

HDIM 2013

Working Session 10: Humanitarian issues and other commitments I, including:

- Combating trafficking in human beings;
- Implementation of the OSCE Action Plan to combat trafficking in Human beings

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This Working session focused on the increasing phenomenon of trafficking in human beings (THB), its features and most recent evolutions, and on the OSCE instrument to tackle it, the Action Plan. On the occasion of the 10th anniversary of the Action Plan, the session exceptionally reunited the current Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Dr. Maria Grazia Giammarinaro* and her two predecessors, *Dr. Helga Konrad* (currently head of the Regional Implementation Initiative at the Austrian Institute for International Affairs), as introducers, and *Ms. Eva Biaudet* (now Finnish Ombudsman for Minorities) as a moderator.

In the beginning of the session, the ODIHR Director Janez Lenarčič measured briefly the impact of the 2003 Action Plan, 10 years after its adoption:

- The unique human rights based approach resulted in the focus on the victims' rights and co-operation between the civil society and the State in protecting victims;
- It established a network of national contacts and resulted in a higher awareness of the realities and new trends in trafficking;
- It delivered Guidelines for carrying out more intensive investigations and trials;
- It allowed for better identification of THB victims.

Dr. Helga Konrad, the first OSCE Special Representative (2004-06) noted that for the last 15 years, the work was too much limited to discussions rather than to victims-focused actions. She noted that too much energy went into actions for the sake of actions, forgetting sometimes the pure victims' interest. Equally, these discussions were isolated from other related questions like development issues and aid; migration or even environmental decay. On the other hand, action has recently moved towards a more preventive approach. Other related issues are now introduced, by which the action has taken a cross-dimensional nature. Therefore, due to its inclusive nature, the OSCE offers the best forum to tackle THB.

The OSCE has put this on the agenda, essentially since the Ministerial Council of 1999, and consolidated in 2000, also due to considerable efforts of the former Belgian Ambassador Del Marmol. Since then, many kinds of national institutions and agencies were established, with increased degree of co-ordination between those agencies. One of the critical moments was the creation of the 'Alliance' as a co-ordination tool created by the OSCE. Since then, the THB has become a priority for many governments, with even increased funds earmarked for this fight. However, few elements on its impact are known. In the long run, all actors would introduce impact assessments for the obvious need for transparency in public funds. On the other hand, co-ordination cannot be the goal. Tackling the THB must remain the goal as well as preventing people from becoming victims.

In her remarks, Dr. Giammarinaro complimented the OSCE as one of the pioneering organizations in fighting the THB, in the first place due to its Action Plan with human rights approach. Since its

existence, nearly all governments have adopted legal provisions for prosecuting traffickers and slavery. Dr. Giammarinaro has even witnessed some landmark legal cases condemning traffickers and not victims. At the same time, public awareness and know-how about this phenomenon are growing.

Nevertheless, some serious challenges remain: (1) the need to invest more in translating commitments into action. Although a lot is being done, the actual judgements remain rare. (2) We have to better acknowledge the widening variety of crimes resulting from THB: today the new kinds of exploitation beyond sexual (which remains the most widespread) are home servitude, child labour or organ removals. (3) Hence, in order to be effective, this fight needs to be better connected with other related policy areas like migration, law enforcement, and labour policy. In any case, it has become a true form of transnational crime. The forms of THB today are less structured, but more competitive.

The judiciary stays behind: only a fraction of the cases results in convictions, and for those victims whose traffickers are convicted, the due compensation is hardly transferred to the victim. Ideally, more regular convictions should go together with an inclusion-strategy for victims. Also, assistance to victims should be unconditional. Too often, the assistance they should be entitled to (according to e.g. an EU-directive of 2011) is still conditional upon identifying the criminals.

Given this broader scope of criminal activities in THB, an addendum to the Action Plan would allow an update to these actual trends. It could equally strengthen the victims-based approach, by guaranteeing compensations and legal and other assistance to victims. The addendum would send a clear message to traffickers that justice will be done. It is the perpetrators who should fear, not the victims.

25 interventions were made during the discussion, including 7 by non-governmental organizations. 1 delegation used its right of reply.

This issue concerns people that are among the most vulnerable victims of all criminal activities. This form of crime is getting more sophisticated over time, and does not know any frontier. The days that this phenomenon was limited to sexual abuse are gone. Nowadays, a wide variety of rather new and related activities are trafficking children for forced labour or sexual exploitation. Also organ trafficking or household exploitation are new challenges in this fight. Due to this transnational nature, international co-ordination is of utmost importance. Therefore, co-operation among law-enforcement officers, social workers, and also policy-makers will determine the success of this fight. Criminals are getting more creative in their activities, use modern technologies, reach more remote 'customers' and hire good lawyers. Any strategy focused on helping the victims requires sophisticated tactics and broad co-ordination among all actors. We can only reach progress with an inclusive approach, involving all different aspects of this crime.

Some delegations praised positive steps taken and hence progress made in some States. In some cases, traffickers are more severely prosecuted, or victims are offered better assistance or States are allocating a more significant budget to this fight. Very focused measures were applauded, such as offering shelter to victims. Also, one country announced the holding of a 'week of fight against trafficking' to increase the awareness of the problem.

One delegation criticized the West or the 'old democracies' of being the main destination of the trade route of e.g. organs.

Another delegation denounced the key reason for the very existence of this crime, which is pure

selfishness.

Generally, the 2003 Action Plan, the work of the OSCE Special Representative and all related activities of the OSCE in the fight of THB all enjoy broad support from all participating States. The human rights approach and the victims-based focus can equally count a widespread support. Many representatives of NGOs highlighted this based on specific examples in their States.

Recommendations to the participating States:

- Respect the international commitments in ensuring the rights of victims of the THB;
- Translate commitments into practice and address the ever evolving patterns of the THB crimes;
- Mainstream the anti-THB policy to related policy areas;
- Support the criminal justice response by civil law remedies bearing in mind that the ultimate goal for victims would be social inclusion. In this regard, the assistance to victims should not to be made conditional;
- Make better use of technology to raise awareness, disrupt traffickers and help victims;
- Ratify the Palermo Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, and the Council of Europe anti-THB tools;
- Implement the UN Global Plan of Action against Trafficking in Persons;
- Focus on assistance to victims without linking it to their co-operation with State authorities;
- Improve the inter-State co-operation in order to investigate and gather data on organ trafficking. Pay more attention to new forms of trafficking, in particular to exploitation of (diplomatic) household personnel;
- Where necessary, review the rules that a victim needs to comply in order to qualify for assistance;
- Support the decision at the Ministerial Council in Kyiv to promote a victims-focused approach in the OSCE.

Recommendations to the OSCE and its institutions:

- Promote the development of the culture of evaluation for anti-THB measures;
- Increase its profile as the promoter of human rights based policies;
- Share best practices in establishing the national preventive mechanisms as well as national action plans to combat THB. Consider creating mechanisms of co-operation and information exchange within the OSCE to make the fight against THB more efficient;
- Further analyse the THB forms in the OSCE region, with an aim to improve legal protection and exchange of experiences between countries on protection of domestic workers in diplomatic households;
- Consider co-operation with other international organizations in sharing good practices;
- Monitor the implementation of international commitments by participating States to send a message that these go beyond mere ratification of international documents;
- Create a formal structure to input victims' voices to the OSCE Action Plan;
- Assist the participating States more intensively in promulgating laws in preventing THB, such as legislation around business transparency and child protection.