests of the victims and law enforcement are not always a contradiction in terms. The Italian legal provisions could be adopted throughout the EU. Currently, Belgium is the only other country with a similar approach. It is also vital that information gathered by observation points like the NGO Regina Pacis is used to analyse the situation and develop instruments of prevention.

There is also a need to clearly analyse the causes of trafficking, namely poverty and political problems. These need to be addressed at a political level. Trafficking cannot be combated only through police activities and tougher immigration laws. A coherent international effort is needed to fight poverty, as well as organised crime, which remain two major driving forces of trafficking. The international effort should be further elaborated and co-ordinated. It should seek support by involving NGOs.

Key Recommendations

- Priority must be given to the protection of the victim
- The award of a residency permit should not depend on a victim's willingness to testify
- The Italian legislative model for victim assistance and protection, which by supporting them encourages co-operation from victims, should be adopted by other EU member states, as well as other countries of destination
- NGOs and law enforcement bodies should co-operate more closely, observing their mandates and being sure not to blur the lines of responsibilities
- The 'push factors' for trafficking must be addressed in the countries of origin through initiatives to fight poverty, inequality, discrimination and violence against women
- There should be an international effort to co-ordinate anti-trafficking policies including the support and involvement of NGOs

Discussion Summary

The chair of the working group, Ms. Augstein, started the discussion by raising some questions and inviting the group to pose further questions to the experts. A wide variety of questions were immediately put forward ranging from the beginning of the process, on what basis or information victims are identified, to the end of the process such as how co-operation should function to ensure successful reintegration.

The Situation in Germany

Ms. Rall answered many of the questions, drawing on her experience in Germany. Regarding the status of the witness once an investigation is concluded, she stated that this matter is no longer a police issue and that the NGO counselling centre often deals with the question of return. However, she did note that it becomes a police matter if the victim may face danger upon return. During this time, psychosocial care for the victim is a high priority. Furthermore, she explained that victims who co-operate with police are given a four-week stay of deportation and those who decide to give testimony are allowed temporary residency. She commented that working groups on the federal Länder level meet to discuss issues of co-operation and that immigration authorities are also involved in these task groups.

Ms. Augstein further elaborated on the role of the working groups. Such a national working group already exists on the national level to address policy issues and legislative reform. On the Länder level, working groups are not directly involved with cases or assisting victims, they are set up to promote better co-operation between various state structures and relevant NGOs. With regards to witness protection in Germany, she briefly mentioned two possibilities. Firstly, that police may be responsible for protection. Secondly, the victim is often left in the direct care of the NGO counselling center.

The Situation in Italy

In responding to the questions raised by the participants, Don Lodeserto first highlighted how Italian legislation addresses trafficking cases. Italian law provides identified victims of trafficking with a residency permit that may then be renewed after 6 months, each year and then every two years for humanitarian reasons. He stressed that the victim is allowed to work and that this is very important so that they may eventually change their status, take a normal working visa and make a clean break with their past. Helping victims to normalise their situation by assisting them to find work and to reunite with their family members must be taken into consideration by state authorities. In Italy, family reunification may take place when the family in the country of origin is at risk or when the victim has a visa and work permit. Then victims may apply for reunification with their family in accordance with existing laws.

In Italy, a cultural mediator assists the police during the interview with an alleged victim. Don Lodeserto conceded that one does not believe everything one hears and that often there is a need for more information to corroborate a victim's story. An NGO, which has been recognised by the Ministry of Equal Opportunities, is responsible for the victim's residency permit that may be revoked if the victim's story is found to be untrue. Don Lodeserto noted that a clear definition of roles and formal co-operation among NGOs, law enforcement bodies and the judiciary ensures an appropriate, humanitarian response. There must be distinct responsibilities for NGOs and law enforcement bodies, as well as judicial authorities, defined in the law. He also mentioned that in the Italian case, the budgets of NGOs must be approved including projects. Currently, until the end of 2002, the Italian Ministry of Equal Opportunities supports 48 programs that assist victims of trafficking.

With regards to the treatment of minors, Don Lodeserto first explained that there are two kinds of minors whom they meet in such cases – victims and children of victims. Consequently, the Italian government

responds in two ways. Victims who are minors are treated in accordance with Italian law and subsequently become a ward of the State. In contrast, children of victims are left with their parent and placed in the care of an NGO.

As one participant questioned the push for family reunification efforts, since victims may have left an abusive family situation, Don Lodeserto acknowledged an awareness of this root cause of trafficking and explained that an analysis of the family situation is taken into consideration. In fact, in some cases, people go to the country of origin to determine whether the victim has told the truth and to evaluate what possibilities there are for family reunification.

Other participants also wanted to know how a story is verified and what sources of information may be used in such cases. Don Lodeserto said that, in consultation with contacts in countries of origin and transit, efforts are made to confirm the victim's route and story.

Concerns, Benefits and Means of Co-operation

After initial responses to the series of questions from the experts, Ms. Augstein summarised some of the differences between the Italian and German co-operation models. She asked the group if they want co-operation or if they have misgivings. An NGO representative who is working in Kosovo took the floor to highlight some concerns from the NGO community. NGOs often feel used because they feel that while law enforcement or international agencies simply want information from them, they do not sincerely want to co-operate with them. This could be the case, for example, with an information campaign where NGOs do not simply want to give information, but want to be partners in implementing the campaign, working with the press and public. A second concern was that police do not tend to contact NGOs when they encounter a victim. Therefore, trust and a clear mechanism of co-operation must be established. The third point raised was that NGOs own safety was usually not taken into account even when they are asked to take on protection and security matters. Finally, not enough funding is given to NGOs for victim support work.

Despite these concerns, there was consensus among the group that co-operation is necessary and desired. Therefore, Ms. Augstein said that we must move from the general discussion to more specific issues such as: what are the key features of co-operation and how can it be effective? Specifically, who should co-operate with whom and in what ways? For instance, various models could be adapted to facilitate co-operation among NGOs, law enforcement and the judiciary, as well as with immigration and labour authorities. Ms. Augstein recommended working groups at the national and local levels. Drawing on her experience, she suggested that the national working group should design a concept or action plan for combating trafficking. In practice, at the local level, there would be a diversity of responses adapted to local resources and needs.

Ms. Augstein led the discussion on how co-operation may be established. Various actors should come together and discuss their mandates, resources and priorities. The aim of such a discussion should be to clarify who has what skills and what are the common objectives of co-operation. It was then suggested that such an agreement defining mandates and common objectives should be put in writing, perhaps as a legally binding document. Then the parties may then move forward to develop a plan of action and a referral mechanism. In summary, actors should outline their tasks, agree upon common tasks and then decide who will do what, when and how.

Exchange of Experience

A French legal NGO joined the discussion to say that in France right now the victim has no clear legal status and there are no such written agreements of co-operation between NGOs and law enforcement agencies. However, they report good co-operation with the police. They attribute this good co-operation

to heightened public awareness. The French NGO also mentioned positive co-operation with the French Foreign Ministry. It was recommended that public awareness campaigns in countries of destination could include distributing materials that outline the rights of employees in the language of the employees and potential foreign victims.

Continuing the discussion regarding specific examples of co-operation, an OMiK representative explained that in Kosovo there are written agreements as to how agencies should co-operate and that this is welcomed since agencies do not want to overlap their boundaries and competencies. She continued that OMiK has agreed upon Standard Operating Procedures with other relevant actors such as IOM. An NGO from Kosovo later commented that the turnover of international staff is an obstacle to ensuring a consistent, appropriate response. ICMC from Kosovo noted a shift in attitude and more appropriate response from prosecutors after awareness raising efforts.

As the discussion developed, Cyprus described its efforts at legislative reform and highlighted the importance of the new UN protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. After first working on the legal framework, now they seek to develop mechanisms of co-ordination and co-operation. The government representative said that there was a recent decision that a council to co-ordinate such efforts would be established under the Attorney General's office. They requested that concrete guidelines for co-operation be elaborated and distributed to all concerned.

A Russian NGO regretted that there is neither a working system of co-operation in Russia nor a system of witness protection. The representative suggested that those in countries of destination who are seeking to verify a victim's story should also contact NGOs in the country of origin and not only the family or state officials. They are working to establish a network of NGOs in Russia.

IOM spoke of its role as a co-ordinator on the Stability Pact Task Force and recommended a fixed structure with common goals and rules. The IOM representative also highlighted an exchange of experience among NGOs from Austria, France and Italy which took place in Vienna in September 2001 as part of a DAPHNE project.

In closing, Don Cesare noted that assistance to victims comes with obligations placed on them as well. He urged that we must stretch the idea of co-operation among various sectors such as health, labour, education and media. He recommended training of police by NGOs in order to avoid criminalisation of victims. He said that NGOs based on the activity of former victims could be a model and that former victims may act as cultural mediators.

In her last remarks, Ms. Rall asserted that the vision of co-operation must be realistic and match the available resources such as funding and personnel.

Key Recommendations

- NGOs and law enforcement should work together to identify victims of trafficking
- At a minimum, victims should be granted a stay of deportation
- Working groups at the national level should address policy issues and legislative reform. While working groups at the local level should elaborate practical agreements for co-operation
- Victims who are issued temporary residency permits should also be granted the right to work
- Family reunification efforts should be undertaken by the state in co-operation with the authorities and NGOs in countries of origin
- A cultural mediator should assist law enforcement when interviewing foreign victims
- There should be a clear definition of roles and responsibilities between NGOs and law enforcement. Ideally, a written contract describing what kind of co-operation and referral mechanism should be established

- Governments should provide funding support to NGOs which assist victims
- The situation of minors should receive special treatment
- NGOs should not only be used for information, but should be equal partners when implementing information campaigns
- In order to co-operate, various actors should come together and discuss their resources /mandates/tasks with the aim of determining what are their common goals. Once they agree upon common objectives, then they can work towards drafting an agreement of co-operation to reach those objectives.
- Public awareness campaigns should also be developed and supported which include distributing materials that outline the rights of employees in the languages of the employees and potential foreign victims. Such material should be made available at the work place, but also at embassies, employment agencies, counselling centres and border check points.
- Concrete guidelines for co-operation between should be elaborated and distributed.
- To verify a victim's story, investigators should not only consult with family members and state authorities in the country of origin, but also should consult with local NGOs.
- We must stretch the idea of co-operation beyond NGOs and law enforcement to include health services, government agencies dealing with education and labour, as well as the media.
- The vision of co-operation should be realistic and based on available resources such as funding and personnel. This also suggests that action plans should be designed in phases dependent on the provision of more resources.

6.2 The Status of Trafficked Persons in Countries of Destination

Trafficked persons are victims of crime. An important starting point to identify these persons as victims under the law is a legal definition of trafficking as a crime. The criminal law in a considerable number of OSCE participating States does not include a sufficient, comprehensive definition of trafficking. Instead, provisions against smuggling and prostitution-related crimes are often used to prosecute traffickers. This not only leads to relatively light sentences for traffickers, but also has severe implications for the status of their victims before the law.

In many countries of destination victims of trafficking still do not enjoy a regularised status. Most have neither a residence permit nor permission to work and may be considered as illegal immigrants, and therefore subject to criminal penalties and deportation. Often a victim's right to remain in a country of destination depends on their willingness to act as a witness and is only limited to the length of the trial process. Meanwhile, they have no opportunity to earn a living, leaving them dependent on the state, with limited rights. This raises the question of what responsibility states have towards victims of trafficking who are often traumatised and left unprotected. Independently of their willingness to be witnesses, and thereby putting themselves even at further risk, trafficking victims need medical, psychological and social assistance, as well as the opportunity to stabilise their position before making any further decisions. This working group will discuss how this stability can be achieved and the state's role in such measures.

Chair *Bärbel Uhl*
OSCE Mission to the Federal Republic of Yugoslavia

Intervention 1 *Georgina Vaz-Cabral*
Comité Contre l'Esclavage Moderne, France

The legal status of trafficked persons in destination countries, particularly the European Union

The status of trafficked persons in countries of destination depends on a range of factors. As soon as a trafficked person is reported to the authorities, at the same time as being recognised as a victim of trafficking stands accused of being in breach of immigration laws. The right of a trafficked victim to remain in the country and to receive further state assistance is also often linked to their willingness to act as a witness in criminal proceedings against traffickers.

The basic factors defining the status of a victim of trafficking are whether trafficking is defined as a crime by law and whether there are legal provisions recognising trafficked persons as victims. In summary, there are four different categories of legal provisions defining the respective status of victims of trafficking within the European Union:

Countries which legally define trafficking as a crime and legally recognise its victims

Belgium and Italy have the most developed policies and legislation to combat trafficking. The protection and involvement of the victim is central to this approach.

Belgium provides an interdepartmental assistance programme within the judiciary, which specialises in providing social, administrative and legal assistance to victims and prepares for their repatriation.

Trafficked persons who take part in the programme and especially those who co-operate with the authorities are able to obtain a right of stay for varying periods of time.

Italy goes a step further, it has specific laws condemning trafficking in human beings and sexual exploitation of minors. It also clearly defines the status of trafficked persons as victims of crime. Article 18 of Italy's immigration law also provides more comprehensive assistance. Independently of the victim's willingness to act as a witness for the prosecution they receive social assistance and protection.

Countries with anti-trafficking legislation which only address "sexual exploitation"

In the majority of EU countries 'economic' exploitation, as opposed to sexual exploitation, is not considered within anti-trafficking provisions. Hence victims of domestic and other labour exploitation, like minors being forced to beg or trafficked persons being forced to commit crimes like burglaries, as well as victims of false or forced marriages, do not fall under the victim protection statute. This is the case in the Netherlands, Germany and Austria for example.

Countries with no specific anti-trafficking legislation and no legal status for victims of trafficking

Some countries, like France, the United Kingdom and Greece have not yet legally recognised trafficking in human beings as a human rights violation and a violation of human dignity. Here more international political pressure and NGO lobbying is needed to make this legal situation a priority for destination countries. In France, for instance intense lobbying has led to the setting up of a parliamentary information mission whose report is expected in December 2001. At the same time the National Commission for the Assistance of Victims is examining specifically the question of the status of victims of trafficking and modern slavery and is currently working on proposals.

Countries with no specific anti-trafficking legislation, but which provide for the legal status of victims of trafficking

Finally, Portugal and Spain mark exceptions. While trafficking is not defined in national law, Portugal's immigration laws include provisions, which grant victims of trafficking a certain level of protection. While Spain has now recently adopted anti-trafficking provisions, in both countries the burden of proof lies with the victim to show that they are a trafficked person. Unsurprisingly, very few victims are able to fulfil this condition.

Questions

NGO delegates asked where a clear definition of exploitation through forced labour versus sexual exploitation can be found in international conventions. Participants noted that the UN Convention against Transnational Organized Crime does not give a clear definition of these terms and that the Convention of the International Labour Organisation on forced labour puts both phenomena into one category. An OSCE representative remarked that the European Court of Human Rights has looked into some cases and defined what does not constitute forced labour rather than giving a positive definition. Anti-Slavery International added that it was currently preparing an "Updated review of the implementation of and follow-up to the conventions on slavery" in co-operation with the UN Sub-Commission for the Promotion and Protection of Human Rights. A previous review prepared in May 2000 contains definitions of most of the terms mentioned in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the UN Convention Against Transnational Organized Crime.

Key Recommendations

- Efforts should be undertaken to harmonise legal definitions of trafficking and the legal recognition of victims throughout the EU
- Temporary residency for victims of trafficking in countries of destination should not be linked to the victim's ability or willingness to act as a witness
- The protection of the victim and their needs must be a priority concern
- Safe accommodation as well as social, medical and psychological assistance should be provided to victims of trafficking
- Training opportunities for victims from language to professional training should be made available in order to offer them perspectives for building a future

Intervention 2 *Marina Pisklakova* ANNA, Russian Federation

The immediate needs of the victims of trafficking need to be the priority concern in countries of destination. In order to reach victims and inform them where they can find help, information campaigns need to be broader and not only targeted at the sex industry. Household workers and other forced labourers cannot be reached this way. Victims need to know that NGOs can immediately provide a safe place for them.

At the same time, many victims want to take control of their lives back after having been deprived of it for a very long time. Therefore, not all of them want to live in a shelter, but want to re-gain some privacy. Often victims of trafficking also would rather be given the opportunity to work and gain their lives back, than to receive financial support. Deportation in many cases amounts to a death sentence. Therefore, victims should receive adequate protection and a right to remain in the country of destination independently of their willingness to act as a witness, for it is the victim who faces threats from their perpetrators.

This is also where law enforcement agencies are called upon to respect the sensitivities of trafficking cases. The police need to ensure that witnesses and their relatives will be safe from the threats of traffickers. The police need to be sensitive in its questioning of often-traumatised victims and taking into consideration cultural sensitivities. This requires special training for law enforcement agencies, as victims will not provide all necessary information, unless they are asked the relevant questions. NGOs and the police should work together to draw up a checklist of what should be asked. At the same time, NGOs should have the right, with the victim's consent, to be present throughout police questioning and court proceedings.

In Russia traffickers first of all take away the national passports of the victims. Safety for the victim upon return is only possible if the traffickers have been arrested. There is a real need to provide more safe shelters and other housing. There are also doubts whether the existing shelters are safe enough. There is not enough investigation and a lack of a legal basis to investigate trafficking. Currently, a witness protection law is being discussed in the Duma, but it is unclear when it will be passed.

The question of what happens to a victim when they come home must be a concern in countries of destination. In addition to the immediate safety concerns, the re-integration of trafficked persons into society is important to stabilise their situation and prevent them from being trafficked again. In countries of destination there also needs to be more clarity regarding the status of the victim. ANNA is aware of a case of a woman who was re-trafficked to Greece and then deported to the USA, where she has been living for 4 years. There, her status is still not clarified and now she works illegally. She will likely be

arrested and imprisoned for being illegal in the USA. ANNA criticises that, while there are now legal provisions in place in the USA defining the status of victims, unfortunately, they are not being implemented fast enough.

Key Recommendations

- Immediate needs of victims must be a priority concern in destination countries
- Safety and stability, medical, social and legal assistance, as well as the possibility for compensation, should be provided for trafficked victims
- Victims should be granted the right to stay in the country, compensation and a work permit
- Information campaigns also need to be designed and implemented which make victims aware of the possibilities for help and assistance
- States should offer victims shelter and assistance, but also respect their wish to regain control of their lives by offering them the opportunity to work and earn a living
- More should be done to ensure the safety of witnesses and their relatives in the country of origin
- Training programmes should be developed and carried out for police to make investigators aware of cultural sensitivities
- A catalogue of questions to be asked by law enforcement should be developed in co-operation with NGOs
- The Russian witness protection law which is currently being discussed in the Duma should finally be passed
- In the USA, the new victim protection act defining the status of the trafficked victims should be implemented more speedily
- In all countries of destination the status of a trafficked victim should be recognised and proceedings should be take place more expediently
- There should be better co-operation with embassies in countries of destination in order to exchange information and to assist with repatriation efforts in a timely and humanitarian manner
- It should be recognised that successful reintegration is also prevention because it breaks the cycle for one individual and is an opportunity to sensitise others

Discussion Summary

The Chair, Ms. Bärbel Uhl, referred to the annotated agenda and opened the session asking two specific questions:

- How can stability for victims best be achieved?
- How should the role of the state in victims' protection be defined?

Cultural Integration

The OSCE Mission in Kosovo (OMiK) opened the discussion with the question of how to integrate victims into a society into which they have been trafficked.

The International Organisation for Migration (IOM) recommended that psychologists should be available to provide support within a network of shelters in countries of destination. Ms. Vaz-Cabral pointed out that cultural mediators are just as important to help victims of trafficking not only in dialogue with the authorities, but to learn how to master daily life, like taking the underground or how to access other services. As a positive example of co-operation with the private sector, she cited a partnership with "The Body Shop" in France through which victims are offered employment opportunities. However, the question of cultural integration only arises once the residence status of the trafficked person is resolved.

Legal Status

The US delegation remarked that the new "Victims of Trafficking and Violence Protection Act of 2000" was passed only a year ago. Replying to the criticism of Ms. Pisklakova, the US delegation stressed that such new and innovative legislation and procedures take time to be put in place.

IOM called for a system of recognition of victims who should then receive a stable residence status. Ms. Vaz-Cabral again recommended cultural mediators when questioning potential victims of trafficking. Ms. Uhl pointed out that there was a problem with providing potentially trafficked persons with a standardised questionnaire. Often the individual stories of the women are too complex to be captured in response to a generic questionnaire. Also, a generic questionnaire may be very impersonal and cause to further alienate the victim. Traffickers may also brief the women on what to say making routine questions followed by routine answers useless.

The German-Polish NGO, ZAPO, pointed out that the perpetrators often train the women and men what to say when they are arrested, promising that they will support her, if she gets caught in a raid. Also promising that money will continue to be sent to her family at home. Therefore, women will often continue to be on the side of the traffickers, who at the same time are often their pimps.

This viscous cycle must be broken within the first hours of arrest. Women will not provide any information, unless they are convinced that help for their families is available and that their needs of safety and security are being addressed. Therefore, it is an imperative for destination countries to establish strong partnerships with law enforcement agencies in the countries of origin, which will be able to contact the families of the victims.

Amnesty International Germany called for better legal provisions for recognising victims of trafficking. The current legal provisions in Germany are very limited and link legal recognition to being a witness. The law is still geared solely towards protecting the state, not the victims.

CARITAS Germany said that victims were mainly reported to NGOs through other prostitutes and clients, giving NGOs good access to first hand information. Therefore, NGOs should be part of the process of

identifying whether a person is a victim of trafficking or not. This identification process is the key to establishing the status of a victim. Victims of trafficking themselves would never walk into an advice centre and label themselves victims of trafficking. NGOs should be long term partners in this process and should also receive long term funding. Ms. Pisklakova intervened that what must be avoided is directly linking the victim's status to the result of criminal prosecution efforts.

Anti-Slavery International remarked that at the moment victims of trafficking do have some rights. However, there are many cases where prosecutors within the EU destination countries have failed to assist victims in distress. For instance, in Albania and Southern Italy there are many cases of re-trafficking. The EU framework decision on combating trafficking in human beings is disappointing and lacking in regard to victim protection measures. However, the EU council framework decision on the standing of victims in criminal proceedings includes some provisions to address this key issue.

NGO representatives also expressed concern about the security of victims returning to countries of origin. The Russian NGO ANNA has written to the Commission of Human Rights of the Russian Duma calling for Russia to protect its citizens in this regard. She stressed the importance of putting trafficking on the political agenda of governments when countries of origin delegations visit destination countries and vice versa.

Ms. Vaz-Cabral re-enforced her call for harmonisation of the legal systems in the countries of destination of the EU and beyond. There is a need for judicial and political co-operation across national borders. If several months pass by to receive information on particular cases, what happens to the victims in the meantime? An OMiK representative suggested that a system of advocates who take part in the procedure of recognition on behalf of the victim was needed. A transparent and standardised process of recognition would be another norm to aim for in harmonising legislation and training professionals.

Key Recommendations

- In countries of destination, cultural mediators should be involved in assisting victims to integrate into society
- Standardised procedures for recognising victims should be elaborated in co-operation with NGOs
- Victim's safety concerns for themselves and their families should be recognised as a precondition to the victim's security and stability and, therefore, should immediately be addressed upon their identification
- Efforts to improve co-operation between law enforcement authorities across borders should be initiated
- The EU council framework decision on the standing of victims in criminal proceedings should become legally binding
- There should be separate European legislation on victim protection since the EU framework decision on combating trafficking in human beings is insufficient in this regard
- Anti-trafficking provisions across countries of destination and beyond should be harmonised
- NGO representatives should be able to accompany and assist victims throughout legal proceedings, if the victim so wishes

7. WORKING GROUP III: PROSECUTION

7.1 International Law Enforcement Co-operation

In addition to addressing the root causes of trafficking and assisting its victims, countries of destination should explore new techniques and solutions for combating organised criminal elements that profit from trafficking in human beings. Countries should consider ways to enhance their co-operation in the fields of intelligence sharing and joint investigations. Such measures continue to develop among EU member states, but serious efforts are now beginning to extend beyond the EU to regions of transit and origin.

This working group will highlight such endeavours and evaluate their progress and the challenges they face. For instance, technical and bureaucratic barriers hinder law enforcement from collaborating effectively across borders. Furthermore, corruption among law enforcement officers remains a serious issue to be addressed in many countries before a foundation of trust can be laid for joint activities.

Chair *Leopold Schuster*
Federal Criminal Police Office (BKA), Germany

Introduction

The Chair of the working group, Mr. Leopold Schuster, took the opportunity to highlight the German Federal Criminal Police Office's priority areas to improve the structures of international law enforcement co-operation. Mr Schuster stressed that a sensitive approach was needed when dealing with the human rights violations of trafficking as part of organised crime.

He called for the UN Protocol to become a guideline for an international way of tackling the problem and outlined what is currently being done to better co-ordinate law enforcement efforts across national borders. The international law enforcement and intelligence agencies, INTERPOL, EUROPOL and SECI are the police agencies currently operating in the OSCE region. Mr Schuster called for a new mandate for EUROPOL to create dedicated working groups tackling the problem of trafficking on a European level.

Further multi- and bilateral agreements between Germany and many other states of origin, transit and destination are needed in order to deliver the organisational framework for law enforcement co-operate on a daily basis. So far, Germany only has observer status with SECI. A working level network is needed to cover Russia to Portugal and Italy to Sweden. National level initiatives can only work if there is international co-operation because trafficking is an international problem that calls for an international solution.

Intervention 1 *Simon Humphrey*
Vice Department of the Metropolitan Police Service
at New Scotland Yard, United Kingdom

Mr. Humphrey initially voiced his concern that this type of organised crime is neglected and underestimated and that, particularly in its activities related to the sex industry, it is increasingly leaving law enforcement behind. He called for a framework of consistent legislation throughout the EU and beyond to enable law enforcers to define and combat the crime of trafficking more effectively.

The combat of trafficking also exposes often-contradictory sets of values in the countries it affects. In some countries prostitution is legalised, therefore a demand for sexual services has been formalised. According to market principles this demand must be matched by supply in a market that believes choice must prevail.

Trafficking is an often-ignored phenomenon. Its complexity has led to repeated calls for better co-operation. There is indeed too little co-operation and co-ordination and a severe lack of urgency and speed in investigations. Struggles over ownership of information and who leads investigations further slow down the investigation process. Meanwhile, victims continue to be victimised.

The UK lacks a coherent legislative framework on trafficking. Smuggling cases, involving immigration violations, continue to be confused cases of trafficking where exploitation is the end result. The continued conflation of these two issues means that in most cases there is not enough concern for the victim because they are assumed to be a criminal.

There is a lack of political will and resources to combat trafficking in an orchestrated manner. There are too many obstacles to exchanging information and too little co-operation. The roles of EUROPOL, which is often rightly referred to as 'Sleeping Giant', INTERPOL and SECI need to be clarified. At present, there are too many players and not enough sharing of intelligence. Working-level intelligence exchange is needed since constantly referring up leads further delays investigations.

Mr. Humphrey also highlighted how effective co-operation can target traffickers when it works well. As a good practice example during 'Operation Rhodos' bilateral co-operation led to the arrest of a British national who was allegedly trafficking persons while on a recruiting trip to Vilnius. With direct help from the Lithuanian police, the British Police acquired the information they needed and were able to arrest the alleged trafficker and to free his victims much quicker than normally.

Therefore Mr. Humphrey called for diplomats and politicians to ensure a better framework, which allows multilateral and speedy action. Furthermore, he asserted that trafficking is a major source of income for terrorists.

First and foremost, there is a need to protect victims and recognise their human rights. Better co-operation among law enforcement bodies would also mean less need to rely on the victim as a witness.

Key Recommendations

- A coherent legal framework should be established in the UK, EU and beyond to define and combat trafficking in human beings
- A legal basis should be elaborated for EUROPOL, INTERPOL and SECI to co-operate more effectively
- There should be co-operation among law enforcement in order to set up structures and screening processes to detect traffickers.
- Law enforcement agencies should put their emphasis on proactive investigation measures and move away from witness-driven prosecution
- There should be a network of dedicated liaison officers exchanging information on trafficking established
- Bilateral rapid co-operation plans and agreements cutting down on bureaucracy should be considered and steps should be taken to make such arrangements feasible and reliable
- Efforts should be made to promote and ensure greater freedom of intelligence exchange
- An effective labeling system indicating who is working on what and where specific expertise lies should be created and maintained

Intervention 2 *Gabriela Konevska*

Regional Center for Combating Transborder Crime,
Southeast European Co-operative Initiative

Ms. Konevska first described the scope of SECI's activities. With its South-Eastern European focus SECI includes diverse States which are countries of origin, transit and destination for trafficking. Only one member of SECI is an EU member state, namely Greece, while others have observer status, such as Germany. Yugoslavia will be the next member to join the SECI network.

Ms. Konevska agreed with Mr. Humphrey's call for better co-operation at the working level and also called for the establishment of a legal basis for the co-operation between SECI, INTERPOL and EUROPOL. SECI members and observer countries also need to exchange information more effectively and speedily.

One major challenge also within SECI is the great discrepancy of how the problem is understood in different countries and by their law enforcement bodies. There is a real need to raise awareness among different law enforcement bodies about what trafficking is, particularly in regard to human rights, the protection of victims and data protection.

Another major concern in the SECI region – and beyond – is corruption. States are still hesitant to engage in a public debate on this issue for fear of damaging their reputation. Corruption needs to be addressed more openly and more effectively.

There is also a need to focus the international expertise in a better way. Ms. Konevska agreed with Mr. Humphrey that special working groups, which are in constant communication across law enforcement bodies, were needed. Both, police and customs need to work together. A legal basis for such co-operation is a priority. While there are a lot of opportunities for discussion and training initiatives to take place, the problem is not tackled politically for fear of the political responsibility.

Key Recommendations

- Awareness-raising campaigns among law enforcement bodies should be carried out in order to address trafficking and corruption
- States must consider and support initiatives to protection relatives of witnesses
- International expertise should be better focused through the establishment of international working groups
- States should introduce and implement comprehensive anti-trafficking legislation
- Legal basis for co-operation of INTERPOL, EUROPOL and SECI

Discussion Summary

Assessing the Problem

At the beginning of the discussion several participants agreed that the difficulties of analysing and drawing up a coherent strategy to tackle the problem of trafficking begins with the unreliability of statistical data. The number of trafficked persons recorded often simply rises proportionally to the amount of raids the police conducts. Therefore, there is no true reflection of the scope of the problem. This problem was reported specifically by Germany, but also confirmed by other national representatives. There was consensus that these statistical shifts are not adequately reflected in the debate on law enforcement issues.

Legal Frameworks and Definitions

The definition of trafficking in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons was unanimously welcomed as milestone definition, providing the basis for the harmonisation of definitions in national law as to what constitutes trafficking. The Head of the OSCE Presence in Albania, Ambassador Geert-Hinrich Ahrens, pointed out that often the national legal framework to combat trafficking is well developed, but poorly implemented. Citing the case of Albania, he stated that a recent judicial review by the OSCE had come to the conclusion that the legal provisions in place are adequate, hence it is then up to political will to implement these provisions.

NGO representatives voiced their concerns that the UN protocol (see annex) is not yet in force and that currently there are moves among law enforcement agencies, also in Germany, to link smuggling of persons and trafficking, which would mark a step back.

Approaches to Law Enforcement

EUROPOL stressed its approach of having two separate expert groups on trafficking and smuggling, which require different law enforcement approaches. While smuggling in persons is a crime against the state, trafficking is first and foremost a crime against the victims. One must not wait until the victims have been exploited, but one must stop trafficking in its recruitment stage. EUROPOL's approach is to train international police and employ contact officers to build working level relations of trust between police networks. The German and British police representatives confirmed the effectiveness of having dedicated contact officers in other national and international law enforcement agencies and called for officers dealing specifically with trafficking.

NGO representatives voiced concern about the approach towards general training and exchange programmes for police officers. A better system is needed to select new recruits for training and work in law enforcement. Otherwise, there is a real danger of making better traffickers out of police officers involved in trafficking due the opportunity for corruption and complicity to thrive. NGOs could have a role in this selection and screening process for new recruits, as they often have an indication of who is engaged in trafficking from among the local community and police force.

Models of Co-operation

Among the participants the question arose, with whom information should and should not be shared and how information getting into the wrong hands can be avoided, as this could undermine the process of co-operation. There is a need to exchange information expediently through secure channels by agreed upon procedures. The OSCE delegations signalled their willingness to assist in solving this problem, but asked for guidance from national police forces.

Both, the German and British police representatives stressed the importance of bilateral agreements regulating information exchange. Here partners for co-operation must be chosen carefully. Corruption is a serious problem hampering co-operation efforts. Nevertheless, the British Metropolitan Police stressed that bilateral co-operation needs to flourish and lead to a more speedy exchange of information.

NGOs also stated that trying to treat trafficking as a border control issue is the wrong approach to tackling the problem. It is not a problem that is simply resolved with the denial of entrance or the voluntary repatriation of trafficked persons.

Key Recommendations

- States should ratify the UN Convention against Transnational Organized Crime and its supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons
- A coherent legal framework should be developed in the EU and beyond to enable effective co-operation in investigation and prosecution efforts
- International and interdisciplinary investigation task forces should be created
- Each government should dedicate police officers to working on trafficking cases and together states should establish a network of liaison officers, which would exchanging information and co-operate on anti-trafficking investigations.
- Measures should be put in place to review co-operation structures when corruption appears to exist and there should be better awareness of structures prone to corruption.
- There should be greater freedom of intelligence exchange among law enforcement bodies through an information exchange system, which also protects victims' rights such as informed consent and anonymity
- Protection must not stop at the border. Much more should be done to guarantee safe, voluntary repatriation for trafficked persons
- To tackle the problem of corruption, measures should be designed to ensure better selection of liaison officers who will become involved in bilateral and multilateral exchange programmes, as well as take part in training programmes

7.2 The Legal Framework to Protect Human Rights and Prosecute Traffickers

Harmonisation of laws is important because legal frameworks that stop at borders provide loopholes for traffickers. In many cases, trafficking itself is not defined as a crime within national legislation, although an internationally agreed upon definition now exists in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons. A thorough review and reform of legislation in countries of origin, transit and destination in regard to trafficking could better define and combat the crime, as well as lay the foundation for viable victim and witness protection measures. Generally, victims do not enjoy any witness protection outside the country of trial, creating a further obstacle to gathering evidence, as well as putting witnesses and their relatives at further risk.

Critics have charged that the draft EU Council Framework Decision on Combating Trafficking in Human Beings falls short of human rights standards for the protection of victims of trafficking. However, within the politically binding OSCE context, EU member states recommend far-reaching measures in the area of victim protection, promoting a progressive, human rights based approach to addressing the trafficking issue. This suggests an opportunity to promote innovative new practices within the EU.

Chair *Martina Vandenberg*
Human Rights Watch, United States of America

Intervention 1 *Elaine Pearson*
Anti-Slavery International, United Kingdom

Ms. Elaine Pearson began her intervention speaking about case studies from Anti-Slavery International's research on victim protection mechanisms. She further cited several cases where victims of trafficking have faced long waiting periods to have their legal status determined, without employment or training opportunities in the meantime, and only limited access to social services¹³.

In closing she summarised: For OSCE countries to seriously tackle trafficking from a rights-based perspective, it's essential to highlight these kinds of practical obstacles in order to think more concretely about how we can address them. This involves how we need to change laws and policies, and also how we can ensure effective implementation of laws and policies that do protect the rights of victims. We need to clearly set out the responsibilities for all stakeholders in protecting rights of trafficked persons.

If I was to state a minimum standard of protection of rights of victims, especially those involved in the prosecution process, then the following aspects must be provided:

1. All trafficked persons must have opportunities for temporary residence, without immediate deportation. This should include a recovery period such as that provided in Holland and Belgium during which time the trafficked person can recover from her situation and decide if they want to pursue criminal proceedings against the trafficker. Trafficked persons should be provided opportunities also for permanent residence in appropriate cases.
2. Services must be provided during the temporary residence stay such as appropriate housing (i.e. often a secret and secure shelter but not detention), counselling, information (especially concerning

¹³ Please see the annex for full text of Ms. Pearson's intervention

their legal rights) in a language the victim can understand) and access to translators, legal assistance, medical assistance, assistance in psycho-social recovery, material (financial) assistance, education/training opportunities, employment opportunities i.e. the right to work.

3. Trafficked persons and those close to them must be protected from intimidation, threats and reprisals. Measures include police protection/escorts as required, protection of family members at home, relocation of family members, ability to communicate with family members at home, in-court legal protections such as testimony by deposition/closed circuit camera, or in the absence of the defendant and confidentiality.
4. Trafficked persons must have access to bring civil claims against the trafficker for compensation.

Other aspects to consider for long-term victim protection for those who act as witnesses include providing opportunities for relocation, change of identity and protection of the victim and/or those close to them in the country of origin. Witness protection and support for trafficking cases should be carried out by an independent witness protection agency rather than by local police. A range of witness protection measures should be made available to the witness and they should be given the opportunity to select between them according to their particular circumstances.

Finally, witness protection mechanisms are not about creating incentives for victims to testify. They are about creating the **ability** for trafficked persons to testify. We need to ensure that trafficked persons who are already victims of grave human rights violations are empowered not disempowered by the process of participating in a criminal prosecution of trafficker. In the long term we are concerned with protecting the human rights of all trafficked persons, not simply those who act as witnesses.

Key Recommendations

- Minimum standards of victim protection, including opportunities for temporary residence without immediate deportation
- A recovery period to decide if victims want to pursue criminal proceedings against the trafficker should be given
- In appropriate cases victims of trafficking should be given opportunities for permanent residence
- Victims should have access to appropriate and secure housing, counseling, information (especially concerning their legal rights) in a language the victim can understand) and access to translators, legal assistance, medical assistance, assistance in psycho-social recovery, material (financial) assistance, education/training opportunities, employment opportunities i.e. the right to work
- Trafficked persons and those close to them must be protected from intimidation, threats and reprisals
- Trafficked persons must have access to bring civil claims against the trafficker for compensation.
- Long-term victim protection for those who act as witnesses include providing opportunities for relocation, change of identity and protection of the victim and/or those close to her in the country of origin
- Witness protection and support for trafficking cases should be carried out by an independent witness protection agency rather than by local police
- witness protection mechanisms are not about creating incentives for victims to testify. They are about creating the **ability** for trafficked persons to testify
- States need to ensure that trafficked persons, who are already victims of grave human rights violations, are empowered rather than revictimised by their participation in the criminal prosecution against their accused trafficker

Intervention 2 *Thomas Fitschen*
Ministry of Foreign Affairs, Germany

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime

Main Points

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons for the first time lays down a universally agreed definition of Trafficking in Persons, also clearly dividing trafficking from smuggling in persons. For the first time a legally binding document also includes measures for the prevention of trafficking, as well as a series of regulations aimed specifically to protect the victims of trafficking, regulating how public bodies should deal with victims and committing states to safeguard their possible return to the countries of origin.

Scope

The protocol does not constitute a legally binding document in itself, but is a protocol attached to the United Nations Convention Against Transnational Organised Crime. Only states that are party to this convention, can also sign the protocol. The convention aims to "promote co-operation and to prevent transnational organised crime more effectively". Firstly, it obliges states to declare the defined "serious crimes" criminal offences under national law. At the same time it includes a range of law-enforcement co-operation measures including extradition and mutual legal assistance. Further measures include the seizure of assets resulting from crime and other practical law enforcement tools.

The measures included in the main convention are vital for the implementation of the three protocols, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons. The protocols refer back to the convention in outlining the avenues of international policing and judicial co-operation available for their implementation. Also some vital definitions such as "organised criminal group" are only contained in the convention itself.

Part I – Aims of the Protocol

In articles 1 and 2 the protocol set out its principal aims:

- The prevention and combat of trafficking in persons, particularly women and children
- The protection of victims of trafficking and the protection of their human rights
- The better co-operation of law enforcement agencies in signatory states working towards these aims

Definition of Trafficking

The Definition of trafficking in persons is the key part of the protocol, and was also the greatest cause of controversy in negotiations – it defines:

Trafficking in Persons as the "...recruitment, transportation, transfer, harbouring or receipt of persons..." by improper means, such as force, abduction, fraud, or coercion, for an improper purpose, such as forced or coerced labour, servitude, slavery or sexual exploitation.

Countries that ratify the Protocol are obliged to enact domestic laws making these activities criminal offences, if such laws are not already in place (Art.3). Just as importantly it defines what does NOT constitute trafficking, namely smuggling of persons. Smuggling of persons is now covered by a separate protocol, clarifying the difference between the two, which has been the source of much confusion. In

principle, smuggling of persons is a crime against the state, more precisely its immigration laws. In cases of trafficking in persons, the victims of the crime are the trafficked people themselves, therefore the term "victim" is used throughout the anti-trafficking protocol whereas it is not mentioned in the protocol against smuggling.

Part II – Protection of Trafficked Persons

In addition to taking action against traffickers, the Protocol requires states that ratify it to take some steps to protect and assist trafficked persons. Trafficked persons would be entitled to confidentiality and have some protection against offenders, both in general and when they provide evidence or assistance to law enforcement or appear as witnesses in prosecutions or similar proceedings. Some social benefits, such as housing, medical care and legal or other counselling are also provided for.

The negotiations over terms of residence are still ongoing, but the text currently requires states to "consider" laws, which would allow trafficked persons to remain, temporarily or permanently, "in appropriate cases". States would also agree to accept and facilitate the repatriation of their own nationals.

Part III – Prevention and Co-operation

Generally, the law enforcement agencies of countries that ratify the Protocol would be required to co-operate with such things as the identification of offenders and trafficked persons, sharing information about the methods of offenders and the training of investigators, enforcement and victim-support personnel (Art.7). Countries would also be required to implement security and border controls to detect and prevent trafficking. For instance strengthening their own border controls, imposing requirements on commercial carriers to check passports and visas (Art.8), setting standards for the technical quality of passports and other travel documents (Art.9), and co-operation in establishing the validity of their own documents when used abroad.

Co-operation between ratifying states is generally mandatory while co-operation with other states is not required, but encouraged. Social methods of prevention, such as research, advertising, and social or economic support are also provided for, both by governments and in collaboration with non-governmental organisations.

Finally I would like to stress, that the Protocol, like all such documents, is a compromise. It will only come into force as soon as at least 40 states have ratified both the Convention and the Protocol.

Discussion Summary

The discussion evolved around the practise of carrying out victim-driven investigations. The representative of EUROPOL recommended developing enhanced policing and investigation techniques, particularly since many victims of trafficking want to return to their home country as soon as possible. In addition, deportation practises in many countries of destination show that victims do not have the opportunity to stay long enough for a court trial in a country of destination. This suggestion was criticised from two different angles – one warning about too excessive policing techniques and the other wanting to see that the human rights of the accused would be ensured.

Alternatives to Victim-driven Investigation

An NGO representative emphasised that so far victims do not benefit from being a witness. A law enforcement expert brought the discussion back to the burden of proof. He suggested that new technologies (such as the use of videotapes for statements) should be introduced under proper legal controls. Victims should get the opportunity to give testimony behind closed doors and should not be revictimised. If the victims are to face their perpetrators in the court, they are more likely to feel threatened and withhold information and as a result traffickers will not be convicted for the crime they have committed. Moreover, laws should accordingly be customised to facilitate the gathering of evidence.

According to the Dutch National Rapporteur's Office, practise indicates that traffickers often are prosecuted for smuggling. Therefore, criminal charges are frequently lower and inadequate. This raised again the demand for a clear definition to be enshrined in international legislation. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children created a uniform definition that will soon be reflected in national legislation. The adoption of this protocol will facilitate the dialogue between all different actors. This also lays the ground for unified research and data collection.

Temporary Residence Permits for Trafficked Persons

The question as set out in the annotated agenda: "Should the right of temporary residence be pegged to the willingness of the victim to appear as a witness?" was answered with a resounding "no."

Participants agreed that residence permits for victims should not be used as incentives. Witness protection is very difficult to execute and very expensive and has tremendous implications on the victim. The course of the debate suggested using the term "victim assistance" for services provided by NGOs, as well as using the term "witness protection" for police programmes that change the identity of victims. Thailand and Belgium were showcased as models for providing temporary residence permits for trafficked persons. These two national examples take the psychosocial situation of the victims into account and allow them to stay in the country for a specific period of time to assess the new situation and any consequences of their decisions.

An NGO representative stated that temporary residence permits are practically no incentive for victims since a number of trafficked persons do not want to stay in countries of destination but are traumatised and lack any social network such as job opportunities.

He reported that Italy introduced a new article (Art. 18) in its immigration law in 1998. Victims may, therefore, stay in Italy for 18 months and have access to full assistance (social, medical and legal) without denouncing criminals. Recent records showed that victims make use of this provision. Traffickers face criminal charges from 8 to 20 years imprisonment. NGO representatives demanded that any migrant who is in great danger should have the right to temporarily stay in a country of destination.

A Ukrainian official stressed the need for international law enforcement co-operation, as well as co-operation with all national actors, including NGOs and IOs, when implementing legislation.

Key Recommendations

States should

- Include anti-corruption provisions in all trafficking legislation
- Incorporate human rights protections into all trafficking legislation
- Provide for the compensation of victims, with due regard for due process protections for defendants
- Use the rules of evidence from the ICTY as a guide for regulations on procedure and on rules of evidence
- Consider the use of alternative sources of evidence and alternative witnesses in trafficking cases, including evidence given by clients
- Ratify the Convention against Transnational Organized Crime and its Protocol on Trafficking. States should incorporate the provisions of the protocol, particularly those relating to protection of victims, into domestic legislation.
- Use the definition of trafficking created in the Trafficking Protocol when creating anti-trafficking legislation
- Separate the provision of victim services and residence permits from prosecution. Residence permits should not be incentives to testify – such incentives can be used to impeach the credibility of witnesses.
- Establish a rapporteur on trafficking or another institution to monitor the implementation of legislation
- Allow for closed hearings for trafficking cases in appropriate circumstances

Furthermore

- Victim protection should take into account the rights of the accused (Reference Article 6 of the European Convention)
- Create a compendium of best practices on successful criminal prosecution
- Victim assistance should be provided to all victims of trafficking, not just those who co-operate with law enforcement. Victim protection should be provided to all trafficked persons and witness protection should be provided on a case by case basis.
- Victim protection laws on trafficking should have an integrated approach to support and assistance to victims
- Access to rehabilitation programs should not be used to pressure victims to co-operate with law enforcement or to testify
- Protection and assistance for victims should be built into criminal law – and fully integrated
- Where lack of co-operation of witnesses does not allow for prosecution under trafficking regulations, states should prosecute traffickers for other crimes that they have committed. If possible, prosecutors should prosecute for other serious crimes committed.
- Anti-trafficking laws should cover all forms of forced labour, not just forced prostitution
- Internal affairs departments should investigate all allegations of police corruption and involvement in trafficking
- Trafficking laws should include savings clauses that allow for the enforcement of the Refugee Convention, including the rules on non-refoulement.
- In appropriate cases, trafficked victims should have the right to apply for asylum.
- Smuggling and trafficking laws should be separate
- Sentencing for other crimes should permit consecutive sentencing
- Minor victims of trafficking should be afforded special protections such as those outlined in the UNHCR guidelines for the protection of unaccompanied minors

- Governments should also research and investigate the legalisation of prostitution.
- Victims of trafficking should not be criminalised for their status as undocumented migrants or for any migration or labour violations committed as a direct result of their beings trafficked
- Member states should consider the ratification and adoption of all relevant conventions such as the ICC Rome Statute, CEDAW, the Optional Protocol to CEDAW, the Convention on the Rights of the Child and its Optional Protocol
- NGO participants recommend that governments consider ratifying the Migrants' Rights Convention

8. RECOMMENDATIONS

Key Recommendations Regarding the Legislative Framework

States should ratify relevant international documents including:

- The United Nations Convention against Transnational Organized Crime, as well as its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and its Protocol against the Smuggling of Migrants by Land, Sea and Air;
- The United Nations Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol which allows for individual complaints and commissions of inquiry;
- The United Nations Convention on the Rights of the Child, as well as its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography;
- The Rome Statute in order to allow for the establishment of the International Criminal Court.

Moreover, States should consider ratifying the UN Convention on the Protection of the Rights of Migrant Workers and their Families

Provisions on human rights protection including addressing the issues of compensation and temporary residence permits, as well as anti-corruption requirements, should be incorporated into all anti-trafficking legislation.

Furthermore, States should establish a rapporteur on trafficking or another institution to monitor the implementation of legislation.

Specific Recommendations for European Union Member States

- Timeframe for developing European Union (EU) guidelines for victim protection, as defined in the European Commission "scoreboard," and as necessary to complement the EU Council Framework Decision, must be moved up from the proposed deadline of 2004.
- Following the EU Council Framework Decision, each EU member state should develop new legislation to identify the offence of trafficking and to ensure that the provisions of protection, as set forth in the UN protocol, are taken into consideration.
- The EU Council Framework Decision on the Standing of Victims in Criminal Proceedings should become legally binding.
- The EU Council Framework Decision should become part of the *acquis communautaire* and must be used as a condition in negotiations with Stability Pact member states.
- European Union member states should harmonise and improve migration legislation. Countries of destination should also reconsider their migration policies in regard to establishing alternative migration models.

Responsibility of Seconding States to Prevent and Punish Trafficking in the Context of International Operations

- Seconding states must raise awareness about trafficking and include a reference to the relevant Code of Conduct in contracts of employment for field personnel; this should also extend to short term secondees such as election observers.
- Furthermore, seconding states must investigate and prosecute allegations of trafficking, as defined in the UN Protocol, which involve their citizens. Special attention should be given to personnel with

law enforcement responsibilities within an international operation, such as peacekeepers and police officers.

General Recommendations

International Co-operation and Co-ordination

- As suggested in the Vienna Ministerial Decision, OSCE participating States should appoint an individual or agency that shall co-ordinate anti-trafficking activities with relevant national, regional and international actors, including non-governmental and international organisations.
- International expertise should be better focused through the establishment of international working groups.
- There should be an international effort to co-ordinate anti-trafficking policies including the expertise, support and involvement of NGOs.
- A coherent legal framework should be developed in the EU and beyond to enable effective co-operation in investigation and prosecution efforts.
- International and interdisciplinary investigation task forces should be created bringing together the expertise of national and international law enforcement bodies.
- Each government should dedicate police officers to working on trafficking cases and together states should establish a joint network of liaison officers, which would exchanging information and co-operate on anti-trafficking investigations.
- Bilateral rapid co-operation plans and agreements cutting down on bureaucracy should be considered and steps should be taken to make such arrangements feasible and reliable.
- To tackle the problem of corruption, measures should be designed to ensure better selection of liaison officers who will become involved in bilateral and multilateral exchange programmes, as well as take part in training programmes.
- There should be greater freedom of intelligence exchange among law enforcement bodies through an information exchange system, which also protects victims' rights such as informed consent and anonymity.
- An effective labelling system indicating who is working on what and where specific expertise lies should be created and maintained.

National Co-operation and Co-ordination

- The needs of victims need to be a priority in designing anti-trafficking measures.
- All different actors working against trafficking should come together and discuss their resources/mandates/tasks with the aim of determining what are their common goals. Once they agree upon common objectives, then they can work towards drafting an agreement of co-operation to reach those objectives.
- Working groups at the national level should address policy issues and legislative reform. While working groups at the local level should come to practical agreements for co-operation.
- The vision of co-operation should be realistic and based on available resources such as funding and personnel. This also suggests that action plans should be designed in phases dependent on the provision of more resources.
- NGOs should look for political allies to further their work, influence policy and reach a wider audience.
- NGOs should expose decision-makers to the reality they deal with on the street in assisting victims, so decision-makers can better understand the needs and challenges NGOs face.
- Governments can support NGOs, not only with funding, but also by collaborating in projects and jointly presenting their efforts to the media.

- There should be a clear definition of roles and responsibilities between NGOs and law enforcement bodies. Ideally, a written contract describing what kind of co-operation and referral mechanism should be established.
- NGOs and law enforcement bodies should co-operate more closely, observing their mandates and making sure not to blur their respective lines of responsibilities.
- We must stretch the idea of co-operation beyond NGOs and law enforcement to include health services, government agencies dealing with education and labour, as well as the media.
- There should be better co-operation with embassies in countries of destination in order to exchange information and to assist with repatriation efforts in a timely and humanitarian manner.

Prevention

Breaking the Cycle

- In order to break the trafficking cycle, States must address "push" factors such as inequality, discrimination, violence against women and poverty.
- Economies in countries of origin may be improved by developing institutions such as administration, banks and courts, as well as by establishing the rule of law.
- Ways to promote legal migration should be better adapted to real conditions. Countries of destination should reconsider their migration policies with regard to finding alternative migration models.
- The labour market should be liberalised. "Green cards" should be accessible for workers with varying levels of skills.
- Real economic and social alternatives should be made available to women to enable them to fend for themselves.
- Successful reintegration should also be recognised as prevention because it breaks the cycle for one individual and is an opportunity to sensitise others.
- Efforts in countries of destination need to address the "double morality", that migration is seen as bad, while there exists a real demand, which it seeks to match.

Awareness Raising

- An awareness raising campaign should be tailored to reach its target audience.
- Time should be taken to strategise about what kinds of partners and methods will help you reach your target audience.
- It should also be considered to translate and adapt materials, as it is not always necessary to reinvent the wheel.
- In order to be able to better measure the impact, information campaigns should be designed in phases/stages that have clearly defined objectives.
- NGOs should not only be used for information, but should be equal partners when implementing information campaigns.
- Awareness raising efforts should extend to reach smaller towns and villages as their populations may be particularly at risk.
- Awareness raising efforts should be developed to specifically target politicians and decision-makers.
- Awareness-raising campaigns among law enforcement bodies should be carried out in order to specifically address trafficking and corruption.
- Media training projects on trafficking in human beings that enhance co-operation between NGOs and the media should be designed and supported.
- Specific information campaigns also need to be designed and implemented to make victims aware of the possibilities for help and assistance.

- In addition to information campaigns targeting at-risk groups in countries of origin, public awareness campaigns should be designed and implemented in countries of destination to address demand and to create a more compassionate atmosphere leading to a more appropriate response to trafficking.
- A wide variety of actors – government agencies, NGOs, embassies and international organisations – should be responsible for supporting and implementing awareness raising campaigns.
- Governments of countries of destination should encourage their embassies to work on this issue. Embassies should network with and support local NGOs in countries of origin, as well as they should make information on relevant national legislation such as family and labour law available.
- International agencies, such as the OSCE and IOM, should collect relevant legal information from their member States and produce a packet of information that could be made available through embassies, employment agencies, NGOs and border checkpoints.
- Public awareness raising campaigns should also be developed and supported which include distributing materials that outline the rights of employees in their native languages and potential foreign victims. Such material should be made available at the work place, but also at embassies, employment agencies, counseling centres and border check points.

Youth Programs

- There should be a focus on working in schools and with families to reach young people and to raise their awareness about trafficking.
- Youth programs should not only raise awareness about trafficking, but also teach life skills, communication skills and encourage gender sensitisation. Related issues could also be addressed in sex education classes.
- NGOs should work directly with young people and encourage them to get involved in NGO activities, especially awareness raising among their peers.

Protection

- Priority must be given to the protection of the victim and their needs.
- Minor victims of trafficking should be afforded special protections such as those outlined in the UNHCR guidelines for the protection of unaccompanied minors.
- Rash deportations should be avoided as they serve neither the protection of victims nor the prosecution of offenders.
- Victims' safety concerns for themselves and their families should be recognised as a precondition to their security and stability and, therefore, should immediately be addressed upon their identification.
- Victim assistance should be available to all trafficked persons and witness protection should be provided on a case by case basis.
- Families of victims should consider creating support groups and sharing their experience.

Identification of Victims

- Standardised procedures for recognising victims should be established in co-operation with NGOs. NGOs and law enforcement agencies should work together to identify victims of trafficking.
- Police should advise victims of trafficking of the possibilities of assistance through independent NGOs and governmental agencies.
- Training programmes should be developed and carried out for police to make investigators aware of cultural sensitivities.
- A cultural mediator should assist law enforcement officers when interviewing foreign victims.
- NGO staff should be present during police interrogations, if the victim so wishes.

- There should be a clear division between law enforcement and victim assistance, which must be transparent for the victims/witnesses.
- NGOs should decide together with the police on where to accommodate a victim.

Victim Assistance

- States should offer victims shelter and assistance, but also respect their wish to regain control of their lives by offering them the opportunity to work and earn a living.
- NGOs play a significant role in combating trafficking and particularly in assisting trafficked persons. NGOs need sufficient political and financial support in order to carry out research and advocacy work, provide direct services and follow-up on individual cases.
- Police should offer advice on security measures for NGO staff and offices.
- A comprehensive network of NGO advice centres should be established.
- Victims should have access to appropriate and secure housing, counseling, information (especially concerning their legal rights) in a language the victim can understand and access to translators, legal assistance, medical assistance, assistance in psycho-social recovery, material (financial) assistance, education/training opportunities, employment opportunities i.e. the right to work
- Temporary residency should be given to trafficked persons regardless of their ability and willingness to be a witness.
- The right of stay should be guaranteed regardless of marital status in cases of trafficking and/or abuse.
- Victims who receive temporary residency permits should also be granted the right to work.
- Victims should be able to seek compensation and should be advised on and assisted with the necessary legal procedures.
- In countries of destination, cultural mediators should be involved in assisting victims to integrate into society.
- Training opportunities for victims from language to professional training should be made available in order to offer them perspectives for building a future.
- Family reunification efforts should be undertaken by the state in co-operation with the authorities and NGOs in countries of origin.
- Children of trafficked persons and undocumented migrants should be able to receive birth certificates and have access to the state education system.

Witness Protection

- A better legal framework for witness protection must be created and implemented.
- A recovery period to decide whether victims want to pursue criminal proceedings against the trafficker should be given.
- Witness protection and support for trafficking cases should be carried out by an independent witness protection agency rather than by local police.
- NGOs must have the right to refuse giving testimony in order to safeguard their relation of trust with the victim and the victim's privacy.
- NGO staff should offer psychological support for the witness before, during and after police interrogations and court procedures.
- NGO advice centres should assist witnesses in finding training and employment opportunities that will support reintegration measures.
- Long-term victim protection for those who act as witnesses should include providing opportunities for relocation, change of identity and protection of the victim and/or those close to her/him in the country of origin. States must consider and support initiatives to protect relatives of witnesses.
- Protection must not stop at the border. Much more should be done to guarantee safe, voluntary repatriation for trafficked persons.

Country-specific Recommendations

- The Italian legislative model for victim assistance and protection, which by supporting them encourages co-operation from victims, should be adopted by other EU member states, as well as other countries of destination.
- Legal residency options should be made possible for all labour migrants living in EU member states. As a first step, the government could consider an "amnesty" for irregular migrants.
- The Russian witness protection law, which is currently being discussed in the Duma, should finally be passed.
- In the USA, the Victims of Trafficking and Violence Protection Act 2000 defining the status of the trafficked victims should be implemented more speedily.
- German federal police forces on the Länder level should co-operate to develop and implement training with an aim to raise awareness, as well as to effectively protect and assist victims of trafficking especially those who agree to be witnesses.

Prosecution

Treatment of Victims

- Victims of trafficking should not be criminalised for their status as undocumented migrants or for any migration or labour violations committed as a direct result of having been trafficked.
- States need to ensure that trafficked persons, who are already victims of grave human rights violations, are empowered rather than revictimised by their participation in the criminal prosecution against their accused trafficker.
- Investigations and court proceedings should be handled in the most expedient manner possible, in order to allow victims to stabilise their situation and to recover from their traumatic experience.
- When a foreign national has been arrested, there should be a waiver of the assessment of their residency status in cases involving human or workers' rights violations.
- Trafficked persons must have access to bring civil claims for compensation against the trafficker.
- NGO representatives should be able to accompany and assist victims throughout legal proceedings, if the victim so wishes.

Investigation Techniques

- Enhanced co-operation between governments, inter-governmental and law enforcement bodies in setting up structures and screening processes to detect and prosecute traffickers and thereby enabling proactive investigation, moving away from purely witness-driven prosecution.
- Use the rules of evidence from the International Criminal Tribunal for the former Yugoslavia as a guide for regulations on procedure and on rules of evidence.
- States should consider the use of alternative sources of evidence and alternative witnesses in trafficking cases, including evidence given by clients.
- In order to verify a victim's story, investigators should not only consult with family members and state authorities in the country of origin, but also with local NGOs.
- Access to rehabilitation programs should not be used to pressure victims to co-operate with law enforcement or to testify.

Legislative framework

- International, regional and national complaint mechanisms should be used to combat trafficking.
- Adoption of minimum penalties into national legislation which criminalises trafficking in human beings, as well as harmonisation of such standards. In particular, increased efforts and improved mechanisms in countries of destination for effective prosecution taking into consideration necessary witness protection measures.

- Where the legal framework does not provide any provisions on trafficking in all its forms or where a lack of co-operation by witnesses does not allow for prosecution under trafficking regulations, states should prosecute traffickers for other serious crimes committed. Sentencing for other crimes should permit consecutive sentencing.
- Anti-Trafficking legislation should be based on the definition of trafficking in persons as outlined in the UN Protocol.
- Anti-trafficking legislation should cover all forms of forced labour, not just forced prostitution.
- Anti-trafficking legislation should include savings clauses that allow for the enforcement of the Refugee Convention, including the rules on non-refoulement. In appropriate cases, trafficked victims should have the right to apply for asylum.
- Smuggling and trafficking laws should be separate.
- Protection and assistance for victims should be built into criminal law. But, the provision of victim assistance and residence permits should be totally separated from prosecution. Residence permits should not be incentives to testify as such incentives can be used to impeach the credibility of witnesses.
- States should provide for the compensation of victims with due regard for due process protections for defendants.
- Closed hearings for trafficking cases should be allowed under appropriate circumstances.

Addressing Corruption

- Companies that exploit foreign nationals should face criminal charges and severe penalties.
- Measures should be put in place to review co-operation structures when corruption appears to exist and there should be better awareness of structures prone to corruption.
- Internal affairs departments should investigate all allegations of police corruption and involvement in trafficking.
- A compendium of best practices on successful criminal prosecution should be created.

9. ANNOTATED AGENDA

Panel Discussion A: Victim Protection: Human Rights versus Repression

Identifying trafficked persons as victims and protecting their rights is the first step in taking a human rights based approach towards this complex problem. As long as there is no clear distinction made by state authorities between illegal immigrants and trafficked persons, victims will continue to be criminalised, in addition to the severe human rights violations they have already suffered.

Unfortunately, victims of trafficking are often arrested, detained and prosecuted because of their irregular migration status or for having worked in an illegal industry. In many countries, they are simply summarily deported. The perception that removing trafficked persons thereby removes the 'problem' is incorrect, and often ends with the victim falling back into the hands of traffickers. During this panel presentation, experts will discuss how destination countries currently treat trafficked persons and what measures should be included in a victim protection mechanism. This discussion may explore how best to protect victims and to what extent states should be responsible for ensuring a timely and appropriate response to the needs of victims.

Questions that could be addressed

- How are trafficked persons identified? What rights does a trafficked victim have?
- What responsibilities do governments have towards trafficked persons?
- What are the minimum requirements for an effective victim protection mechanism?

Panel Discussion B: Breaking the Cycle: East-West Co-operation

From the perspective of countries of destination, finding a solution for trafficking in persons frequently means stricter immigration policies, tighter border controls and fighting organised crime. Yet, this narrow approach fails to address the true causes of the problem, which include inequality, discrimination and poverty. As long as repatriated trafficked persons return to the same circumstances from which they sought to escape, the cycle of trafficking will continue. Upon returning home, many trafficked victims additionally have to face the social stigma connected with having worked in the sex industry, as well as to cope with the long-term psychological and physical scars of trafficking.

Therefore, anti-trafficking initiatives should aim to develop and offer real prospects of escaping this cycle of poverty, abuse and exploitation. In addition to supporting awareness raising campaigns that highlight the risks of trafficking and one's rights abroad, destination countries should consider supporting programs to enhance education and economic opportunities in countries of origin, keeping in mind a gender-sensitive approach to development work.

Furthermore, in addition to taking proactive steps to address the root causes of trafficking, countries of destination, including European Union (EU) member states, can make a real difference by providing technical assistance within the framework of cross-border law enforcement co-operation. Specifically, more should be done to proactively investigate the activities of traffickers, rather than depending only on witness testimonies.

Questions that could be addressed

- What are the "push" factors that make someone want to migrate?
- What measures of conditionality can donor states and development agencies employ to persuade countries of origin to take measures to combat trafficking?
- How can law enforcement authorities co-operate across borders to proactively investigate trafficking cases?

Working Group I: PREVENTION

Migration Policies within the European Union

Unquestionably, there is a real demand for labour in the EU. At the same time, the demographic shift that the region is currently experiencing means that the EU needs immigration to increase its workforce in order to support its ageing population. These two factors should be an incentive to think strategically about adaptation of immigration and labour policies.

Examining current practice, one may draw the conclusion that stricter immigration policies are not a successful means for combating trafficking. Restrictive policies of immigration put more pressure on those who seek to migrate and leave them with no option but to turn to traffickers, who take advantage of their dependency to place them in a position of debt bondage, exploitation and abuse. The demand for labour and services from countries of destination, coupled with the willingness to migrate in countries of origin, could become the starting point for constructive discussion of adapting immigration policies, in ways that will not fuel the activities of organised criminal groups.

Questions that could be addressed

- What are the benefits of alternative migration models?
- What possibilities are there to migrate legally?
- Do immigration and development polices promote technical assistance programs that train and select qualified individuals to immigrate and join the labour market?

Awareness Raising

At-risk groups in countries of origin are not only vulnerable to trafficking because of a lack of opportunity, but also due to a lack of information. Persons in countries of origin need to be better informed about the potential risks of becoming victims of trafficking and what rights they have in foreign countries. In many cases of trafficking, ignorance results in deception and exploitation. Education and awareness raising programs empower people to make informed choices about migration, marriage and employment abroad.

On the other hand, in countries of destination, a better understanding of the acute situation of the victims is imperative for the police, border guards, immigration authorities and non-governmental organisations (NGOs) to take appropriate action towards breaking up the trafficking networks while safeguarding the human rights of the victims. For instance, severely distressed victims suffering from physical and mental abuse may find themselves interrogated by police officers and immigration officials who are trained to investigate violations of immigration laws. Proper sensitisation training for police and immigration officials, as well as awareness raising amongst lawmakers, judges and prosecutors, can therefore help to ensure that victims' rights are protected during the investigation and trial process.

Questions that could be addressed

- Who is responsible for implementing awareness raising programs?
- What different audiences should such programs target?
- What good practice and materials are already available?

Working Group II: PROTECTION

Models of Co-operation between NGOs and Governmental Bodies

Due to their illegal status and other factors, victims of trafficking are more likely to turn to NGOs for assistance, rather than to state agencies. However, state authorities, such as border guards and police, are also likely to discover trafficked victims who urgently need assistance. Therefore, it is important for NGOs and state authorities to co-operate in order to more effectively identify victims, to investigate alleged cases of trafficking and to protect victims.

Standard operating procedures with a clear division of responsibilities should be agreed upon and implemented to create a more co-ordinated response to trafficking cases. Such co-operative agreements should bear in mind that while NGOs often are entrusted with the care of victims there are real security concerns that should be taken into account by law enforcement bodies. Once a clear response and referral mechanism is in place, victims should be informed about the terms of co-operation existing between state authorities and NGOs, allowing a better understanding of their rights and, in particular, what alternative options they have for assistance and redress.

Questions that could be addressed

- What are the benefits of co-operation between NGOs and governmental bodies?
- What are the components of an effective referral mechanism on the national level?
- What models of co-operation exist which clearly define responsibilities while ensuring adequate victim protection and assistance?

The Status of Trafficked Persons in Countries of Destination

Trafficked persons are victims of crime. An important starting point to identify these persons as victims under the law is a legal definition of trafficking as a crime. The criminal law in a considerable number of OSCE participating States does not include a sufficient, comprehensive definition of trafficking. Instead, provisions against smuggling and prostitution-related crimes are often used to prosecute traffickers. This not only leads to relatively light sentences for traffickers, but also has severe implications for the status of their victims before the law.

In many countries of destination victims of trafficking still do not enjoy a regularised status. Most have neither a residence permit nor permission to work and may be considered as illegal immigrants, and therefore subject to criminal penalties and deportation. Often a victim's right to remain in a country of destination depends on their willingness to act as a witness and is only limited to the length of the trial process. Meanwhile, they have no opportunity to earn a living, leaving them dependent on the state, with limited rights. This raises the question of what responsibility states have towards victims of trafficking who are often traumatised and left unprotected. Independently of their willingness to be witnesses, and thereby putting themselves even at further risk, trafficking victims need medical, psychological and social assistance, as well as the opportunity to stabilise their position before making any further decisions. This working group will discuss how this stability can be achieved and the state's role in such measures.

Questions that could be addressed

- With what preconditions does a victim have to comply in order to receive assistance?
- What working models exist for regularising the status of trafficked persons?
- Once a victim's residency status is stable, who is responsible for addressing their other needs?

Working Group III: PROSECUTION

International Law Enforcement Co-operation

In addition to addressing the root causes of trafficking and assisting its victims, countries of destination should explore new techniques and solutions for combating organised criminal elements that profit from trafficking in human beings. Countries should consider ways to enhance their co-operation in the fields of intelligence sharing and joint investigations. Such measures continue to develop among EU member states, but serious efforts are now beginning to extend beyond the EU to regions of transit and origin.

This working group will highlight such endeavours and evaluate their progress and the challenges they face. For instance, technical and bureaucratic barriers hinder law enforcement from collaborating effectively across borders. Furthermore, corruption among law enforcement officers remains a serious issue to be addressed in many countries before a foundation of trust can be laid for joint activities.

Questions that could be addressed

- What are the main legal and bureaucratic barriers hindering co-operation in this area?
- How can states work together to combat corruption and organised crime?
- How can investigations become more proactive and intelligence based rather than dependent on witness testimony?

The Legal Framework to Protect Human Rights and Prosecute Traffickers

Harmonisation of laws is important because legal frameworks that stop at borders provide loopholes for traffickers. In many cases, trafficking itself is not defined as a crime within national legislation, although an internationally agreed upon definition now exists in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons. A thorough review and reform of legislation in countries of origin, transit and destination in regard to trafficking could better define and combat the crime, as well as lay the foundation for viable victim and witness protection measures. Generally, victims do not enjoy any witness protection outside the country of trial, creating a further obstacle to gathering evidence, as well as putting witnesses and their relatives at further risk.

Critics have charged that the draft EU Council Framework Decision on Combating Trafficking in Human Beings falls short of human rights standards for the protection of victims of trafficking. However, within the politically binding OSCE context, EU member states recommend far-reaching measures in the area of victim protection, promoting a progressive, human rights based approach to addressing the trafficking issue. This suggests an opportunity to promote innovative new practices within the EU.

Questions that could be addressed

- What areas of the legal framework should be reviewed and reformed to ensure protection for victims' rights and successful prosecution of traffickers?
- Should the right of temporary residence be pegged to the willingness of the victim to appear as a witness?
- How do governments balance the competing priorities of prosecution versus protection?
- What steps are being taken to ensure that anti-trafficking legislation is fully implemented?

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11. ANNEX

11.1 Available Working Group Interventions

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Working Group I: Prevention: Migration Policies within the European Union

Intervention presented by Mathias Köngeter

"ZUR AUFENTHALTSRECHTLICHEN SITUATION DER OPFER VON MENSCHENHANDEL"

1. Einleitung

Innerhalb der Diskussion um Menschenhandel ist es für die Beauftragte der Bundesregierung für Ausländerfragen ein vorrangiges Anliegen, den Schutz der Personen, die Opfer von Menschenhandel wurden, zu verbessern. So geht es in der nachfolgenden Darstellung der rechtlichen Situation der Opfer von Menschenhandel in Deutschland um die Frage, welchen Schutz das bestehende Aufenthaltsrecht und die behördlichen Verfahren den von Menschenhandel geschädigten Migrantinnen bietet.

Richtschnur für die rechtliche Situation der von Menschenhandel betroffenen Frauen bilden in aufenthaltsrechtlicher Hinsicht das Ausländergesetz und die Verwaltungsvorschriften sowie in arbeitsrechtlicher Hinsicht die Bestimmungen des Sozialgesetzbuch III (SGB III), die Arbeitsgenehmigungsverordnung (ArGV) und die Anwerbestoppausnahmereverordnung (ASAV).

Das derzeit geltende deutsche Ausländergesetz unterscheidet vier verschiedene Arten von rechtmäßigen Aufenthaltsgenehmigungen. Die von Menschenhandel betroffenen Frauen verfügen zumeist über keinen dieser Aufenthaltstitel. Oder sie haben ihre Aufenthaltsgenehmigung durch die illegale Arbeitsaufnahme verwirkt.

Um diesen Punkt deutlich zu machen: Prostitution ist in Deutschland nicht verboten – bekanntlich ist die Aufhebung der Sittenwidrigkeit vor kurzem durch den Bundestag beschlossen worden – dennoch bleibt Prostitution eine Tätigkeit, die nicht erlaubnisfähig ist. Das heißt, Migrantinnen verstoßen gegen die Rechtsvorschriften, wenn sie als Touristin oder Au-pair-Mädchen eingereist sind und unerlaubt einer Erwerbstätigkeit nachgehen, sei es im Sexgewerbe, in Haushalten oder in anderen Bereichen. Durch den Verstoß gegen die Rechtsvorschriften besteht dann ein Ausweisungsgrund nach § 46 AuslG, auch wenn die Migrantin zunächst über eine Aufenthaltsgenehmigung verfügte.

Im folgenden werden vier Stufen des behördlichen Verfahrens im Umgang mit Opfern von Menschenhandel aufgezeigt. In den Bundesländern, wo bereits Kooperationen zwischen Polizei und Fachberatungsstellen bestehen, spielen die spezialisierten Beratungsstellen in der Verfahrenspraxis eine zentrale Rolle. An dieser Stelle kann nur auf ihre wichtige Funktion hingewiesen werden. Ausführlicher beleuchten weitere Beiträge der OSZE-Konferenz ihre Arbeitsweise.

Stufe 1: Polizei oder andere staatliche Organe greifen eine Person mit einer nichtdeutschen Staatsangehörigkeit auf – z.B. bei einer Razzia – und registrieren erstmalig die unrechtmäßige Erwerbstätigkeit bzw. den illegalen Aufenthalt.

Dieser Moment ist sowohl für die Polizei wie für die Migrantinnen ein schwieriger Moment. Für die Polizei gilt es festzustellen, ob ein Zusammenhang mit dem Delikt Menschenhandel bestehen könnte.

Die Frauen, die Opfer von Menschenhandel wurden sind zunächst unter Schock, in vielen Fällen auch traumatisiert. Sie sind in vielen Fällen zunächst nicht in der Lage über den Hintergrund des Menschenhandels zu sprechen oder auch nur Hinweise darauf zu geben.

Der medizinisch-psychologische Befund des Traumas hat mit dem Bleiberecht für traumatisierte Bosnierinnen auch im Ausländerrecht die nötige Anerkennung erfahren. Spezielle Schutzregelungen aufgrund eines erlittenen Traumas im Zuge von Menschenhandel gibt es im deutschen Ausländerrecht demgegenüber nicht. Es wäre lohnenswert darüber nachzudenken.

Nach Bekanntwerden des illegalen Aufenthalts sieht das Verfahren die Option einer richterlichen Vernehmung vor. In der Praxis wird von dieser Möglichkeit häufig kein Gebrauch gemacht. Insofern möchte ich darauf hinweisen, dass sich unter den kurzfristig ausgewiesenen oder abgeschobenen Personen immer wieder auch Menschen befinden, die Opfer von Menschenhandel geworden sind. Möglicherweise haben sie erhebliche psychische Schäden erlitten. Möglicherweise wären sie wichtige Zeuginnen, sind aber nicht als solche vernommen worden.

Auf die erheblichen Probleme in der Praxis weist auch der im Juli in den Bundestag eingebrachte Antrag der Regierungskoalition. Die Fraktionen von SPD und Grünen kritisieren darin die gängige Praxis, nach der die betroffenen Frauen in vielen Fällen von der Polizei nicht als schutzbedürftige Opfer von Menschenhandel wahrgenommen werden, sondern als Täterinnen, die gegen das Ausländergesetz verstoßen haben, indem sie hier ohne Aufenthalts- und Arbeitsgenehmigung arbeiten. Als Folge – so der Antrag – werden sie abgeschoben, ehe die wahren Hintergründe geklärt sind und sie entscheiden konnten, ob sie ggf. als Zeuginnen gegen die Menschenhändler aussagen wollen.

Stufe 2: Ein Zusammenhang mit dem Delikt Menschenhandel wird festgestellt.

Sprechen konkrete Tatsachen oder Anhaltspunkte dafür, dass eine ausreisepflichtige Person von Menschenhandel betroffen ist, sehen die Verwaltungsvorschriften grundsätzlich vor, dass eine Frist zur freiwilligen Ausreise von mindestens vier Wochen eingeräumt wird. Diese Frist soll den Betroffenen zum einen die Möglichkeit bieten, ihre persönlichen Angelegenheiten zu regeln. Zum anderen werden sie über die Möglichkeit informiert, sich durch spezialisierte Beratungsstellen betreuen und helfen zu lassen (Ziff. 42.3.2 AuslG – VwV). Gleichzeitig dient diese Frist auch als Bedenkzeit über die Aussagebereitschaft als Zeugin in einem Strafverfahren.

Um keine Missverständnisse entstehen zu lassen: Der Bezug dieser Bestimmungen ist der Straftatbestand Menschenhandel nach § 180 b oder § 181 StGB. Dies bedeutet: Opfer sklavenartiger Arbeitsverhältnisse, die nicht in den Bereich der Prostitution fallen, z.B. prekäre Arbeitsverhältnisse im Bereich des Haushalts oder der Pflege, sind nicht von dieser 4-Wochen Regelung erfasst. Sie gilt ebenfalls nicht für die Opfer anderer Delikte im Umfeld von Menschenhandel, wie z.B. Freiheitsberaubung, Körperverletzung oder Vergewaltigung.

Stufe 3: Die dritte Stufe tritt ein, wenn die Zeugin eines Menschenhandeldelikts zur Aussage vor Gericht bereit ist.

Für die Personen, die in einem Strafverfahren wegen des Delikts Menschenhandel als Zeuginnen benötigt werden oder die mit den deutschen Behörden bei der Ermittlung von Straftaten vorübergehend zusammenarbeiten, wird die Ausreisepflichtung zeitweilig ausgesetzt. Sie erhalten eine Ermessensduldung nach § 55 Abs. 3 AuslG. Sie gilt für die Dauer der Beteiligung der Opferzeugin am Strafverfahren.

Trotz Verwertbarkeit der Aussagen einer Zeugin kommt es nicht immer zu einem Strafverfahren, recht häufig wird das Strafverfahren vorzeitig eingestellt. In diesen Fällen werden die Opferzeuginnen nicht mehr zu Ermittlungszwecken benötigt und ihre Ausreisepflicht setzt entsprechend früher ein.

Mit der Duldung erhalten die Zeuginnen während ihres Aufenthaltes in der Bundesrepublik die eng bemessenen Leistungen nach dem Asylbewerberleistungsgesetz. Besonders erfreulich ist von daher der Erlass zur Erteilung von Arbeitsgenehmigungen des BMA vom 29. Mai diesen Jahres. Seither erhalten die Opferzeuginnen Zugang zum Arbeitsmarkt (nach § 1 Abs. 2 Nr.1 ArGV).

Ein zweiter erfreulicher Erlass des BMA aus diesem Jahr beinhaltet die Klarstellung, dass auch die Opfer von Menschenhandel Ansprüche auf Leistungen entsprechend des Opferentschädigungsgesetzes geltend machen können. Einschränkend ist allerdings hinzuzufügen, dass Entschädigungsgelder bei Bezug von Leistungen nach dem Asylbewerberleistungsgesetz mit diesen verrechnet werden. Eine deutliche Errungenschaft bedeutet diese Anwendung des Opferentschädigungsgesetzes auf Opfer von Menschenhandel gleichwohl dort, wo die Kosten einer medizinischen und psychologischen Behandlung des erlittenen Traumas übernommen werden können. Die Leistungsbestimmungen nach dem Asylbewerberleistungsgesetz gewähren i.d.R. keine psychologischen Behandlungen.

Stufe 4: Aufenthalt aus Gefährdungsgründen.

Zugang zu einem längerfristigen Aufenthalt in der Bundesrepublik – allerdings weiterhin im Rahmen einer Duldung, also keinem rechtmäßigen Aufenthaltstitel – erhalten gefährdete Opferzeuginnen, wenn ein Abschiebungshindernis nach § 53 Abs.6 AuslG besteht. Diese Regelung bezieht sich auf eine bestehende "erhebliche konkrete Gefahr für Leib, Leben oder Freiheit". Folgende Voraussetzungen müssen dabei erfüllt sein: die erhebliche Gefahrensituation muss einzelfallbezogen bestehen, d.h. sie muss auf die betreffende Person individuell bezogen sein und sie muss im Heimatland landesweit gegeben sein. Die Verwaltungsvorschrift berücksichtigt ausdrücklich auch die Gefährdung von Zeuginnen und Zeugen aufgrund ihrer Mitwirkung in einem deutschen Strafverfahren wegen organisierter Kriminalität (z.B. Menschenhandel).

Der Nachweis einer solchen Gefahrensituation hat sich in der Praxis allerdings als ausgesprochen schwierig erwiesen. Es fehlt häufig an Beweisen für die Drohungen, ebenfalls ist der Nachweis, dass die Gefahrenlage landesweit besteht schwer zu erbringen. Die Anzahl derer, die auf dieser Grundlage eine Duldung bzw. eine Aufenthaltsbefugnis erhalten ist de facto ausgesprochen gering.

Schluss

Der Schutz von Opferzeuginnen ist schon aus humanitären Gründen geboten. Zugleich liegt es auch im Interesse einer erfolgreichen Bekämpfung von Menschenhandel, die Rahmenbedingungen und die Verfahrenspraxis für den Aufenthalt der Opfer von Menschenhandel möglichst realitätsnah und zugeschnitten auf ihre spezifischen Belange zu gestalten. Wie die Staatsanwaltschaft immer wieder betont, sind die Zeugenaussagen in der Strafverfolgung von großer Bedeutung, in vielen Fällen sind sie das einzige Beweismittel. Schnelle Abschiebungen dienen weder dem Opferschutz noch liegen sie im Interesse der Strafverfolgung.

Die Verwaltungsvorschriften aus dem Jahr 2000 und die genannten Erlasse des BMA weisen in die Richtung entscheidender Verbesserungen des Schutzes von Opferzeuginnen.

Die größte Schutzlücke besteht jedoch weiterhin dort, wo all diese Regelungen nicht greifen. Zu denken ist an die Opfer von Menschenhandel, die nicht unter die enge Definition des deutschen Strafgesetzbuches fallen, wie beispielsweise die Opfer von Heiratshandel oder die Opfer von Ausbeutung in sklavenartigen Arbeitsverhältnissen.

Im Schutz der Opferzeuginnen sind wir dort einen großen Schritt weiter gekommen, wo die Kooperationskonzepte zwischen Polizei und Beratungsstellen umgesetzt werden. Denn eins ist deutlich zu beobachten: es sind die Beratungsstellen, die dort einspringen, wo polizeiliche

Zeugenschutzprogramme nicht greifen. Sie sind es, die den von Menschenhandel Geschädigten Mut zur Aussage gegen ihre Täter zusprechen, die den Frauen Unterstützung und Hilfe bieten.

Abschließend möchte ich noch einmal betonen: es gilt die Opfer nicht als Täterinnen zu behandeln, sondern als zu schützende Personen. So sind die rechtlich bestehenden Schutzmöglichkeiten auch in der Verfahrenspraxis in vollem Umfang zur Anwendung zu bringen und zwar nicht nur zum Zwecke der erfolgreichen Strafverfolgung sondern aus Respekt vor den Opfern von Menschenhandel.

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Working Group I: Prevention: Migration Policies within the European Union

ANFORDERUNGEN AN EINE EUROPÄISCHEN MIGRATIONSPOLITIK IN HINBLICK AUF DEN SCHUTZ VON MENSCHEN/FRAUENRECHTE IN EUROPA

Vorbemerkung

Es hat uns sehr gefreut, dass die inhaltliche Gestaltung dieser Konferenz das Thema Frauenhandel unter verschiedenen Aspekten aufgreift und wir heute in dieser Arbeitsgruppe zusammensitzen um darüber nachzudenken, wie eine Migrationspolitik gestaltet werden kann um wirksam dem Phänomen Frauenhandel in Europa entgegen zu arbeiten.

Frauenhandel kann nicht isoliert betrachtet werden, sondern muß im Gesamtkontext von Frauenmigration thematisiert werden.

Die Auswirkungen des Transformationsprozesses in Mittel- und Osteuropa sowie der steigende Arbeitskräftebedarf in Europa haben Frauen aus Mittel- und Osteuropa dazu veranlaßt ihre Herkunftsländer zu verlassen. Ihre Migrationsbeteiligung liegt bei 50% und mehr. Das vorherrschende Muster dieser neuen Migrationform ist die Pendelmigration, d.h. zeitlich befristeter Aufenthalt mit der Perspektive einer kurzfristigen Erwerbstätigkeit. Auf diese veränderte Realität sind die migrationspolitischen Richtlinien aber nicht eingestellt.

Bei der Entwicklung umfassender und wirksamer Maßnahmen gegen Frauenhandel in Deutschland bzw. Europa ist es erforderlich den bestehenden migrationspolitischen Rahmen, der die konkreten Zugänge, Möglichkeiten und Bedingungen für Frauen in der Migration bestimmt, einzubeziehen.

Da ich mich nicht ausschließlich auf den juristischen Begriff "Menschenhandel" beziehen werde und über 95% der von Menschenhandel Betroffenen, Frauen sind, benutze ich den Begriff Frauenhandel.

Struktur und Arbeitsansatz von ZAPO

ZAPO steht für zentralen integrierte Anlaufstelle für Pendler und Pendlerinnen aus Osteuropa. ZAPO ist ein Projekt des Polnischen Sozialrats und ist im Hinblick auf die sich verändernde Ost-West-Migration im Juni 1997 eingerichtet worden.

Das Projekt ZAPO bietet als Anlaufstelle Information, Orientierung und Hilfe für osteuropäische PendlerInnen die während eines überwiegend befristeten Aufenthalts in Deutschland in Notlagen geraten sind und Unterstützung brauchen. Die Arbeit von ZAPO richtet sich an drei Gruppen:

Jugendliche aus Polen, die sich aus unterschiedlichen Gründen in Berlin befinden und in Schwierigkeiten geraten sind

Werkvertragsarbeiter, SaisonarbeiterInnen und andere ArbeitnehmerInnen aus Osteuropa. Hierbei geht es um die Stärkung der Konfliktfähigkeit der ArbeitnehmerInnen und die Sicherung arbeitsrechtlicher Mindeststandards

Frauen aus Mittel- und Osteuropa, die in Not geraten sind, sich in Ausbeutungs- oder Abhängigkeitsverhältnisse befinden oder von Frauenhandel betroffen sind.

Die konkrete Beratungs- und Unterstützungsarbeit im Arbeitsbereich Frauen umfasst die Information zu

sozialen und rechtlichen Fragen, die Beratung und Betreuung in Krisensituationen, Begleitung zu RA, Behörden..., die Unterstützung bei der Bewältigung des Alltags und der Umsetzung von Lebensentwürfen sowie die Betreuung und Prozeßbegleitung von Opfern des Frauenhandels.

Darüberhinaus gehören aber auch Öffentlichkeitsarbeit, Vernetzungsarbeit regional/national/international sowie Gremien- und Lobbyarbeit zu unseren Arbeitsaufgaben.

Die Konzeption einer Zufluchtswohnung für osteuropäische Frauen, die extreme Gewalt erlitten haben oder von Menschenhandel betroffen sind, wurde von dem Verein "In Via" und dem ZAPO-Frauenbereich gemeinsam entwickelt und mit der finanziellen Unterstützung den Senats für Frauen im Dezember 1999 eröffnet.

In unserer Arbeit fühlen wir uns den Menschen- bzw. Frauenrechten verpflichteten. Mit einem "unterstützenden Ansatz" setzen wir uns für die Einhaltung menschen- und arbeitsrechtlichen Mindeststandards für alle in Deutschland lebenden und/oder arbeitenden Menschen ein.

Auswirkungen der bestehenden Migrationspolitik auf die Situation von Migrantinnen aus Mittel- und Osteuropa.

Aus der Beratungsarbeit läßt sich feststellen, das die Frauen die Zapo in Anspruch nehmen überwiegend aus Polen, aber auch der Ukraine, Russland, den baltischen Staaten, Weissrussland, Bulgaren und der Tschechischen Republik kommen. Der Informations- bzw. Beratungsbedarf bezieht sich auf Fragen zur Ehe bzw. Lebensgemeinschaften, Kinder, Aufenthaltsrecht, Gewaltverhältnisse, Familiennachzug, Alltagsbewältigung, Gesundheit, Anerkennung von Berufen, Arbeit.

Aus den vielfältigen und komplexen Bereichen der Beratungsarbeit lassen sich zwei thematische Schwerpunkte herausstellen: Heiratsmigration und Arbeitsmigration.

Extreme Formen der Menschenrechtsverletzungen an Frauen, die als Frauenhandel zu bezeichnen sind, geschehen im Verlauf des Migrationsprozess.

Sowohl in der Heiratsmigration und vor allem in der Arbeitsmigration, bewegen sich Frauen teilweise in rechtsfreien Räumen und einem, ihnen eher ablehnend bis feindlich gesinnten gesellschaftlichen Klima. Täter nutzen dies für ihre kriminellen Machenschaften und zwingen Frauen unter Anwendung oder Drohung von Gewalt, Zwang, Betrug und Täuschung zu Tätigkeiten oder Dienstleistungen gegen ihren Willen, berauben sie ihrer persönlichen Freiheit und/oder ihrer sexuellen Integrität, kontrollieren ihr Leben.

Bezogen auf die Gesamtheit der in Deutschland lebenden Migrantinnen ist der Anteil der Migrantinnen, die Opfer von Frauenhandel geworden sind, quantitativ eher gering. Trotzdem ist es wichtig, dass diesen Frauen aufgrund der Schwere der Menschenrechtsverletzung, die häufig eine Traumatisierung zur Folge haben, Schutz und eine gezielte Unterstützung zugestanden wird.

Gründe die Frauen dazu veranlassen zu migrieren

- Heirat
- Arbeit
- Sonstige

Heirat als Zuwanderungsmöglichkeit

- Zugang und Arbeitsbereiche für mittel- und osteuropäische Arbeitsmigrantinnen auf dem hiesigen Arbeitsmarkt

- Anwerbung, Einreise und rechtliche Rahmenbedingungen
- Lebens- und Arbeitsbedingungen für osteuropäische Arbeitsmigrantinnen

Lebensbedingungen

- Unterkunft
- Gesundheit
- Kinder/Bildung
- Soziales Umfeld

Arbeitsbedingungen

- Arbeitszeiten
- Lohnbezahlung
- Lohnfortzahlung im Krankheitsfall
- Lohnbetrug
- Arbeits- und Unfallschutz
- Verhältnis zu/r Arbeitgeber/in
- Sexuelle Belästigung

Unterstützen statt Kontrolle

Forderungen

- Umfassende Maßnahmen zur Genesung, zum Schutz, zur Entschädigung von und Gerechtigkeit für Frauen, die Opfer von Frauenhandel geworden sind
- Gezielte Präventions- und Aufklärungsarbeit zum Thema Frauenhandel in den Herkunftsländern und in den Zielländern
- Für ein eigenständiges Aufenthaltsrecht für ausländische Ehefrauen/Ehemänner mit der Eheschließung
- Entkriminalisierung der Prostitution. Gleichstellung der Prostitution mit andern Erwerbstätigkeiten
- Anerkennung von Haushalts- und Reinigungsarbeiten als gesellschaftlich wesentliche Arbeitsleistungen
- Legalisierung von hier lebenden Arbeitsmigrantinnen
- Verzicht auf eine Statusfeststellung bei menschen- bzw. arbeitsrechtlichen Verletzungen
- Verfolgung von mit betrügerischen Mitteln arbeitenden Unternehmen (z.B. Generalunternehmerhaftung für alle Branchen)
- Stärkung der Rechts- und Konfliktfähigkeit (Einrichtung von spezifischen Beratungsstellen und Lobbyarbeit)
- Anerkennung der UNO-Konvention Nr. 158 vom 18. Dezember 1990 (International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families)
- Entwicklung eines gesellschaftlichen Klimas in Deutschland, das MigrantInnen offen und wohlgesonnen begegnet
- Öffnung des Arbeitsmarkts: Soll Greencard nur an Hochqualifizierte vergeben werden oder auch an Hausarbeiterinnen, Prostituierte, Pflegepersonal,..?

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Working Group I: Prevention: Awareness Raising

FRAUENHANDEL – STRUKTUREN UND URSACHEN EINES PHÄNOMENS PRÄVENTION IN DEN ZIELLÄNDERN?

Einleitung

Die Anzahl der Berichte, sowohl über das Sexgewerbe selbst, als auch über den sogenannten Frauenhandel, den Heiratsmarkt und den Prostitutionsourismus sind gestiegen. Die Themen erscheinen! häufig unter spektakulären Titeln, beliebtester ist "Frauen als Ware" (u.a. Brigitte, Journal Frankfurt, Stern, Emma, Focus, Spiegel). Diese Schlagzeilen sind inzwischen fast zu Synonymen avanciert. Sie machen vordergründig sofort deutlich wovon die Rede ist und scheinen das Thema recht erschöpfend auf den Punkt zu bringen.

Der Bogen wird von dem Handel/der Ware über Migrantinnen zur Prostitution oder Ehe gespannt. Die Assoziationen, die sich daraus ergeben, liegen auf der Hand.

Das Objekt jeden Handels ist die Ware, die an- und verkauft wird, die normalerweise an sich weder einen eigenen Willen noch Wünsche besitzt. Der Verkaufspreis bestimmt sich nach Angebot und Nachfrage auf dem Markt. So wird in diesem Zusammenhang auch gerne von dem Sklavenmarkt oder Sklaverei (Frankfurter Journal, Emma) gesprochen. Ein schwieriger, wenn nicht gar falscher Begriff. Wenn Frauen als "Sklavinnen" beschrieben werden, schwingt dabei auch die Assoziation zu "Sklavinnen der Lust" mit. Die Frauen erscheinen als willenlose, passive und unwissende Geschöpfe, denen eine extrem gut organisierte, furchterregende und skrupellose Männermacht gegenübersteht. So werden sie "verraten und verkauft, erniedrigt und bedroht, gequält und abgeschoben" (Brigitte-Dossier, Spiegel, Focus). "Sie stehen Schlange für einen Job im goldenen Westen" (Focus). Als vermittelte Ehefrauen ist "der Umtausch oder die Rückgabe" (Brigitte-Dossier) bei Nichtgefallen gewährleistet.

Die Verantwortung liegt damit allein bei den Händlern und Männern, den Frauen wird ihre Motivation, jedes Eigeninteresse und eigene Entscheidungen abgesprochen. Sie sind eigentlich nur zur plastischen Verdeutlichung des Ausmaß dieser "illegalen Machenschaften" relevant, dabei ist unerheblich, daß auch sie ihre Gründe haben und z.B. auf das schwer verdiente Geld angewiesen sind.

Das Alles läßt uns nun folgerichtig nach der staatlicher Ordnungsmacht, stärkeren und restriktiveren Kontrollen rufen, die den diversen Händlern endlich das Handwerkszeug legen sollen. Das Problem scheint damit gelöst, denn Täter und Opfer sind ausgemacht. Die Frauen werden aus den Klauen dieser monströsen Organisationen gerettet. Um sie als Opfer muß sich insbesondere gekümmert werden, da sie als Zeuginnen, sprich "Beweismittel" notwendig und in diesem Kontext im Interesse der Bundesrepublik Deutschland unabdingbar und äußerst relevant sind.

Die Situation und die Probleme der Frauen bleiben dabei unberücksichtigt, die Gründe für ihre Migration bleiben bestehen, die Bedingungen ebenso.

Zudem ist die Seite der Nachfragenden, der Konsumenten in den Bereichen Prostitution und auch Ehe bei dieser Art von Betrachtung völlig ausgeblendet. Dadurch bleibt zwangsläufig auch die Diskussion im eigenen Lande, über unseren Umgang mit Sexualität und den Beziehungswünschen und den Veränderungen, die stattfinden, außen vor. Der Bedarf ist groß, die Nachfrage immens. So werden die Frauen als exotisch oder anschiemig, treu oder anspruchslos beschrieben und angeboten. Was bedeutet das eigentlich für unsere Gesellschaft?

Und es ist immer wieder die hergestellte Verbindung zu kriminellen Organisationen, Schlepperbanden, der Mafia, Zuhältern und zum ganz großen Geld, die dieses Thema so reizvoll macht. Es ist also ein Thema, dem sich nur allzu bereitwillig gewidmet wird, beinhaltet es doch von jeher den Stoff, aus dem die Mythen sind. Sex, Crime und Exotik sind einfach eine wunderbare Mischung.

Es ist in diesem Zusammenhang sicherlich nicht abzustreiten, daß nicht auch in jedem Klischee ein Körnchen Wahrheit stecken kann und es die oft beschriebenen extremen Fälle gibt. Bei der spezifischen Migration von Frauen aus Asien, Afrika, Lateinamerika und inzwischen auch Mittel- und Osteuropa in die Ehe, in die Prostitution oder in illegale Arbeitsverhältnisse bleibt dabei allzu oft die Frage ungestellt oder zumindest offen, inwieweit diese reißerischen Darstellungen oder auch Horrorgeschichten über geschlagene, gequälte und zur Prostitution oder in die Ehe gezwungene Frauen und Mädchen der Realität zehntausender von Frauen, die in westeuropäischen Ländern in diesen informellen Arbeitssektoren, im Reproduktionsbereich – als Prostituierte, Hausangestellte oder "vermittelte" Ehefrauleben und arbeiten, überhaupt gerecht werden können. Die Situation der Frauen in Deutschland ist schwierig und ihre persönliche Motivation zu migrieren, welche existiert, sicherlich komplexer als hier vielfach wahrgenommen.

Ich werde im folgenden versuchen die Komplexität dieses Themas aufzublättern und die verschiedenen Ebenen aufzuzeigen. Angesichts des Rahmens werde ich einige Punkte auch nur anreißen können.

An Fallstricken gibt es hier einige, ausgeblendet bleibt oft vieles. Fallstricke meint hier auch unsere eigene Erklärungsversuche und -Ansätze, von Analysen zu sprechen, wäre hier sicher zu hoch gegriffen. Dem Thema immanent sind so viele, äußerst emotionsgeladene und damit auch medienräftige Aspekte, die es manches Mal erschweren zu differenzieren – auch uns als Teil der Gesellschaft und in diesem Bereich Arbeitende.

Über den Glanz und das Elend der Prostitution ist schon viel geschrieben, geredet und gezeigt worden. Weiterhin sind Migrantinnen und auch die Ehe Bereiche, die ebenso komplex und schwierig sind, da jedes dieser Themen für sich in unserer Gesellschaft eine mythisch überfrachtete Realität beinhaltet und aufgeladen ist. Es geht also um Frauen aus den Ländern des Südens und Ostens, um Migration, Geschlechter- und Machtverhältnisse, Sexualität und Geld, Konsumverhalten und frauenspezifische Gewalt. Wir befinden uns hier an einer Schnittstelle von Sexismus und Rassismus.

Ich werde zuerst auf die Hintergründe der Migration von Frauen eingehen, um dann kurz die Wege zu schildern. Bei der Beschreibung der Situation in der Bundesrepublik werde ich kurz auf die Situation illegalisierter Frauen und illegalisierter Sexarbeiterinnen eingehen. Vorgestellt wird dann eine Definition von Frauenhandel, um anschließend auf die Aspekte des Frauenhandels und die Situation von Frauenhandel betroffener Frauen einzugehen. Eine Unterscheidung zwischen Sexarbeiterinnen und von Frauenhandel betroffene Frauen ist ungeheuer wichtig, um die Grenzen, aber auch fließenden Übergänge deutlich zu machen und nicht alles in einen Topf zu werfen.

Nicht die Händler und Händlerinnen stellen das Kernproblem dar, sondern die Situation in den Heimatländern in Verbindung mit den ausländerrechtlichen Regelungen und der Nachfrage der Zielländer sind Grundlagen des Phänomens.

Ursachen und Hintergründe

Wie Lydia Potts in ihrem Buch "Weltmarkt – Arbeitskraft – Migration" schreibt, gibt es bereits seit dem Ende des 15. Jahrhunderts den Transfer lebendiger Arbeit im Interesse der europäischen Ökonomien und das in erheblichem Umfang und über weite Entfernungen. Dieser Transfer von Arbeitskräften ist zentraler Bestandteil und so alt wie die europäische Expansion. Der Entwicklung des Weltmarkts für Waren und Kapital liegen die Strukturen des Weltmarkts für Arbeitskräfte zugrunde. Sie stellen nicht die Folgen oder spätere Entwicklungen dar, sondern sind vielmehr deren Voraussetzung.

Das Prinzip des Sexismus, in Form weiblicher Arbeitskräfte, ist auf dem Weltmarkt für Arbeitskraft allgemein gültig. Dieser Weltmarkt funktionierte von Anbeginn auf der Basis rassistischer Prinzipien. Gegenüber Angehörigen der untersten Stufe der europäischen "Rassenhierarchie" ist dabei ein Höchstmaß an Ausbeutung erlaubt. Die Ausbeutung der Frauen innerhalb der jeweiligen Gruppen ist besonders massiv. Heute finden sich in den Zuschreibungen von Migrantinnen und Migranten unterschiedlichster Herkunftskontexte vergleichbare Muster. Der allzu diskreditierte Begriff Rasse wird inzwischen eher durch den der Kulturerbe ersetzt.

"Die sexistischen Strukturen des Weltmarkts für Arbeitskraft sind seit Kolonialzeiten mit den rassistischen eng verwoben. Europa schuf nicht nur die äußeren materiellen Bedingungen, in die die Kolonisierten zum Zwecke der Ausbeutung eingepaßt wurden, sondern auch die entsprechenden rassistischen Ideologien." (Lydia Potts, Weltmarkt für Arbeitskraft - Von der Kolonisation Amerikas bis zu der Migration der Gegenwart, Hamburg 1988)

Nachdem Frauen bis Anfang der 80er Jahre eine Minderheit innerhalb der migrierenden Bevölkerung darstellten, ist ihr Anteil heute auf über 50% angestiegen. Sie wählen die Migration als Lebensstrategie vor allem wegen der schwierigen bis schlechten Lebens- und Arbeitsbedingungen in ihren Heimatländern, aus politischen Gründen oder weil sich ihre Familie bereits im Zielland aufhält. Diese als Feminisierung der Migration bezeichnete Entwicklung verstärkt sich zunehmend.

Die Frage nach den Ursachen der Frauenmigration drängte sich uns in diesem Kontext in neuer Weise auf. Entwicklungspolitische Erklärungsansätze als auch das "Push and Pull Modell" lassen viele Fragen offen. Die weltweiten Migrationsbewegungen zeigen deutlich, daß nicht alle Menschen aus den Ländern des Südens migrieren und auch nicht unbedingt aus den ärmsten. Armut kann Migration auslösen. Größere Bedeutung wird aber inzwischen den Brücken zugesprochen, die von der internationalisierten Wirtschaft zwischen Sende- und Zielländern geschaffen werden. Migrationsfördernde Gründe in den Sendeländern sind vor allem Direktinvestitionen vor Ort, die exportorientierte Wirtschaft der Zielländer und der Tourismus sowie die Begleiterscheinungen der globalisierten Wirtschaft, z.B. die Zerstörung traditioneller Dorfgemeinschaften und Familienstrukturen als auch die Akkulturation der Bevölkerung an die westeuropäische/anglo-amerikanische Kultur, (siehe C. Karrer, R. Turschi, M. Le Breton Baumgartner).

Ursachen des Migrationsdrucks und der Motivation der Frauen sind vielfältig. Sie sind zum größten Teil durch ihre Situation im Heimatland selbst begründet. Einige Punkte seien hier genannt:

Die Arbeitslosigkeit speziell der Frauen ist insgesamt sehr hoch. Sie finden oft keinen Arbeitsplatz oder keine ihrer Ausbildung angemessene Stelle. Und selbst wenn, ist die Bezahlung oft zu niedrig, um davon leben zu können. Das steht im Gegensatz zur steigenden Verantwortung der Frauen für das ökonomische Überleben ihrer Familien. Viele Frauen sind alleinerziehende Mütter, d.h. die Väter haben sich jeglicher Verantwortung und finanziellen Versorgung entzogen. Außerdem umfaßt hier Familie nicht nur die Kernfamilie, sondern auch die Mütter, Geschwister, Tanten, etc.. Für viele Frauen ist der Wunsch ihre Familien zu unterstützen einer der zentralen Gründe für die Aufnahme einer Arbeit in einem fremden Land. Sie sehen darin die Lösung der familiären Finanzprobleme. Das nicht-vorhandene Sozialsystem oder das Verschwinden des Sozial Systems der Staaten, z.B. in Mittel- und Osteuropa, beläßt oder wälzt zunehmend die Verantwortung auf die Schultern der Frauen ab.

In manchen Ländern existiert zudem eine Tradition der Arbeitsmigration. Einen Job in einem anderen Land zu suchen oder zu haben, ist hier nichts Ungewöhnliches. Ausbildungen und vor allem gute Ausbildungen kosten zunehmend Geld. Viele junge Frauen glauben hier das Geld für ihre eigene Ausbildung, die sie in ihrem Heimatland beginnen möchten, verdienen zu können.

Alkoholismus und Gewalt in den Familien sind vielfach ein Grund für Mädchen, von zuhause zu fliehen. Sie können vor diesem Hintergrund recht leicht von Vermittlern/Händlern angesprochen werden, die ihnen vermeintlich bessere Perspektiven offerieren.

Zudem existiert in den Köpfen vieler v.a. junger Frauen insbesondere in Mittel- und Osteuropa ein als "Pretty Women Syndrom" umschriebenes Bild – der Traum von Unabhängigkeit, vom Glück und Reichtum. Frauen werden vorrangig als erotische Objekte in fast allen Gesellschaften dargestellt und wahrgenommen. Warum also nicht die Not zur Tugend machen – Sexarbeit erscheint hier als attraktiver Job.

Zu diesen Faktoren gesellt sich nun der Mythos von West-Europa (oder auch Nordamerika) hinzu. Entgegen vieler Annahmen geht es hier nicht nur um den Wohlstand. Um das deutlicher zu machen, möchte ich einen Absatz aus der Broschüre "Traumwelten" von der Aktionsgemeinschaft Solidarische Welt (1996) zitieren:

"Im Nordosten Brasiliens, in einer tropischen Atmosphäre exotischer Schönheit trifft die junge Frau ihren "Wikinger Prinzen". Die in der Peripherie des Lebens geborene Mädchen... wagt es zu glauben, daß es auf der anderen Seite des Meeres eine Antwort auf ihr Leben geben könnte. Sie hat einen Traum vom Glück.....

Es ist wichtig zuhören zu können, die Wahl derjenigen zu verstehen, die keine Wahl haben. Zu verstehen, daß es legitim ist, sich nicht mit der "gesellschaftlichen Ordnung" zufrieden zu geben, auch wenn der Preis dafür sehr hoch ist. Sind sie es nicht selbst, die dafür bezahlen, als Frauen, als Schwarze, als Arme geboren zu sein?"

Die Frauen wollen und planen ein besseres Leben für sich und für ihr Kinder. Sie möchten unabhängig und berufstätig sein, Karrieremöglichkeiten entsprechend ihrer Ausbildung wahrnehmen und wünschen sich insbesondere eine partnerschaftliche Beziehung oder Ehe. Sie wollen aus der traditionellen Familien und Geschlechterrolle aussteigen. Das erscheint ihnen hier erreichbar und lebbar.

In ihren Heimatländern wird oft ein konservatives und traditionelles Modell der Familie propagiert, in welchem die Rolle der Mutter und Hausfrau als Erfüllung schlechthin gilt. Angesichts der sozialen und ökonomischen Realitäten und der Verantwortung der Frauen wie vorher beschrieben ist das paradox.

Der Mythos West-Europas beinhaltet also auch, das hier die Unabhängigkeit und Emanzipation der Frauen besser gegeben ist, das es "frauenfreundlich" ist. Frauen migrieren auch deshalb vorrangig in die Länder, die als "frauenfreundlich" betrachtet werden: Niederlande, Deutschland, Belgien und auch die skandinavischen Ländern.

Paradoxerweise sind die realen Arbeitsmöglichkeiten in West-Europa jedoch genau auf die informellen, sogenannten weiblichen Arbeitsbereiche wie Hausarbeit oder Prostitution beschränkt. Den Frauen wird in unserer Gesellschaft der gleichberechtigte Zugang zum formalen und regulierten Arbeitsmarkt verwehrt. Sie werden generell in den ungeschützten Arbeitssektor gedrängt, denn nur hier bieten sich Erwerbsmöglichkeiten an.

Frauen müssen dabei spezifische Formen der Migration wählen, weil ihnen in der Regel der für Männer gängige Weg zum Zwecke der Erwerbstätigkeit erschwert oder versperrt ist. Dies liegt weniger an der z.T. geringeren Bildung und beruflichen Qualifikation, als vielmehr an den größeren Schwierigkeiten, einen angemessenen qualifizierten Arbeitsplatz zu finden. Viele der Frauen kommen also als "Heiratsmigrantinnen", Haushaltshilfen, Au-pairs, als Tänzerinnen oder Prostituierte. Sie werden angesprochen von Freunden, Bekannten, unbekanntem Männern oder Frauen, die ihnen entsprechende Angebote offerieren oder selbst schon in der Bundesrepublik waren oder sie reagieren auf Annoncen oder bewerben sich als Au-Pairs.

Auf dem Weg in das neue Land stehen Migrantinnen zudem vor besonderen Hürden, sie müssen zwar – wie viele ihrer Landsmänner – die Unterstützung und Hilfe von VermittlerInnen, PolizistInnen und anderen in Anspruch nehmen, doch das kostet Geld. Für die Frauen ist das wegen der oft geringeren

finanziellen Ressourcen und erschwerten Verdienstmöglichkeiten vielfach ein Problem. So zahlen sie diese "Vermittlungen" manchmal nicht nur mit Geld, sondern auch mit sexuellen Dienstleistungen oder nehmen hohe Kredite auf. Daß eine solche Vorbereitung und Inanspruchnahme von VermittlerInnen notwendig ist, liegt zum einen an den ausländerrechtlichen Bestimmungen der jeweiligen Länder und zum anderen an der Unkenntnis über die Gesellschaften der Zielländer seitens der Frauen.

Im Aufnahmeland erhalten die Frauen meist nur die schlecht bezahlten Arbeitsplätze im informellen Sektor, d.h. in den als typisch weiblich bezeichneten Bereichen wie z.B. Haushalt und Sexgewerbe. In der Praxis scheinen dies die einzigen Bereiche zu sein in denen Frauen Arbeit finden können, und die außerdem traditionell (selbst heute noch) als Frauenarbeit gelten. In diesen Bereichen verdienen Millionen von Frauen den Lebensunterhalt für ihre Familien und sich selbst; dies sind gleichzeitig aber auch die Bereiche, die nicht durch Arbeitsgesetze und -verordnungen geregelt und geschützt sind. Gerade in diesen informellen und unregulierten Arbeitsmärkten treten, d.h. Prostitution, Vergnügungsgewerbe, Beschäftigung als Hausangestellte und damit verbunden der gewerbliche Heiratsmarkt, Frauenhandel und zwangsarbeitsähnliche Methoden auf..

Zudem sind die Frauen aufgrund ihres daraus oft resultierenden unklaren bis illegalen Aufenthaltsstatus der Willkür von Arbeitgebern, Bordellbetreibern, staatlichen Organen und Ehemännern, die sie hier heiraten, ausgesetzt. Ein Aufenthaltsstatus, der für mindestens vier (in der Diskussion jetzt zwei) Jahre an den des Ehemanns geknüpft ist, kann sie auch hier in unerträgliche Abhängigkeiten zwingen (§ 19 AuslG). Diese Ausgangslage begünstigt Heiratsagenturen sowie VermittlerInnen, "HändlerInnen" und SchlepperInnen aller Art. Sie fördert die mißbräuchliche Anwerbung und mißbräuchliche Arbeitsbedingungen.

Die konkrete Situation der Frauen in Deutschland, ihr illegaler Status, ihre Schulden, ihre familiären Verpflichtungen, läßt vielfältige Formen und Ausübung von Zwang und Druck zu.

In der deutschen Öffentlichkeit sind Migrantinnen zudem von rassistischer und sexueller Gewalt bedroht. Die Stigmatisierung, als "gekaufte" Frau oder Prostituierte angesehen zu werden, trifft Migrantinnen vielfach, unabhängig davon, in welcher Berufssparten sie arbeiten, ob sie studieren oder eine Liebesheirat mit einem Deutschen eingegangen sind. Vor Pauschalisierungen solcher Art sollte man sich hüten und selbst dann, wenn eine Frau als Prostituierte arbeitet oder über eine Heiratsvermittlung nach Deutschland gekommen ist, wird ein solches Urteil dem Individuum nicht gerecht und ist diskriminierend. Eine vermittelte Ehe kann gut funktionieren – ebenso wie eine "Liebesheirat" scheitern kann; eine Migrantin in der Prostitution kann ihr finanzielles Ziel erreichen und professionell arbeiten – ebenso wie eine Deutsche an der Prostitution zugrunde gehen kann.

Frauen – Mütter, Töchter, Schwestern oder Ehefrauen – entscheiden sich für den Schritt in die Fremde und kommen also unter anderem in der Hoffnung auf ein gutes Einkommen oder überhaupt einen Verdienst, eine gute Ehe, eine abgesicherte Zukunft für sich und vor allem für ihre Familien. Die weiblichen Familienmitglieder sind sich ihrer Verantwortung in diesem Gefüge nur zu klar bewußt. So werden z.B. lieber die Töchter in die Hauptstadt oder ins Ausland geschickt, weil man sich auf ihre Geldüberweisungen verlassen kann.

Als Gesamtfaktoren stellen also folgende Punkte die entscheidende Grundlage für die Migration oder genauer die Arbeitsmigration der Frauen dar:

- die Situation im Heimatland
- die steigende Verantwortung der Frauen für das wirtschaftliche Überleben ihrer Familien
- die Möglichkeiten, die sich in den Ländern des Nordens bieten
- und die Nachfrage nach billigen weiblichen Arbeitskräften und "exotischen" Frauen in den Metropolen.

Der persönliche Mut und die Risikobereitschaft der einzelnen Frau ist jedoch letztendlich für die Migration, d.h. dieser Arbeitsmigration, ausschlaggebend.

Wenn wir uns also die Perspektiven der meisten Frauen mit denen wir uns befassen, vor Augen führen, müssen wir uns klar werden, daß sie überwiegend nach Westeuropa kommen, weil sie bessere Lebensbedingungen suchen. Wir sollten sie also als arbeitssuchende Migrantinnen ansehen. Migration ist eine Methode, um dies zu erreichen, so alt wie die Welt selbst. Dies gilt sowohl für Männer als auch für Frauen.

Arbeitsmigration – Situation vor Ort

Was Westeuropa anbelangt, behaupten alle hiesigen Statten, daß sie keine Einwanderungsländer sind. Aus diesem Grund ist Arbeitsmigration außerhalb der EU-Staaten sehr begrenzt.

Trotzdem ist die o.g. Behauptung bezüglich des Einwanderungsstatus nicht haltbar, wenn wir aufgrund unserer Erfahrung feststellen müssen, daß es, in ökonomischen Termini gesprochen, eine große Nachfrage nach einer gewissen Art von ArbeiterInnen für bestimmte Tätigkeiten gibt, und daß es eben diese Tätigkeiten sind, die unsere Wirtschaft in Gang halten.

Die westeuropäischen Staaten reduzieren jedoch immer mehr die Möglichkeit, legal einzuwandern. Diese verringerten Möglichkeiten legaler Arbeitsmigration und die gleichzeitige Nachfrage nach Arbeitskräften im informellen Sektor schaffen einen eklatanten Widerspruch zwischen offizieller Politik der Zielländer und den tagtäglichen Praktiken in der Prostitution, dem Hausangestelltensektor und dem kommerziellen Heiratsvermittlungsmarkt.

Davon profitieren jegliche Art von HändlerInnen und VermittlerInnen, die sich diesen Widerspruch zunutze machen. Gerade der halblegale Charakter dieser Tätigkeiten, in Verbindung mit der Nicht-Existenz arbeitsrechtlicher Normen und Standards in diesen Sektoren, schaffen die Bedingungen für ausbeuterische Schleppereipraktiken und Arbeitsbedingungen. Diese variieren von abwertender Behandlung über ungerechte Entlohnung und exzessive Arbeitsstunden, bis hin zu regelrechter Zwangsarbeit und Sklaverei.

In diesem Zusammenhang sind beachtliche Profite für alle Beteiligten zu machen, nur nicht für die Arbeitsmigrantinnen selbst. Trotzdem stellen die Geldüberweisungen der Frauen in ihre Heimatländer beträchtliche Deviseneinnahmen dar, gleichzeitig sind deren Familien oft auf Jahre davon abhängig und nicht zuletzt ist die Arbeit von Migrantinnen auch ein wesentlicher Beitrag für die Ökonomie der Zielländer.

Die rechtliche Situation

Die Frauen reisen normalerweise als Touristinnen in die Bundesrepublik ein.

Eine Touristin hat automatisch ein Visum für 3 Monate, daß ihr grundsätzlich nicht gestattet zu arbeiten (§3 AuslG). Wenn sie trotzdem erwerbstätig ist, macht sie sich aufgrund des Ausländergesetzes strafbar. Es ist ein Ausweisungsgrund und sie begibt sich damit in die Illegalität.

Da z.B. Prostitution in Deutschland nicht als Beruf anerkannt ist, haben die Frauen keine Chance, reguläre Arbeitspapiere zu erhalten, auch als Hausangestellte ist dies äußerst problematisch.. Da viele der Frauen kaum deutsch sprechen und ihr Situation, wenn sie nicht mit einem deutschen Ehemann verheiratet sind, ungeklärt ist, sind sie im Falle von Ausbeutungs- und/oder Gewaltverhältnissen relativ machtlos. Die Frauen befinden sich also in einer Situation, welche die Ausübung von Druck und Zwang ermöglicht.

Bei Heirat mit einem deutschen Mann sind aufenthalts- und arbeitsrechtliche Papiere relativ problemlos zu erhalten.

Ein illegalisierte Status verwehrt Menschen den Zugang zu medizinischer Versorgung, ihren Kindern die

Schulbildung, zwingt sie häufig, in ausbeuterischen Arbeitsverhältnissen ihren Lebensunterhalt zu verdienen. Jederzeit müssen sie damit rechnen, den Arbeitsplatz zu verlieren und sich dann erneut auf die Suche nach einem Job zu begeben. Wird der Lohn nicht ausbezahlt, gibt es kaum Möglichkeiten, ihn einzufordern. Wird vom Arbeitgeber oder Hausherrn sexuelle Gewalt ausgeübt, haben sie kaum Möglichkeiten, dies anzuzeigen. Die Suche nach einer Wohnung gestaltet sich schwierig, oft müssen horrenden Mieten für sehr beengte und heruntergekommene Unterkünfte bezahlt werden. Die Versorgung wird zu großen Teilen von Familienangehörigen, Bekannten oder den eigenen Communities geleistet. Dort finden neu Angekommene zunächst einmal Unterschlupf und die wichtigsten Informationen über potentielle Arbeitsmöglichkeiten und Verhaltensregeln. Die Angst, in eine Polizeikontrolle zu geraten, ist ständig zugegen. Denn eine Kontrolle hätte die Ausweisung oder Abschiebung zur Folge, häufig verbunden mit einer Geld- oder Haftstrafe. Das Leben in der Illegalität mit all den Ängsten, Versorgungsengpässen bis hin zu existenziellen Nöten stellt eine große psychische Belastung dar und erfordert viel Mut und Stärke.

Der rechtlose Status ist Menschen ohne Aufenthaltsrecht in der Bundesrepublik zunächst einmal gemeinsam. Und doch unterscheiden sich die konkreten Lebenssituationen sehr. Dies hängt stark davon ab, in welchen Lebenszusammenhängen sie sich befinden. Eine Frau mit Kindern oder eine schwangere Frau lebt sicherlich unter anderen Bedingungen als ein alleinstehender Mann. Gehen wir davon aus, daß Illegalisierung die Erpreßbarkeit und damit Ausbeutung und Gewalt fördert, so sind Frauen zusätzlich noch von sexualisierter Gewalt bedroht.

Zur Situation illegalisierter Sexarbeiterinnen

Prostitution wird immer noch vielfach mit Frauenhandel, Zwangsverhältnissen, Zuhälterei gleichgesetzt. Das ist falsch und greift zu kurz. Es gibt Frauen, die sich bewußt für diese Form der Arbeitsmigration entscheiden. Auf Grund der weltweiten ökonomischen Ungleichheit soll diese selbstbewußte Entscheidung nicht mit Freiwilligkeit in dem Sinne verwechselt werden.

Neben den verschiedenen Faktoren, die die Arbeitsbedingungen von ausländischen Sexarbeiterinnen prekär gestalten, sind es vor allem die Aspekte der Illegalisierung und damit Kriminalisierung.

Die Prostitution ist ein Arbeitsbereich, in dem potentiell schnell und viel Geld zu verdienen ist. Diese Hoffnung erfüllt sich allerdings für viele Frauen nicht.

Über die Arbeitsbedingungen und Verdienstmöglichkeiten im Sexgewerbe hierzulande sind viele Frauen schlecht oder gar nicht informiert, auch wenn ihnen vor der Einreise bekannt war, daß sie hier als Prostituierte arbeiten würden. Horrende Ausgaben relativieren sehr schnell die vermeintlich hohen Einnahmen:

Daß Bordellbetreiber, diverse Rechtsanwälte, sogenannte VermittlerInnen u.a. die großen Gewinne abschöpfen, steht in enger Verbindung mit dem rechtlosen Status vieler Frauen.

Die herrschende Doppelmoral und damit einhergehende gesellschaftliche Diskriminierung, die Nicht-Anerkennung der Prostitution als Arbeit/Beruf wie auch die Vertreibungspolitik durch Sperrgebietsverordnungen trifft alle Sexarbeiterinnen. Bei vielen ausländischen Sexarbeiterinnen tritt der illegale Status als ein die Situation verschärfendes Moment hinzu. Da Frauen aus Nicht EU-Staaten Aufenthalts- und Arbeitserlaubnisse verwehrt werden, sind sie auf eine spezifische Art zusätzlich erpreß- und ausbeutbar. Illegalisiert hier zu arbeiten, heißt unter enormem Druck zu stehen, in ständiger Angst vor einer Polizeikontrolle bzw. Razzia. Bei einer Polizeikontrolle erfolgt für Prostituierte häufig eine diskriminierende Behandlung, alles wird durchsucht bis hin zur Leibesvisitation, das Geld wird beschlagnahmt, die Frau erkennungsdienstlich behandelt und danach ausgewiesen oder abgeschoben. Bestehen noch unbezahlte Schulden durch die hohe Vermittlungsgebühr, ist es besonders dramatisch.

Es kristallisieren sich im Prinzip drei Gruppen von Frauen, die nach Europa kommen und in der Sexindustrie arbeiten, heraus: Frauen, die wissen, um was für eine Arbeit es sich handelt und die bereits vorher als Sexarbeiterinnen tätig waren; Frauen, die ebenfalls wissen, was für eine Tätigkeit sie ausüben sollen, aber noch nie als Prostituierte gearbeitet haben und Frauen, die nicht darüber informiert wurden, also unter Vorspiegelung falscher Tatsachen einreisen und dann zur Prostitution gezwungen werden. Alle Frauen sind aufgrund ihres ausländerrechtlichen Status leicht ausbeutbar. Die eigenen Überlebensstrategien, die entwickelt werden, sind jedoch verschieden. Das liegt einmal an der jeweiligen Persönlichkeitsstruktur der Frau und zum anderen nicht unerheblich daran vor welchem Hintergrund sie in die Bundesrepublik eingereist ist.

Werden Migrantinnen ohne eine Arbeitserlaubnis von der Polizei bei einer Erwerbstätigkeit kontrolliert oder gar festgenommen führt dies zwangsläufig zu einer Ausweisung mit Wiedereinreiseverbot (§ 46 AuslG, § 8 AuslG). Wenn sie nicht freiwillig gehen und kein Rückreise-Ticket vorweisen können, werden sie abgeschoben und u.U. in Abschiebehäft genommen.

Für ausländische Frauen, die in der Prostitution arbeiten, ist eine solche Kontrolle/Razzia eine Katastrophe.

Frauenhandel

Dem Frauenhandel liegt grundsätzlich eine Kommerzialisierung der Beziehungen sowie eine zunehmende Kommerzialisierung der Körper von Frauen zugrunde. Diese unterliegen rein kapitalistischen Verwertungskriterien und bestimmen sich wie jeder Markt über die Nachfrage. Auf diesen Punkt werde ich nochmal abschließend eingehen.

Wir begreifen Frauenhandel als eine extreme Form des Mißbrauchs innerhalb der Migration von Frauen. Frauen können Mißbrauch auf zwei voneinander getrennten Ebenen erfahren: während des Prozesses der Anwerbung und Reise, sowie in den Arbeits- und Lebensbedingungen im Zielland selbst.

Unter Frauenhandel verstehen wir entgegen der juristischen Definition von Menschenhandel nicht nur den Handel in die Prostitution. Auch der Handel in die Ehe oder in andere ausbeuterische Arbeitsverhältnisse ist für uns Frauenhandel.

Frauenhandel liegt unseres Erachtens nach vor, wenn Frauen mittels Täuschung, Drohungen, Gewaltanwendung angeworben werden und im Zielland zur Aufnahme und Fortsetzung von Dienstleistungen und Tätigkeiten gebracht oder gezwungen werden, die ausbeuterisch oder sklavenähnlich sind, d.h. ihre Menschenrechte verletzen.

Zur Erfüllung des Tatbestands Frauenhandel sind die Nötigung, der Zwang und die Täuschung als Kernelemente notwendig. Der Zwang kann verschiedene Formen annehmen. Er kann durch direkte physische Gewalt oder durch Androhung derselben, Erpressung, unrechtmäßiges Einbehalt von Dokumenten und verdientem Geld, Raub, Isolation und Betrug ausgeübt werden. Auch das Ausnutzen einer hilflosen Lage, der Autoritätsmißbrauch und die Schuldknechtschaft sind Formen des Zwangs.

Wir beraten und betreuen von Frauenhandel betroffene Frauen unabhängig davon ob sie sich für eine Anzeige bei der Polizei entscheiden. Es gibt sehr nachvollziehbare Gründe, warum Frauen dies nicht tun. Sie fürchten Racheakte an ihnen und ihren Familien, sie haben kein Vertrauen in den Polizei- und Justizapparat. Sie haben kein Aufenthaltsrecht in der Bundesrepublik, das ihnen auch einen besseren Schutz garantieren würde.

Entscheiden sie sich dennoch zu einer Anzeige bei der Polizei, begleiten wir sie zu den polizeilichen und richterlichen Vernehmungen, im Prozeß – sofern es dazu kommt, organisieren ihnen eine geschützte Unterkunft, vermitteln Rechtsanwältinnen und bieten eine psychosoziale Betreuung. Was wir ihnen leider nicht bieten können, ist ein ausreichender Schutz, da sie kein Bleiberecht hier haben.

In Deutschland wurde der Paragraph 180/181 StGB "Menschenhandel" im Sommer 1992 reformiert, d.h. das Strafmaß für Menschen, die andere in die Prostitution zwingen, wurde heraufgesetzt. Außerdem kann Menschenhandel nun schon gegeben sein, wenn auf eine Person in Kenntnis einer Zwangslage oder in Kenntnis der Hilflosigkeit, die mit ihrem Aufenthalt in einem fremden Land verbunden ist, eingewirkt wird, um sie zur Aufnahme oder Fortsetzung der Prostitution oder zu sexuellen Handlungen zu bringen – und nicht mehr die Anwendung von Gewalt, Drohungen oder List nachgewiesen werden muß. Unerheblich ist inzwischen auch, ob die Frauen vorher als Prostituierte gearbeitet haben oder nicht. Menschenhandel kann in jedem Fall vorliegen.

Die Opfer von Menschenhandel müssen meist nach den richterlichen Vernehmungen, seltener nach dem Prozeß, das Land verlassen oder sie werden ausgewiesen und abgeschoben. In manchen Bundesländern werden sie sofort in Abschiebehäft genommen und abgeschoben, sobald sie für die Strafverfolgungsbehörden nicht mehr von Interesse sind.

Den Frauen, die Opfer von Menschenhandel geworden sind und z.B. falsche Informationen über die Arbeits- und Lebensbedingungen erhielten und nicht bereit sind, unter den bestehenden Bedingungen zu arbeiten, bieten die deutschen Gesetze wenig. Die Frauen haben – von Ausnahmefällen abgesehen – keinen Zeuginnen-Schutz zu erwarten und können nach ihrer Aussage sofort abgeschoben werden. Günstigenfalls können sie eine Duldung für die Zeit des Strafverfahrens gegen den/die TäterInnen bekommen, was allerdings eher selten gewährt wird. Sie haben aber keine Möglichkeit, in dieser Zeit zu arbeiten, um z.B. das Geld für einen neuen Start im Heimatland zu verdienen.

Viele Frauen fürchten zudem bei einer Rückkehr in ihre Herkunftsländern Repressalien seitens der FrauenhändlerInnen.

Diesbezüglich ist inzwischen gemeinsam mit dem BKA, LKA und Fachberatungsstellen ein Konzept zum besseren Schutz und zur besserer Betreuung der Opferzeuginnen innerhalb der AG Frauenhandel in Bonn ausgearbeitet worden. Es bleibt zu hoffen, daß dieses Konzept zur Grundlage der Arbeit gemacht und umgesetzt wird.

Im Falle von Menschenhandel und/oder Zwangsprostitution sind der Hilfe für die Opfer klare Grenzen gesetzt.

Die Notwendigkeit von begleitenden ausländerrechtlichen, arbeitsrechtlichen und sozialen Maßnahmen bleibt ausgeblendet und wird wenig diskutiert. Den Frauen wird z.B. kein Bleiberecht aus humanitären Gründen, falls Verfolgung im Heimatland zu erwarten ist oder mindestens eine Aufenthaltsbefugnis zugestanden. Schadensersatz- oder Schmerzensgeldforderungen sind unüblich, obwohl die Frauen damit u.U. ihre Schulden bezahlen und sich eine Existenz in ihrem Heimatland aufbauen könnten. Bisher müssen sie das Land anschließend verlassen.

Mit Schulden, die sie möglicherweise noch haben, mit ihrer Verantwortung und ihren Verpflichtungen gegenüber der Familie und mit ihren Ängste bezüglich irgendwelcher zu erwartender Racheaktionen zuhause oder Drohungen müssen sie alleine fertig werden.

Um es ganz deutlich auf den Punkt zu bringen: wir haben ihnen letztendlich kaum etwas anzubieten. Und für jede ausgewiesene Frau reist eine neue Frau ein. Die VermittlerInnen verdienen wieder an den Zinsen, der Bordellbetreiber hat "Frischfleisch" und eine zusätzliche Kaution, da er die der ausgewiesenen Frau selbstverständlich nicht zurückgezahlt hat.

Weder wird damit die Migration der Frauen gebremst noch die Begleitkriminalität gemindert.

Verhältnis zu Ämtern/Behörden

Zudem ist das Vertrauen der Frauen in die Polizei oder in andere Behörden insgesamt gering. In ihren Herkunftsländern sind Korruption und Machtmißbrauch gang und gäbe. Wohlhabende und Mächtige

erfreuen sich des Privilegs, das Gesetz auf ihrer Seite zu haben. Die Frauen haben die Erfahrung gemacht, daß man Geld und Beziehungen braucht, um das Gesetz zu den eigenen Gunsten arbeiten zu lassen. Alles Dinge, die Frauenhändler und nicht ihre Opfer zur Verfügung haben. Die schlechten Erfahrungen mit der "Ausländerpolizei" in den Aufnahmeländern trägt das ihrige dazu bei.

Außerdem befinden sich die Frauen gesetzwidrig an ihrem Aufenthaltsort, was bedeutet, daß sie sich durch jeden Kontakt mit den Behörden einer Abschiebung aussetzen.

Weiterhin identifizieren sich die meisten Leute, einschließlich der Polizisten, Ankläger und Richter unschwer mit Frauen, die dem Stereotyp eines naiven, unschuldigen, zur Prostitution tückisch verführten Opfers entsprechen. Bei Frauen, die schon vorher als Prostituierte gearbeitet haben oder vorhaben als solche weiterzuarbeiten oder sich auf ihre eigene Weise wehren, schlägt das Mitgefühl schnell in Gleichgültigkeit oder gar unverhohlene Feindschaft um. Die öffentliche Meinung ist wohl auch weiterhin davon überzeugt, daß eine Frau die eine Prostituierte wird, ihre Rechte damit verwirkt, d.h. sie verliert ihren Anspruch auf Schutz gegen Gewalt, Ausbeutung, physische Aggression, Erpressung, Betrug und Beschränkung der Bewegungsfreiheit bzw. Gefangennahme.

Unglücklicherweise sind den Frauen solche Einstellungen bekannt. Damit erklärt sich, außer den hier schon genannten Gründen, ihr geringes Vertrauen in die Polizei.

Der Entschluß dieses oder jenes zu verraten, muß an die Überzeugung geknüpft sein, im Besitz bestimmter Rechte zu sein und Anspruch auf Schutz zu haben, wenn jemand gegen diese Rechte verstößt. Überflüssig zu sagen, daß vor sich einem solchen Hintergrund Prozesse zuungunsten der Frauen und zugunsten der Täter auswirken.

Hinzu kommt, daß die Folgen der äußersten Abhängigkeit, in die die Opfer des Frauenhandels geraten sind, nahezu vergleichbar sind mit Situationen in denen Menschen als Geiseln festgehalten werden. Daraus erwächst eine Überlebensstrategie, die darin besteht, die die Kontrolle ausübende Person in Sicherheit und Ruhe zu wiegen, in dem man sich ihrem Verhalten anpaßt und ihre Wünsche richtig einschätzt. Die Frauen wenden diese Überlebensstrategie so an, daß sie sich auf die Beeinflussung Einzelner konzentrieren anstatt z.B. zu fliehen. Die meisten Frauen begreifen sehr bald, daß offener Widerstand keinesfalls der Weisheit letzter Schluß ist.

Wenn wir Verfahren entwickeln wollen mit denen der Frauenhandel zu bekämpfen ist, müssen wir uns grundsätzlich darüber im klaren sein, daß es sich hier um Frauen handelt, die viele Gründe haben, sich zu fürchten und unter starkem Druck stehen. Sie befinden sich in einer überaus brenzligen Situation und haben unter unvorhersehbaren und ungewissen Bedingungen gelernt zu überleben. Sie müssen einerseits in jedem Augenblick überlegen, welche Strategie ihnen die beste Überlebenschance bietet. Andererseits sind die meisten der Frauen in diese Situation geraten, weil sie unternehmungslustig, mutig und bereit waren, die Initiative zu ergreifen, um ihre eigenen Lebensbedingungen und die ihrer Familien zu verbessern. Aber an einem Punkt dieses Prozesses sind sie in eine Falle geraten.

Angst vor Abschiebung

Obwohl Abschiebung auf den ersten Blick als ein Entkommen aus der Macht der HändlerInnen erscheinen könnte, ist die Realität komplizierter.

Viele Frauen halten die Abschiebung trotz ihrer Situation für eine noch schlimmere Perspektive. Sie versuchen zu überleben, in der Hoffnung, daß es ihnen in einer bestimmten Phase gelingen wird, den ursprünglichen Traum der Migration zu verwirklichen. Die Frauen nehmen die Angebote der AnwerberInnen ja nur deswegen an, weil sie sich nicht mit der Situation zuhause abgefunden haben. Das Angebot im Ausland zu arbeiten, war eine der Möglichkeiten das Land zu verlassen und sich eine bessere Zukunft zu sichern. In vielen Fällen haben sie hohe Schulden und ihre Familien rechnen mit ihrem Einkommen.

Wenn sie abgeschoben werden, kehren sie mit leeren Händen nach Hause zurück, ohne Geld, mit Schulden, die sie nie imstande sein werden zu tilgen.

Wenn bekannt wird, daß sie als Prostituierte gearbeitet haben, kann das für sie ernste Folgen haben, bis dahin, daß sie von ihrer Familie verstoßen werden.

Außerdem ist es zweifelhaft, ob Abschiebung wirklich ein Entkommen bedeutet. Es sind Fälle bekannt, in denen die Frauen nach ihrer Rückkehr erwartet wurden und geradewegs wieder zurückgeschickt wurden.

Es gibt viele Möglichkeiten, sich des Gehorsams der Frauen zu versichern: Schulden, die getilgt werden müssen, Drohungen, daß ihren Kindern oder ihrer Familie Leid zufügt. Abschiebung bedeutet kein Ende, die Angst vor Vergeltungsmaßnahmen bleibt, wobei die Frau nicht nur das Risiko bezüglich ihrer eigenen Sicherheit sondern auch das ihrer Familie eingeht.

Während die Frau für die HändlerInnen gearbeitet hat, hat man ihr meist sehr anschaulich geschildert, was mit ihr passieren wird, falls sie zu fliehen versucht oder sich an die Polizei wenden sollte. Solche Drohungen verlieren keines Falls an Gewicht, selbst wenn sie es mit verständnisvollen Polizisten zu tun hat, die ihren Schutz veranlassen. Wer schützt ihre Familie und ihre Kinder daheim? Die Frauen sind sich sehr bewußt, daß die Macht der Polizei des jeweiligen Landes an dessen Grenzen aufhört.

Ursachen vor Ort – in der Bundesrepublik

Das "Phänomen Frauenhandel", mit dem wir es hier zu tun haben, hat seine Grundlagen in den bereits schon aufgeführten Faktoren, die alle ineinander wirken und sich bedingen.

Zwei wesentliche Punkte in dieser Debatte bleiben dabei jedoch systematisch ausgeblendet und auf diese möchte ich nun einen Blick werfen. Sie beziehen sich auf die Ursachen vor Ort, zum einen auf die Nachfrageseite und die Klischees, die dahinter stehen sowie auf die eigenen Bilder im Kopf. Hier anzusetzen, eröffnet unter Umständen auch Möglichkeiten der Prävention in den Zielländern.

Wenn man davon ausgeht, daß allein im Frankfurter Bahnhofsviertel etwa 1.500 Prostituierte arbeiten und diese alleine zur Zahlung ihrer Fixkosten 10 Männer täglich bedienen müssen, so ist anzunehmen, daß mindestens 15.000 Männer täglich in diesem Viertel unterwegs sind und sexuelle Dienstleistungen in Anspruch nehmen. Nach Schätzungen von Hydra, einer Prostituiertenorganisation in Berlin, nehmen drei von vier Männern im sexuell aktiven Alter in der Bundesrepublik gelegentlich oder regelmäßig die Dienste der Prostituierten in Anspruch. Wenn man dazu noch die etlichen tausend Sextouristen, die jedes Jahr unterwegs sind, rechnet und sich vor Augen hält, was jährlich in dieser Branche umgesetzt wird (Jahresumsatz von 1994: schätzungsweise 50 Milliarden DM – laut: Der Spiegel "Wachstumsbranche Prostitution"; zum Vergleich: Großkonzern Daimler-Benz setzte 10 Milliarden DM weniger um), so kann man davon ausgehen, daß der Bedarf unermesslich und die Nachfrage immens ist – insbesondere und vor allem nach Frauen aus den Ländern des Südens und Ostens. Der Heiratsmarkt als auch der informelle Arbeitsmarkt sind dabei noch nicht berücksichtigt.

Jeder Markt, der in der bundesrepublikanischen Gesellschaft entsteht und bestehen will, braucht eine gewisse Nachfrage und wird von dieser Nachfrage letztendlich bestimmt. Das ist ein ökonomischer Grundsatz. Ohne diese Nachfrage käme keine der Frauen, gäbe es keine Händlerinnen, die daran verdienen könnten.

Unsere hochtechnisierte Leistungsgesellschaft ist gekennzeichnet durch die Verwissenschaftlichung der Alltagswelt, der Rationalisierung der Lebensbedingungen und der Technisierung der Arbeit. Sie scheint Menschen hervorzubringen, die zugleich von einer großen Bedürftigkeit und einer enormen Beziehungsunfähigkeit geprägt sind. Gleichzeitig sind wir im Besitz einer, im Weltmaßstab gesehen, unglaublichen Kaufkraft, die Konsumgewohnheiten entstehen läßt und diese entscheidend bestimmt. Es

erscheint zunehmend und fast alles in unserer Welt konsumierbar – auch das Andere oder die Fremde. Zudem ist unsere Gesellschaft von einer rasanten Entwicklung in den verschiedensten Bereichen gekennzeichnet, die insbesondere Auswirkungen auf das Geschlechterverhältnis hier haben. Der Zugriff der Leistungsgesellschaft auf die Sexualität hat längst schon stattgefunden. Lust wird psychologisiert, medikalisiert und technisiert. Es werden Normen, Zahlen und endlose Vergleiche aufgestellt. Das Richtige, das Perfekte wird gesucht. Das Sexualleben ist Teil der Öffentlichkeit geworden. Es wird diskutiert, sich geoutet (auf die Freier warten wir noch), Maß- und Meßlatten angelegt. Es existiert ein Diktat der Quantität und eine besessene Suche nach den Kicks, ein Spiel ohne Grenzen.

Sexuelle Aktivität erscheint als Allheilmittel schlechthin. Es ist nicht nur ausdrücklich erlaubt, was gefällt, es wird auch, leistungsbezogen wie wir sind, eingefordert. Diese Aspekte sorgen unter anderem für Ausmaß und Art der Nachfrage.

Dabei sind die Gehalte, der vermeintliche Reiz verbotener Vorstellungen, Bedürfnisse und Idealbilder so losgelöst und ungeheuer schematisch, abstrakt und schal. Ansonsten wäre die durchschnittliche pornographische Industrie, die diese Gehalte bekanntlich z.T. erzeugt als auch bedient, ein Reich der Kreativität. Und das ist sie nun wahrlich nicht.

So werden die Frauen aus den Ländern des Südens und Ostens nicht zufällig als "exotisch oder anschmiegsam, treu und anspruchslos beschrieben und angeboten": In unserer hochindustrialisierten Welt scheint es für Männer zunehmend attraktiv oder "exotisch" zu sein, eine vermeintlich verständnisvolle, weiche, emotionale und liebenswerte Frau/Ehefrau zu haben, wenig konkurrenzfähig und fordernd, eher formbar und handlich. Oder zu einer exotischen, sprich weiblichen, weichen, gefühlvollen, warmherzigen, liebevollen und leidenschaftlichen Prostituierten zu gehen. So werden sie zumindest beschrieben und gepriesen. – Zu Frauen also, die in unserer (besser männlichen?) Bilderwelt für menschliche, sprich "natürlich weibliche" Werte und einen Rest Humanität stehen. Es ist die Illusion, den angeblichen Komfort der "ersten Welt" und die vermeintlichen menschlichen, d.h. weiblichen Werte der "Dritten oder weniger entwickelten, also auch östlichen Welt" zu verbinden – ohne großartige Kosten und vor allem ohne Risiko.

Anscheinend sind die Landsfrauen hierfür inzwischen zu emanzipiert, zu fordernd, zu kühl. Rationalismus und Pragmatismus sowie Lebensplanung und Lebensstandard, der Hunger nach Konsum, Dienstleistungen und Sicherheiten prägen das Bild. Die Berechnung geplanter Ziele steht für die emanzipierte Frau Nordeuropas und -amerikas demnach im Vordergrund.

Wir sollten also annehmen, daß die Industrialisierung in Westeuropa/Nordamerika wohl endgültig ihren Durchbruch erzielt hat. Das Ideal der bürgerlichen Gesellschaft mit ihrer geschlechtsspezifischen Rollenaufteilung scheint für die Männer in der Auflösung begriffen, d.h. die Frau als Gattungswesen, zuständig für die inneren, emotionalen Belange unterliegt einem sogenannten Emanzipationsschub, der Männern nun das für sie so notwendige Pendant entreißt. Sie fischen nun im Teich des Südens und Ostens, voller Hoffnungen und Illusionen. Vorerst.

Doch was hat die "unterwürfige Asiatin", denn nun eigentlich mit der "überemanzipierten Europäerin" zu tun?

Dies sind die männlichen Klischees und Erklärungsangebote, die aber auch in unseren Köpfen eine Rolle spielen und immer wieder hinterfragt werden müssen. Sie werden den Alltags- und Lebensrealitäten der Frauen aus dem Norden wie Süden und Osten nicht gerecht.

Bilder und Klischees

"Edle Wilde" oder "Ausgebeutete Geschöpfe"?

Schon in den Bordaufzeichnungen bei Kolumbus ist nachzulesen, daß er nach seiner ersten Reise davon

überzeugt war, das Paradies auf Erden entdeckt zu haben und voller Bewunderung für die Natürlichkeit und Sinnlichkeit der Überseebewohnerinnen war. Als er sich jedoch von ihnen bedrängt fühlte, machte er aus ihnen die bösen, gewalttätigen und hinterhältigen Wilden.

Abwertung und Idealisierung von fremden Menschen oder ungewöhnlichen Tätigkeiten, wie der Ausübung der Prostitution, ist offensichtlich Ausdruck einer Abwehr. Die Kehrseite des gängigen Rassismus, der Abwertung und Bedrohung ist die Idealisierung, die Stilisierung des Opfers, der auf Exotik gerichtete Blick. Es ist der Blick auf durchgängig positive Eigenschaften, auf das Faszinierende und Genußvolle im Fremden gerichtet. Fremden wird dann der Besitz all dessen zugeschrieben, was uns als Deutschen im Zuge von "Zivilisation" und Industrialisierung abhanden gekommen ist. Das war schon zu Beginn des Jahrhunderts ein auffälliges Phänomen. Fremde Menschen oder Fremdes wird für die eigenen Bedürfnisse vereinnahmt und als Projektionsfläche für unerfüllte Sehnsüchte und Phantasien mißbraucht. Was jeweils wahrgenommen wird und wie das Wahrgenommene bewertet wird, wird in bezug auf die Funktion, die es für "das Eigene" erfüllen könnte, geprüft. Wir sehen fortwährend nur das, was wir sehen wollen: "vereinnahmenswerte Vor-Bilder oder bedrohliche Gegen-Bilder" (siehe Jutta Bertram).

Solange wir uns überlegen fühlen und diese Überlegenheit von der anderen Seite nicht in Frage gestellt wird, fällt es uns leicht, fremde Menschen zu edlen und glücklichen oder zu Opfern zu stilisieren. Fühlen wir uns jedoch von ihnen bedroht, schlägt diese Wertung sofort um. Das Exotische impliziert immer den Widerspruch: Bewunderung/Abwertung, Wertschätzung/Geringschätzung.

"Die Deutschen suchen sich uns (die Lateinamerikanerinnen) aus, weil wir immer lächeln, wir haben so etwas wie Sex-Appeal, so eine Lebenslust, wir haben diese Wärme im Blut. Das Lächeln, das ihnen fehlt, finden sie bei uns: die Menschlichkeit. Diese Arbeit hat etwas von Psychologen, wir sind oft wie Ratgeber." (Claudia, eine Psychologin aus Kolumbien, die hier für eine Zeit in der Prostitution gearbeitet hat.)

Wenn wir davon ausgehen, daß im Patriarchat Geschlechterrollen festgelegt und Frauenbilder entwickelt wurden, dann können wir auch davon ausgehen, daß diese Bildkonstruktionen dazu dienen männliche Interessen und Macht zu zementieren und das Handeln von Frauen zu bewerten. Die zwei sich dabei jeweils gegenüberstehenden Kategorien/Dichotomien beinhalten immer ein Wertung, die eine Kategorie steht über der anderen. So gehört zu dem Bild der Hure, das Bild der Heiligen oder Ehefrau/Mutter. Die Zuordnung in die eine Kategorie erkennt gesellschaftlich an und ist somit ein Angebot (die Mutter/Ehefrau oder Heilige), die andere Zuordnung verweigert dies oder erkennt gesellschaftlich ab (die Hure). Sie legitimieren Machtverhältnisse und spalten. Das Stigma Hure bringt bis heute Frauen zur Raison, es maßregelt grundsätzlich die Autonomie, Bewegungsfreiheit und das Selbstbewußtsein der Frauen. Es ist ein Mittel, alle Frauen zu diskreditieren und zu diskriminieren – ohne daß sie je die Tätigkeit ausgeübt haben müssen. Das betrifft die Bilder und Klischees über die Frauen aus dem Süden und Osten ebenso. Sie werden zudem gerne als hilflose Opfer und/oder als noch zu Emanzipierende phantasiert. Die Frauen selbst, die sich für eine Migration entschieden haben, ihre Motivation, ihre Wünsche und ihre Lebens- und Arbeitsrealität geraten dabei dann wieder völlig aus dem Blick. Und wenn sie den Klischees nicht entsprechen, bekommen sie Ärger, sei es mit dem enttäuschten Ehemann oder Kunden, somit auch dem Bordellbetreiber oder anderen. Auch das ist eine Realität, der sich die Frauen stellen müssen.

Es sind männliche Bilder, die Konkurrenz, Neid und Mißtrauen entstehen lassen, die "unterwürfige Asiatin" oder die "überemanzipierten Europäerin". Was hat die Realität der Frauen mit diesen Bildkonstruktionen zu tun? Wenn wir davon ausgehen, daß die bestehenden Bilder von Frauen, von Weiblichkeit ursprünglich Projektionen von männlichen Wünschen, Sehnsüchten und vor allem. Ängsten sind, dann stellt sich doch die Frage, ob diese Bilder als etwas den Frauen unveränderlich Aufgezwungenes betrachtet werden müssen. Diese Bilder und Klischees sind immer wieder zu hinterfragen, nur dadurch läßt sich eine Spaltung/Abspaltung, insbesondere auch unter den Frauen, verhindern.

Macht, Ohnmacht und unsere Bilder im Kopf

Die Bilder von Frauen, mit denen in den Medien (Zeitschriften, Film und Fernsehen) gearbeitet wird, entsprechen nicht unbedingt unseren eigenen Bildern und Wahrnehmungen, es gilt jedoch, sie uns bewußt zu machen und zu analysieren. Denn wir Frauen begegnen uns selbst und anderen Frauen mit Vorstellungen und Zuschreibungen, zusammengesetzt aus eigener Geschichte, Erfahrungen und dem gesellschaftlichen Kontext, in dem wir leben. Soweit wir in Beratungsstellen arbeiten sind wir zudem häufig nur mit den "Problemfällen" konfrontiert, auch dies prägt unseren Blickwinkel.

Wir haben zwar im Laufe der Jahre eine kritische Haltung gegenüber Bildern, die unsere eigene Gesellschaft über uns produziert, entwickelt, sehen aber die in uns vorhandenen Bilder kaum. Dies betrifft nicht nur unsere Auseinandersetzung mit Migrantinnen, sondern ebenso mit Prostituierten.

Wir wissen, soliden Frauen sind Angehörige der Dominanzkultur und haben uns mit dieser Tatsache bisher kaum konfrontiert – selbst bei vielfachen Begegnungen mit Personen aus Subkulturen oder anderen Ländern. Wir sind selten bereit, unsere Wahrnehmung und unsere Bilder von dieser Welt, gerade auch der eigenen, zu hinterfragen oder gar zu relativieren. Das Erkennen der unterschiedlichen Blickwinkel auf und Erklärungen über die Welt beinhaltet zwangsläufig das Gewährwerden um deren Relativität und die ihnen innewohnenden Konstruktionen. Es beinhaltet zu verstehen und zu begreifen, daß diese historisch gewachsen, erklärbar und unterschiedlich sind. Da diese Konstruktionen und Weltanschauungen für jede/n identitätsstiftend und -stabilisierend sind, ist es natürlich schwer, sich auf dieses unsichere Feld zu begeben. Zudem sind sie nicht nur ein Instrument zur eigenen Legitimierung und Konsolidierung, sondern ebenso eines von bestehenden Macht- und Herrschaftstrukturen. Diese Konstruktionen über das Eigene und jeweils Andere entstehen im Kontext der eigenen Gesellschaft und sind darin auch begründet. Sie bilden sich relativ unabhängig von den eigenen Erfahrungen heraus. Über Dinge, die wir fürchten, hassen, ablehnen oder glorifizieren, lieben und idealisieren, denken wir zumeist in Bildern – Bilder, die nicht abstrakt bleiben, die wir vielmehr als die Wirklichkeit ausmachend verstehen. Wahrnehmungen und Bilder sind immer auch ein Produkt der kulturellen Sozialisation, sie sind gemacht und oft unbewußt. Auch unsere Bilder von thailändischen, brasilianischen, iranischen oder türkischen Frauen, ebenso von Prostituierten sind durch Informationshäppchen, Vorstellungen und Klischees, die in unserer Gesellschaft existieren, geprägt und gezeichnet.

Migrantinnen – insbesondere Frauen aus Südostasien oder Lateinamerika und inzwischen auch aus Osteuropa – werden entweder als Opfer oder als die echten, schönen und kraftvollen Frauen wahrgenommen. Ihr Selbstbewußtsein, ihre Stärke, ihr Mut, aber auch ihre individuellen Schwächen, Nöte und Ängste werden nicht gesehen. Eine solche Sicht verhindert nicht nur echte Solidarität und Bündnisse, sie verhindert auch das Wahrnehmen der eigenen blinden Flecken. Es reicht nicht aus, wenn Feministinnen des Nordens, aber auch alle, die übergreifend für die Rechte von Migrantinnen eintreten, bestenfalls der herrschenden Doppelmoral entgegentreten, indem sie nur die Vermittlerinnen und den "Markt" für Migrantinnen in der Prostitution, als Ehefrauen oder als Hausangestellte benennen. Es ist zwingend notwendig auch die eigenen Bilder und Klischees anzugehen und aufzubrechen, die Frauen als Individuen wahr-zunehmen, Bündnisse einzugehen, um mit ihnen gemeinsam für die Verbesserung ihrer Lebens- und Arbeitssituation zu kämpfen.

"Solidarität heißt aber auch, die anderen mit ihren Problemen und ihrem Selbstverständnis ernst zu nehmen, selbst wenn wir anderer Meinung sind – das schließt jede tyrannische Fürsorge, Bevormundung und insbesondere Objektivierung der anderen aus. Solidarität ist eben etwas ganz anderes als Mitleid, Solidarität verlangt Arbeit und Selbstüberwindung, und das sollten wir Frauen gegenseitig von uns verlangen." (Farideh Akashe-Böhme, Über die Dialektik von Solidarität und Selbstbestimmung. Frauen in geteilten Welten, in Feministische Studien I,94)

Zusammenfassung

Menschen, die sich ohne Aufenthalts- und Arbeitsgenehmigung in der Bundesrepublik aufhalten und sich auf dem Arbeitsmarkt anbieten, werden in der Regel schlecht bezahlt und schlecht behandelt. Die Gewinne, die von Unternehmern, Bordellbetreibern und Vermittlern erzielt werden, lohnen sich trotz Geldstrafen oder anderer Art von Bußen allemal. Illegal sich in der Bundesrepublik aufhaltende Menschen sind das "Schmieröl" der Wirtschaft, egal um welche Branche es sich dabei handelt. Sie sind ökonomisch hervorragend einsetzbar und unter wirtschaftlichen Gesichtspunkten auch gewollt und werden gebraucht. Frauen aus Ländern des Südens und des Ostens, die hier im informellen Sektor oder in der Prostitution arbeiten, ist, wie beschrieben, der Weg über eine Arbeitserlaubnis aber versperrt. Zudem ist die Prostitution in der Bundesrepublik als Dienstleistung oder Beruf nicht anerkannt. Darüber hinaus existieren im Bereich der Migration von Frauen spezifische Bedingungen und Faktoren – insbesondere der Frauenhandel. Die Bedingungen für die Zeuginnen bedurften dringend einer Verbesserung, ausländerrechtliche Änderungen, arbeitsrechtliche Regelungen und soziale Maßnahmen müßten folgen.

Wir fordern aus den genannten Gründen die Anerkennung der Prostitution als Arbeit und arbeitsrechtliche Mindeststandards im Haushaltssektor, d.h. ein daraus resultierendes Arbeits und Aufenthaltsrecht für die Frauen, die hier dieser Arbeit nachgehen wollen. Die Frauen könnten sich versichern, sie würden Steuern zahlen und könnten gegebenenfalls Anzeige gegen Vermittlerinnen, Bordellbetreiber und gewalttätige Kunden, Hausherrn oder Arbeitgeber erstatten – ohne Angst vor Ausweisungen zu haben. Sie wären unabhängiger und somit weniger ausbeutbar. Die Strukturen des Handels wären leichter überprüfbar, da sie aus der Grauzone herausgeholt würden. Es bleibt zu hoffen, daß sich ein besserer Umgang mit und eine Entkriminalisierung der Frauen durchsetzt.

"Leider haben wir keinerlei Schutz, sie behandeln uns hier wie Lastesel. Wir Frauen müssen arbeiten und produzieren, und mehr als ein Deutscher frißt sich satt an unseren Körpern. Trotzdem behandeln sie uns wie Dreck, ohne jeden Respekt. Wir müssen für das Zimmer zahlen, wir müssen darum bitten, daß sie uns arbeiten lassen, und dafür halten sie uns wie in einer Kaserne. Warum? Warum kommandieren sie uns herum? Wenn wir es sind, die bezahlen, sollten wir auch die Forderungen stellen. Deshalb bin ich dafür, daß die Prostitution voll legalisiert werden sollte, dann hätte die Stadt ein Problem weniger, und wir auch. Dazu brauchte es klare Regelungen mit den Bordellen, und wir hätten z.B. ärztliche Untersuchungen, sie könnten uns ein Visum für einige Zeit geben, um in Frieden zu arbeiten, dann hätten sie auch Kontrolle über die Häuser (die Verrittler/Betreiber) und könnten die Steuern kontrollieren." (Claudia, einer Psychologin aus Kolumbien, die hier für eine Zeit in der Prostitution gearbeitet hat.)

Staatliche Maßnahmen, die sich auf die Bekämpfung der illegalen Einwanderung richten, schützen den Staat und nicht die Frauen. Statt Gewalt und Mißbrauch an Frauen zu verhindern und zu bekämpfen und den Frauen zu ihren Rechten zu verhelfen, tendieren solche Maßnahmen – auch wenn sie primär die Händlerinnen im Visier haben – eher dazu, die betroffenen Frauen noch mehr zu marginalisieren und zu kriminalisieren.

"Den Frauenhandel verhindern und die Lage der Frauen, die schon dessen Opfer geworden sind sowie die Situation der Prostituierten insgesamt verbessern – das kann man nur dann, wenn man die Interessen der Frauen berücksichtigt, die es betrifft und zwar sowohl bei der Aufklärung der Öffentlichkeit als auch beim politischen Lobbyismus. Die Strategien zur Unterstützung der Frauen, die Opfer des Handels geworden sind, sollten sich auf Bestärkung ihrer Fähigkeiten konzentrieren, sich in allen Stadien dieses Handels zu wehren. Man sollte in dieser Richtung wirken, damit die Frauen die Kontrolle über ihr Leben zurückgewinnen und es ihnen möglich wird die Opferrolle aufzugeben." (Marjan Wijers, "Strategien gegen den Frauenhandel", Konferenz: Sexarbeit, Sextourismus und Frauenhandel in Prag von der Heinrich Böll Stiftung, 1996) Die Frauen brauchen reale wirtschaftliche und soziale Alternativen.

Die Mechanismen des Marktes und die immense Nachfrage werden nicht verändert oder gar ausgehebelt werden können. Es bedürfte dazu einer wesentlich tiefergehenden Diskussion über unsere Beziehungsvorstellungen und -fähigkeiten, unsere Sexualität und unsere Konsumgewohnheiten und vor allem über unsere Verantwortung als Wirtschaftsmacht und Industrienation im weltweiten Kontext. Das Menschenrecht auf Leben ist ein natürliches, vorjuristisches Recht. Es ist niemanden abzusprechen. Die Menschen verlassen nicht ihre Heimat und ihre Familien ohne existenzielle Gründe – insbesondere wenn sie in ein Land reisen, dessen Sprache und Gewohnheiten sie nicht kennen und wo sie nicht willkommen sind.

Wir werden in der Bundesrepublik keine wirklichen Lösungen finden, wenn wir nicht lernen hinzuschauen und den Dingen auf den Grund zu gehen. Illegale Einreise läßt sich nicht verhindern, höchstens erschweren – auf Kosten der Betroffenen oder gegebenenfalls eindämmen.

Nur stehen wir hier letztendlich nicht vor einem polizeilichen oder Grenzschutz-Problem, sondern vor einem gesellschaftlichen weit größeren Ausmaßes, welches anders, um nicht zu sagen politisch, diskutiert werden müßte.

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Working Group II: Protection: Models of Co-operation between Non-Governmental Organisations and Governmental Bodies

Il fenomeno del traffico di esseri umani può essere contrastato solo nella totale collaborazione tra le vittime e quanti sono preposti ad operare in questa difficile realtà, sia per quanto riguarda gli organismi non governativi, sia per le realtà governative. Il contrasto presuppone il concetto della collaborazione, e questo a motivo soprattutto della internazionalizzazione del fenomeno. La collaborazione della vittima deve mettere nelle condizioni di poter effettuare la migliore delle analisi per l'identificazione delle motivazioni dell'esodo, degli itinerari e dei gruppi criminali, oltre ai supporti al traffico, come la falsa documentazione, il denaro e quant'altro possa essere di supporto al traffico. Il forte richiamo che noi facciamo della collaborazione deriva proprio dall'esperienza fatta dall'Organismo non governativo da me presieduto, il quale, forte anche della legislazione italiana, fa opera di convincimento perché la collaborazione da parte della vittima con le forze di polizia e la giustizia possa essere realmente un gesto di liberazione totale. Collaborare vuol dire superare la fase della dipendenza, che può essere di ogni tipo, soprattutto psicologica ed economica. Il testo legislativo italiano sull'immigrazione, all'art.18, prevede dei progetti di protezione sociale per coloro che vogliono sfuggire a forme di sfruttamento e dipendenza, gestite soprattutto da attività criminali. La protezione sociale prevede, a seguito anche della collaborazione con la giustizia nella individuazione dei gruppi criminali, la concessione di un permesso di soggiorno per ragioni umanitarie e un'attività di recupero della persona all'interno di organismi di volontariato riconosciuti dal Governo italiano e preposti ad attivare e gestire le vittime. La vittima viene quindi messa nella condizione di poter fornire utili informazioni, di carattere anche internazionale, per individuare i gruppi criminali operanti sul territorio internazionale, e procedere, possibilmente, ad un immediato fermo dei soggetti. Le informazioni devono anche permettere l'analisi del fenomeno, per cui la vittima è chiamata a fornire ulteriori informazioni su quanto accaduto nel paese di provenienza, sugli itinerari, sulle diverse organizzazioni, sulle metodologie del coinvolgimento e su quanto sarà ritenuto di rilevante importanza ai fini della indagine. L'esposizione di alcune cifre, riguardanti l'attività della Fondazione che presiedo, può far comprendere l'efficacia della collaborazione, oltre, ovviamente, ai rischi nell'impatto con le organizzazioni criminali che non gradiscono l'attività svolta dalle nostre organizzazioni. Nell'anno 2001 hanno collaborato 168 vittime, di cui 4 uomini ed il resto donne. Fra queste ultime 12 minori. 20 hanno collaborato sul fenomeno della schiavitù domestica, 2 per il traffico di clandestini, 144 per il fenomeno della tratta, 2 per il traffico di organi e bambini. Attraverso questa collaborazione si è giunti alla individuazione di 5 organizzazioni criminali internazionali, che trafficavano in esseri umani e all'arresto di oltre 200 soggetti, di differenti nazionalità e tuttora in stato di detenzione. Per la gran parte di loro è stata emessa già sentenza di condanna in primo e secondo grado. Interessante evidenziare che, grazie a questa collaborazione, è stato possibile emettere anche alcune sentenze per il reato di riduzione in schiavitù. Le cifre esprimono il valore della collaborazione, oltre alla fatica di un'opera che richiede il coraggio e la determinazione di servire realmente questi soggetti, mettendo anche a rischio la propria vita. Ma senza la denuncia e la collaborazione della vittima non è assolutamente possibile giungere ad alcun risultato. Mettiamo in evidenza alcuni punti fondamentali: Il successo è possibile nella piena intesa e collaborazione tra la magistratura, le forze di polizia e gli organismi di volontariato, dove ognuno deve occupare un ruolo determinato, evitando che il poliziotto diventi un assistente sociale e l'assistente sociale un poliziotto. È importante che il modello italiano, riguardante i programmi di protezione sociale, venga fatto proprio anche dagli altri Stati della Comunità Europea. Solo il Belgio ha qualcosa di simile. L'evoluzione della politica comunitaria in materia di immigrazione, almeno fino ad oggi, non prevede alcuna attenzione al problema della collaborazione e dei benefici che ne possono scaturire. Si parla di traffico di esseri umani e di rifugiati o richiedenti asilo politico. Il

fenomeno deve avere una costante lettura internazionale, alla luce anche degli eventi che si succedono nel tempo, come oggi potrebbe l'attuale conflitto bellico, i quali generano traffico di essere umani ed attivano meccanismi criminali pronti a speculare ad ogni prezzo. I flussi migratori clandestini sono gestiti da organizzazioni ben radicate nei territori di massimo esodo e coordinati lungo itinerari diversificati a seconda delle possibilità economiche della vittima o dell'utilizzo della stessa. Bisogna tracciare con precisione gli itinerari dei traffici, individuando le diverse cause che generano la mobilità umana. Ben sappiamo che le cause possono essere differenti: dalle ragioni economiche a quelle politiche, oltre allo sfruttamento nelle diverse forme di schiavitù. Bisogna intensificare le forme di contrasto, che non possono essere solo quelle messe in atto dall'attività delle diverse polizie e dalla tenacia dei tribunali. Il contrasto avviene attraverso l'informazione e controinformazione, attraverso lo sviluppo locale nei paesi di maggiore provenienza di immigrati, attraverso una legislazione nazionale e internazionale che sappia gestire il fenomeno. Anche la politica ha le sue responsabilità, perché nel momento in cui non è a servizio dell'uomo difatti l'immigrato viene consegnato alla speculazione dell'attività criminale, che lo rende una vittima. In sintesi, il contrasto al traffico di esseri umani non è il frutto di una attività di polizia o di innalzamento di frontiere, ma scaturisce da una capacità politica e di intelligence che sappia comprendere cosa oggi sta avvenendo nel mondo ed in qual misura l'Europa venga coinvolta dal fenomeno. Tale attenzione sarà anche di prevenzione alle insidie esistenti all'interno dei flussi migratori, dove si annidano soggetti che nulla hanno a che fare con la povertà, ma covano intenzione che mettono a rischio la sicurezza sociali dei singoli stati. Un'attenzione merita la realtà della povertà, causa scatenante di esodi incontrollabili, che va affrontata nella logica della cooperazione internazionale. I poveri non li fermerà mai nessuno, per cui o si attiva un meccanismo internazionale in difesa della povertà dell'uomo, oppure saranno i potenti e i ricchi della terra a consegnare i poveri ai trafficanti di essere umani. È importante, e qui presento una caratteristica fondamentale del mio organismo, creare dei punti di osservazione lungo gli itinerari utilizzati dai trafficanti, perché non possiamo attendere di raccogliere le vittime lungo le nostre strade o nello sbarco soprattutto sulle coste italiane. Gli osservatori possono essere ottimi strumenti di prevenzione e di analisi, oltre a sostenere ed attivare i progetti di sviluppo locale. Tutto ciò noi lo abbiamo realizzato in Moldavia.

L'approccio alla realtà del traffico di esseri umani richiede una particolare attenzione alle vittime, che possono oggi rientrare tra le schiavitù del nuovo millennio. Lo sforzo comune deve essere quello di liberare gli schiavi dalle mani di coloro che ne vogliono trarre solo del profitto, senza scrupoli e senza alcun rispetto dell'uomo. Lo sforzo internazionale, e tale deve essere perché le politiche nazionali sono deboli e spesso impaurite dinanzi al fenomeno migratorio, deve essere organico e determinato, trovando forza anche nell'intesa con gli organismi non governativi, i quali, inseriti nei diversi territori, sia di partenza che di arrivo, sono nelle condizioni di offrire un grande supporto. Dobbiamo far nostra un'espressione di un grande profeta: *Servi di tutti, schiavi di nessuno*. Questo deve essere il programma di chi fa la scelta di servire i poveri.

Georgina Vaz Cabral

Comité Contre l'Esclavage Moderne (CCEM), France

Working Group II: Protection: The Status of Trafficked Persons in Countries of Destination

"LE STATUT DES PERSONNES TRAFIQUÉES DANS LES PAYS DE DESTINATION, EN PARTICULIER L'UNION EUROPÉENNE"

La traite des êtres humains est un phénomène complexe et en constante évolution. Le nombre limité de plaintes déposées par les personnes en situation d'esclavage révèle que l'approche répressive seule ne suffit pas à lutter contre la traite des êtres humains. Les personnes trafiquées sont des victimes, il est important de le souligner pour ne plus les considérer comme des personnes en situation irrégulière ou des criminels.

La participation des victimes de la traite dans la procédure pénale contre les trafiquants est primordiale. Mais pour quelles raisons une victime accepterait-elle de témoigner contre les trafiquants si sa vie reste en danger. Un témoignage nécessite du courage et une réelle force de volonté.

Les victimes de la traite des êtres humains sont au cœur du phénomène. À ce titre, leur protection et leur réhabilitation doivent être une priorité. La répression ne peut pas être dissociée de la protection et de l'assistance. La reconnaissance du plein statut juridique et administratif de la victime et l'effectivité de ces droits sont des conditions essentielles à sa collaboration dans la procédure judiciaire.

Outre, évidemment, le caractère humanitaire, le lien entre l'assistance offerte à la victime et sa collaboration avec les autorités doit se comprendre comme un acte préparatoire instaurant un climat de confiance.

Cette confiance peut être obtenue en proposant des mesures de protection minimum telles que :

- un permis de séjour rassurant la victime quant à une éventuelle expulsion,
- un hébergement dans un centre d'accueil spécialisé où elle serait protégée des trafiquants ou exploitateurs,
- une assistance sociale, médicale et psychologique,
- et une aide à son intégration dans le pays de destination qui serait l'alphabétisation, une formation ou par la possibilité d'exercer une activité professionnelle afin de se construire un nouveau avenir. Je souligne que le retour dans les pays d'origine ne sont pas systématiquement possibles, au contraire.

L'analyse des législations européennes montre que le statut des victimes de la traite va dépendre de la reconnaissance légale des infractions de traite des êtres humains ou d'esclavage. En l'absence de définition juridique ou d'incrimination spécifique, il n'est pas reconnu à la victime de statut légal. Elle se retrouve hors de tout cadre juridique et d'assistance.

L'appréhension du phénomène d'esclavage ou de la traite est loin d'être uniforme dans l'Union européenne. Les difficultés que connaît la Commission européenne à élaborer une décision-cadre en la matière en est un bon exemple.

Pour simplifier et donner un aperçu du statut de la personne trafiquée et exploitée dans l'Union européenne, j'ai synthétisé les différentes positions des États en 3 catégories et un cas particulier :

- les États disposant d'incriminations spécifiques et reconnaissant un statut à la victime de la traite des êtres humains
- les États ne reconnaissant que la traite des êtres humains en vue de l'exploitation sexuelle
- les États ne disposant pas d'incrimination spécifique et ne reconnaissant pas un statut à la victime
- enfin, le cas particulier de l'Espagne qui ne dispose pas d'incrimination spécifique mais reconnaît la personne trafiquée comme une victime bénéficiant d'un certain statut.

Je vais reprendre les catégories une par une.

Les Etats disposant d'incriminations spécifiques et reconnaissant un statut légale a la victime de traite des etres humains sans distinction entre exploitation économique et sexuelle

La Belgique et l'Italie ont les politiques les plus développées en la matière. La participation de la victime y est centrale dans un but d'efficacité de la répression.

La loi belge du 13 avril 1995 a été adoptée suite à une Commission d'enquête parlementaire. Elle prévoit une spécialisation des autorités judiciaires, une Cellule interdépartementale de coordination de la lutte contre la traite et l'habilitation de centres d'accueil. Ces structures spécialisées assurent un accompagnement social, administratif et juridique aux victimes et préparent leur éventuel retour dans le pays d'origine. Les personnes qui acceptent de suivre le programme d'assistance et surtout de coopérer avec les autorités judiciaires obtiennent un titre de séjour qui a terme peut être définitif.

L'Italie a mis en place une politique d'assistance aux victimes d'esclavage et de traite en 1998. Pour cela, l'Italie n'a pas hésité à redonner vie à l'article 600 du code pénal qui condamne l'esclavage ou à modifier et intégrer de nouvelles infractions, par exemple l'article 601 du code pénal qui condamne l'exploitation sexuelle des mineurs. Parallèlement à ce remaniement pénal, un article prévoyant des procédures d'assistance aux victimes a été introduit dans la nouvelle loi sur l'immigration. L'article 18 du Texte Unique de la loi sur l'immigration, prévoit une procédure d'assistance plus souple que la Belgique. Deux types de procédures sont prévues selon qu'il y est dépôt de plainte ou pas. La demande du titre de séjour pour protection sociale est faite:

- soit par le procureur si une procédure pénale est initiée avec la collaboration de la victime,
- soit par les associations ou les services sociaux de la collectivité locale qui ont présenté un programme de réhabilitation et d'assistance. Dans ce deuxième cas de figure, il revient au préfet de police d'évaluer lui-même l'existence d'un danger pour la victime qui veut se soustraire aux groupes criminels.

Par conséquent, les victimes peuvent bénéficier de mesures d'assistance avec ou sans plainte. La plainte n'est plus une condition exclusive à l'assistance et à la délivrance d'un titre de séjour. La volonté de se soustraire des réseaux criminels et d'intégration de la victime dans le pays de destination devient ainsi également une condition à sa protection.

Les Etats ne reconnaissant que la traite des etres humains en vue de l'exploitation sexuelle.

Brièvement, pour une majorité de pays, l'exploitation dite « économique », par opposition à sexuelle, n'est pas considérée comme de la traite des êtres humains. Par conséquent, les victimes d'esclavage domestique, de servitude pour dette autre que sexuelle, l'exploitation des mineurs par la mendicité, par l'obligation de commettre des infractions comme les cambriolages par exemple, ou alors les victimes de faux mariage ne bénéficient pas de la protection que confère le statut de victime de la traite. C'est le cas des Pays-Bas, de l'Allemagne et de l'Autriche par exemple. Mais, si pénalement il est possible de condamner ces situations en utilisant d'autre incrimination que celle de traite, il revient aux ONG d'assister ces personnes qui n'ont le droit à aucune protection de la part de l'Etat de destination en tant que victime de traite des êtres humains.

Le cas particulier de l'Espagne.

La traite des êtres humains n'est pas appréhendée en tant que telle par le code pénal espagnol mais la législation sur les étrangers prévoit la délivrance d'une autorisation de séjour aux victimes ayant subi un préjudice ou ayant été témoins de traite illicite de main d'œuvre ou d'exploitation sexuelle.

L'Espagne ne dispose pas d'incrimination spécifique sur la traite au regard de la définition du protocole de la Convention sur la criminalité transnationale, mais offre une certaine protection aux victimes. Une

difficulté demeure, c'est qu'il appartient à la victime de prouver qu'elle a été trafiquée. Il est facile de comprendre que très peu de victimes seront en mesure de le prouver.

Les Etats qui ne disposent pas d'incrimination spécifique et ne reconnaissent pas un statut aux victimes.

Certains Etats, comme la France, la Grande-Bretagne ou la Grèce n'ont pas encore reconnu juridiquement la traite des êtres humains et les formes contemporaines d'esclavage comme une violation des droits de l'Homme et une atteinte à la dignité humaine.

Toutefois, l'évolution du phénomène, la prise de conscience au niveau international et européen et la pression des ONG ont conduit ces Etats à se pencher sur la question.

Pour ne prendre que l'exemple de la France, suite au lobbying mené par le Comité Contre l'Esclavage Moderne, une Mission d'information parlementaire sur les diverses formes d'esclavage moderne a été mise en place. Un rapport sera rendu en décembre prochain. Parallèlement, la Commission Nationale d'aide aux victimes examine spécifiquement la question du statut des personnes trafiquées et en situation d'esclavage. Des propositions quant à la délivrance d'un titre de séjour sont en train de se préciser.

Pour conclure, je voudrais juste rappeler que l'absence d'harmonisation en matière de traite des êtres humains est l'un des obstacles majeurs à un combat commun et efficace. D'autre part, le statut de victime ne doit pas se limiter au caractère répressif de la lutte mais s'ouvrir à une dimension humaine et de dignité. On oublie trop souvent que ces femmes, ces enfants et ces hommes ont déjà été instrumentalisés.

Elaine Pearson

Anti-Slavery International, United Kingdom

Working Group III: Prosecution: The Legal Framework to Protect Human Rights and Prosecute Traffickers

When we think about a legal framework to combat trafficking in persons, I am pleased to see, at this meeting at least, there seems to be a common understanding (in rhetoric at least) that laws are not simply about repression of trafficking and organised crime but about empowering trafficked persons to access their rights. This wider recognition may be a result of the Transnational Crime Convention and its attached Protocol to Prevent, Suppress and Punish Trafficking in Persons. Over 70 governments have signed the Protocol and as such have committed themselves not only to prevent and combat trafficking in persons, but to protect and assist victims of trafficking, with full respect to their human rights¹⁴. Unfortunately however, whilst these are two stated aims of the Protocol, the protection provisions for victims under the Protocol are discretionary (worded 'States shall consider', 'in appropriate cases', 'to the extent possible') whereas the criminalisation provisions are obligatory (worded simply 'States shall').

A fallout effect of this disparity in the level of prescribed obligation is seen now at the European Union level in the recent EU Framework Decision on Combating Trafficking in Human Beings. The Framework Decision recognises trafficking as constituting a serious violation of human rights¹⁵, but only focuses on the criminalisation aspect of prosecuting and penalising traffickers and has no substantive provisions for protecting trafficking victim's human rights¹⁶.

As has been said by many before me, we need to integrate a human rights perspective within the law enforcement approach to trafficking and not develop it as a separate policy to be applied by States when they see fit and as they see necessary. The clearest example of this is of course when we are thinking of prosecution of traffickers, and the protection of those victims who participate in criminal proceedings against them. This is the area of Anti-Slavery's research into trafficking. We are documenting law, policy and practice of victim protection in various countries so I would like to share two cases from our research as an illustration of ineffective protection of victim's rights in pursuing prosecution of traffickers.

In the first case, Anna (not her real name) was trafficked into forced prostitution from an Eastern European country to a European Union country. She was 'rescued' during a police raid, arrested by police for being in the country illegally and at the moment of arrest was given two choices: either report the trafficker and gain a temporary right of residence in that country, or return home immediately. Anna could not go home because the trafficker came from the same village as her, and would surely come after her again. The reason she had left her home in the first place was to provide for her family economically and this she had not yet managed to do. She feared they would be angry with her if she returned home with nothing. They had no idea of her situation and if they knew she'd been forced into prostitution they would disown her.

I am sharing this story because it is important to be clear on what are the realities and priorities for trafficked persons when they first escape their situation. So with these limited options, Anna reported the trafficker to the police that day she was arrested. She spent one night in jail. The next day the police brought her before an investigative Magistrate. She made the statement in court. She spent another night in jail. The police applied for her temporary residence on the grounds of aiding the investigation and

¹⁴ Article 2 of the Trafficking Protocol.

¹⁵ Introduction to the Proposal for a Council Framework Decision on Combating Trafficking in Human Beings, Draft 21 May 2001, paragraph 3.

¹⁶ Only Article 7 of the Proposed Framework Decision deals with protection & assistance to victims in regard to children, which simply refers to another Framework Decision on the Standing of Victims in Criminal Proceedings.

they put her in touch with an NGO to arrange shelter and social support. At that stage the NGO advised Anna of her situation, at which point she realised the danger to which she was now exposed by reporting the trafficker. She said she wished she did not make the statement. But it was too late, and she really could not go home.

This is a clear case where the interests of law enforcement and that of the victim were in conflict. Law enforcement needed her testimony; Anna needed support and information about her rights. Anna's rights were violated by the police. For example, her right to equal treatment, her right not to be held in detention, her right to autonomy, her right to legal advice. She should have been given time to think about her situation and had the opportunity to access an NGO, lawyer or a social worker in order to inform her of her rights from the beginning. She had the right to appropriate housing i.e. a shelter, not arbitrary detention. The police said it was 'voluntary detention' but the fact is that it's more convenient for them to keep a victim who's a potential witness in a jail cell instead of a shelter to secure their testimony in case they change their mind.

So this illustrates how the rights of the victim were subordinated to the interest of prosecuting the trafficker in the initial investigatory phase. We know that prosecution of traffickers for trafficking is usually dependent upon the testimony of victim witnesses. However we also know that it is not always in the best interests of trafficked persons to testify against their traffickers. Victims who agree to testify put themselves and their families at grave risk of reprisals. They open themselves up to secondary victimisation in court. Not to mention the economic disadvantage for many victim witnesses who are often unable to earn any money in the time leading up to the trial. Let's not forget it was economic need that drove many victims to leave their homes in the first place.

So let me give one more example regarding ineffective court procedures in prosecution of traffickers. In this case, several trafficked women agreed to testify against their trafficker in an EU country. They obtained a residency permit to stay because they were witnesses. The case was pending for a long time, and it was three years later before the women got summoned to court to testify against a trafficker. During these three years there was no opportunity for them to work or earn money or for any formal education or training. They were provided with psychosocial support, counselling, medical care, housing and some financial support from the government.

By the time they were called to testify at the trial, one of the witnesses had returned home. It had been three years and she wanted to get on with her life, to earn a livelihood and to see her family again. She was unable to be located to return to testify. The others still in the destination country agreed to testify. The trial actually was in a neighbouring country, and the NGO that supported the women accompanied them there and arranged with the police for a police escort from the border to the courtroom for the women. The timing was also arranged so the women would not 'accidentally' meet their traffickers in the courthouse, and a separate private room was available for them to wait in. So far so good. However, although the Prosecutor and judge had said the courtroom would be closed to the public and the defendant not present, when the first woman went in to testify this was not the case, the courtroom was open and the defendant and his family whom she knew were present in the room. The women gave evidence anyway, because in this case these victims were actually very angry for what had happened to them and were committed to seeing the traffickers convicted.

However as a result of this experience, they were severely emotionally traumatised by confronting the trafficker again in the courtroom. The judge was not very sensitive to the needs of the women in the questioning and cross-examination. The social worker counselling the women found their recovery was seriously impeded by participating in the criminal proceeding. Not only that, following the trial, one of the women received numerous threatening anonymous telephone calls allegedly from the traffickers' family. After giving evidence, no information was later given to these women about whether the trafficker was finally convicted or not.

Now I wanted to share this case because I think it illustrates some of the practical impediments and serious gaps in protection of the rights of trafficked persons who agree to testify against traffickers. The lack of communication from the Prosecutors Office regarding the status of the case at various times, the lack of witness protection measures in the courtroom and the lack of any long term protection for the safety of the victim who may be in increased danger as a result of her testimony.

Even with a legal framework that enabled the victim to stay in the country, I think its clear that often there is little regard for protecting human rights beyond that in this case. We need to ask, was this an empowering experience for the trafficked person? A three-year waiting period, no right to employment or education or training opportunities, no access to information about status of the case, increased threat to security of person and trauma as a result of testifying and no access to compensation.

For OSCE countries to seriously tackle trafficking from a rights-based perspective, it's essential to highlight these kinds of practical obstacles in order to think more concretely about how we can address them. This involves how we need to change laws and policies, and also how we can ensure effective implementation of laws and policies that do protect the rights of victims. We need to clearly set out the responsibilities for all stakeholders in protecting rights of trafficked persons.

If I was to state a minimum standard of protection of rights of victims, especially those involved in the prosecution process, then the following aspects must be provided:

1. All trafficked persons must have opportunities for temporary residence, without immediate deportation. This should include a recovery period such as that provided in Holland and Belgium during which time the trafficked person can recover from her situation and decide if they want to pursue criminal proceedings against the trafficker. Trafficked persons should be provided opportunities also for permanent residence in appropriate cases.
2. Services must be provided during the temporary residence stay such as appropriate housing (i.e. often a secret and secure shelter but not detention), counselling, information (especially concerning their legal rights) in a language the victim can understand) and access to translators, legal assistance, medical assistance, assistance in psycho-social recovery, material (financial) assistance, education/training opportunities, employment opportunities i.e. the right to work.
3. Trafficked persons and those close to them must be protected from intimidation, threats and reprisals. Measures include police protection/escorts as required, protection of family members at home, relocation of family members, ability to communicate with family members at home, in-court legal protections such as testimony by deposition/closed circuit camera, or in the absence of the defendant and confidentiality.
4. Trafficked persons must have access to bring civil claims against the trafficker for compensation.

Other aspects to consider for long-term victim protection for those who act as witnesses include providing opportunities for relocation, change of identity and protection of the victim and/or those close to her in the country of origin. Witness protection and support for trafficking cases should be carried out by an independent witness protection agency rather than by local police. A range of witness protection measures should be made available to the witness and she be given the opportunity to select between them according to her particular circumstances.

Finally, witness protection mechanisms are not about creating incentives for victims to testify. They are about creating the **ability** for trafficked persons to testify. We need to ensure that trafficked persons who are already victims of grave human rights violations are empowered not disempowered by the process of participating in a criminal prosecution of trafficker. In the long term we are concerned with protecting the human rights of all trafficked persons, not simply those who act as witnesses.

11.2 Links to Relevant International Documents

U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime

http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/index.htm

EU Council Framework Decision on Combating Trafficking in Human Beings

[http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=52000PC0854\(01\)R\(01\)&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=52000PC0854(01)R(01)&model=guichett)

OSCE Ministerial Council Decision No.1 on Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings

<http://www.osce.org/austria2000/documents/decisions/mc08ed01.pdf>

ODIHR Reference Guide for Anti-Trafficking Legislative Review with Particular Emphasis on South Eastern Europe

http://www.osce.org/odihr/attf/attf_refguide.pdf

Council of Europe Recommendation No. R(2000)11 of the Committee of Ministers to member states on Action against Trafficking in Human Beings for the Purpose of Sexual Exploitation

<http://cm.coe.int/ta/rec/2000/2000r11.htm>

11.3 Statements Made at the OSCE Permanent Council

**STÄNDIGE VERTRETUNG DER BUNDESREPUBLIK DEUTSCHLAND
BEI DER ORGANISATION FÜR SICHERHEIT UND ZUSAMMENARBEIT
IN EUROPA, WIEN**

Permanent Mission of the Federal Republic of Germany to the
Organization for security and cooperation in Europe, Vienna

Wien, 25. Oktober 2001

Tagesordnungspunkt "Aktuelles"

Information über OSZE-Konferenz "Europa gegen Menschenhandel" in Berlin 15./16. Oktober 2001

Am 15. und 16. Oktober 2001 fand in Berlin die OSZE-Konferenz "Europa gegen Menschenhandel – Europe against Trafficking in Persons" statt, die gemeinsam vom Auswärtigen Amt und ODIHR organisiert wurde. Sie wurde von Bundesaußenminister Joschka Fischer und dem amtierenden OSZE-Vorsitzenden, Außenminister Geoana, eröffnet. Weitere prominente Teilnehmer waren die deutsche Familienministerin Christine Bergmann, die EU-Kommissarin für Arbeit und Soziales, Anna Diamantopoulou, ODIHR Direktor Gérard Stoudmann, die Parlamentarische Staatssekretärin im Innenministerium der Bundesrepublik Deutschland, Cornelia Sonntag-Wolgast, die Europaparlamentarierin Patsy Sörensen, die Leiterin der Stabilitätspakts-Taks Force gegen Menschenhandel, Ministerin Helga Konrad sowie der Leiter des deutschen Bundeskriminalamtes Leopold Schuster. Zahlreiche weitere Persönlichkeiten aus dem Bereich von NGOs, internationalen Organisationen und deutschen Behörden und Organisationen, die sich mit der Bekämpfung des Menschenhandels befassen, beteiligten sich als Moderatoren, Keynote-Sprecher oder Diskussionsteilnehmer der verschiedenen Arbeitsgruppen und Podiumsdiskussionen. Gleichzeitig mit der Konferenz fand im Lichthof des Auswärtigen Amtes eine umfangreiche, von Nichtregierungsorganisationen organisierte Plakatausstellung über die Probleme des Menschenhandels statt.

Die Außenminister Fischer und Geoana stimmten darin überein, dass Menschenhandel eine besonders brutale und verabscheuungswürdige Verletzung der Menschenrechte ist, die zu Recht eine "moderne Form der Sklaverei" genannt wird. Es gilt daher, dieses globale Problem umfassend zu bekämpfen und ihm mit einem Bündel konkreter und spezifischer Maßnahmen zu begegnen. In dem heute zirkulierten Bericht von ODIHR zu den Ergebnissen der Konferenz sind zahlreiche Empfehlungen und Maßnahmen für den OSZE-Raum aufgezeigt und ich hoffe, dass wir möglichst viele bereits in naher Zukunft umsetzen können.

Wie Bundesaußenminister Fischer sagte, haben wir Mitgliedstaaten der OSZE eine besondere Verantwortung. Wir haben uns auf einen in der Welt einzigartigen Menschenrechtsstandard verpflichtet und in der Gipfelerklärung von Istanbul explizit eine entschlossene Bekämpfung des Menschenhandels vereinbart. Wir müssen daher bei der Verbesserung der Rechte von Frauen und Kindern Vorreiter sein, sie in unseren eigenen Staaten umfassend verwirklichen und uns international mit Nachdruck für ihre Stärkung und Überprüfung einsetzen.

Die Berliner Konferenz war die erste in einem sogenannten "country of destination". Deutschland gehört wie viele andere westeuropäische Staaten zu dieser Gruppe, in denen vor allem Frauen und Kinder, aber auch Männer als illegale Arbeitskräfte, Prostituierte oder für andere kriminelle Zwecke ausgebeutet werden. Wir sind daher gemeinsam mit unseren Nachbarstaaten und vor allem mit unseren EU-Partnern aufgefordert, unseren Teil dazu beizutragen, den Menschenhandel zu bekämpfen.

Daneben hat sich die Konferenz vor allem mit der Situation der Opfer befasst. Wir dürfen über der Ergreifung staatlicher Schutzmaßnahmen und gesetzlicher Regelungen zur Bekämpfung von organisierter Kriminalität, Menschenhandel und illegaler Einwanderung nicht vergessen, dass hinter dem abstrakten Begriff "Menschenhandel" schutzbedürftige Opfer stehen – Frauen, Mädchen, Männer und Kinder, deren Menschenwürde geschützt werden muss. Ich freue mich daher, dass es auf dieser Konferenz eine besondere Gelegenheit gab, mehr Kontakte zwischen Regierungsvertretern und Nichtregierungsorganisationen herzustellen, die sich vor allem mit dem Opferschutz befassen. Zahlreiche Nichtregierungsorganisationen, die unmittelbar mit Opfern von Menschenhandel zu tun haben, konnten ihre reichhaltigen Erfahrungen in die Konferenz einbringen und ihre Anliegen unmittelbar an Vertreter von Regierung und anderen staatlichen Stellen herantragen. Ich begrüße es auch, dass wir am 9. November 2001 Gelegenheit haben werden, mit ODIHR-Direktor Stoudmann und seinen Mitarbeitern über mögliche Folgemaßnahmen für die Konferenz zu diskutieren. Gleichzeitig möchte ich die Gelegenheit ergreifen, mich an dieser Stelle sehr herzlich bei Botschafter Stoudmann und seinem Team für die Mitorganisation dieser wichtigen Konferenz zu bedanken.

Schließlich möchte ich noch darauf hinweisen, dass die Eröffnungsrede des Bundesaußenministers am 18. Oktober 2001 in deutscher und englischer Sprache an alle Delegationen verteilt wurde und auch auf unserer Website abrufbar ist.



EU Presidency Voorzitterschap Vorsitz Présidence UE

CONSEIL PERMANENT N°363 DU 25 OCTOBRE 2001

Déclaration de l'Union européenne concernant la conférence de Berlin «l'Europe contre la traite des êtres humains»

Au sein de l'Union européenne, nous sommes tous très préoccupés par ce phénomène révoltant et malheureusement croissant qu'est la traite des êtres humains.

Ce fléau est souvent abordé du point de vue des pays d'origine et il est important que ces pays soient soutenus dans leurs efforts pour lutter à tous les stades et de toutes les manières contre ce très grave problème. Mais, bien sûr, l'Union européenne se sent également très concernée par la traite des êtres humains en tant que région de destination. Il est important que de ce point de vue aussi la réflexion soit stimulée et les mesures possibles examinées.

A cet égard, les recommandations formulées lors de la conférence de Berlin constituent des références très utiles dont il convient notamment de retenir la nécessité de mettre en place une législation efficace imposant des sanctions sévères aux trafiquants, d'assurer leur poursuite et de garantir la protection des droits des victimes.

C'est pourquoi nous nous félicitons qu'une rencontre comme celle de Berlin ait pu être organisée avec succès grâce au gouvernement allemand et au Bureau des Institutions Démocratiques et des Droits de l'Homme, et nous espérons qu'elle ne sera que la première d'une série de rencontres et de discussions consacrées à ce commerce particulièrement abominable.

Les pays associés, la Bulgarie, Chypre, l'Estonie, la Hongrie, la Lettonie, la Lituanie, Malte, la Pologne, la Roumanie, la Slovaquie, la Slovénie, la République tchèque et la Turquie souscrivent à cette déclaration.



United States Mission to the OSCE
Statement on Berlin Conference:
"Europe Against Trafficking in Persons"
Delivered by Ambassador David T. Johnson
to the Permanent Council, Vienna
October 25, 2001

Thank you, Mr. Chairman.

I would like to thank both the Government of Germany and ODIHR for holding a valuable and well-organized conference.

We are all aware of the egregious practice of trafficking. It affects all OSCE states. This conference had an interesting focus on destination countries, of which the United States is clearly one. This illustrates to us that this is not a problem of one region or one part of the OSCE, but a problem we all share and on which we all must work on together.

We have made some progress on this issue – with the Vienna Ministerial decision committing our governments to take steps to address the problem, as well as projects and programs conducted by ODIHR, the Stability Pact Task Force on Combating Trafficking in Human Beings, and OSCE field presences. This is a good start.

But, as the issues raised in this conference clearly showed, it is only a beginning. It is up to our governments to ensure that we fulfill our commitments to (quote from the Vienna Ministerial) "take necessary measures, including by adopting and implementing legislation, to criminalize trafficking in human beings, including appropriate penalties, with a view to ensuring effective law enforcement response and prosecution. Such legislation should take into account a human rights approach to the problem of trafficking, and include provision for the protection of the human rights of victims, ensuring that victims of trafficking do not face prosecution solely because they have been trafficked."

As participants in the conference also pointed out, NGOs can be our best allies on the fight against trafficking, particularly in protecting victims. We need to look at ways to support their work. The issue of ensuring that international personnel do not contribute to trafficking in countries where they are deployed was also discussed in the conference. We agree that this is an extremely important issue. We support the implementation of the OSCE anti-trafficking guidelines to help ensure that OSCE is not part of the problem, but part of the solution.

We look forward to concrete follow-up on this conference. It is not enough to point out the problems; we must work together to solve them.

Thank you, Mr. Chairman.